The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER
The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.
Eternal Lord God, the fountain of truth and wisdom, thank You for the yearning You have placed in our hearts for You.
Today, equip our Senators for the tasks before them. Help them strive to make the rough places of our world smooth and the crooked places straight. As they debate the Judge Samuel Alito nomination to the Supreme Court, give them the wisdom to be guided by conscience and not contention. Empower them to disagree without being disagreeable. Guide their hands, hearts, and minds to those undertakings that please You. May they never swerve from the straight and narrow path of Your unfolding providence.
Help us all to live for Your honor so that even our enemies will be at peace with us. Bless our military men and women who sacrifice each day to keep us free. We pray in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE
The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:
I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME
The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION
NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 486, which the clerk will report.
The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.
The PRESIDENT pro tempore. Under the previous order, the time from 10 a.m. to 11 a.m. shall be under the control of the Democratic leader or his designee.
RECOGNITION OF THE ACTING MAJORITY LEADER
The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE
Mr. DEMINT. Mr. President, today, we resume consideration of the nomination of Judge Alito to be an Associate Justice of the Supreme Court. The order from yesterday allows the Democrat side to begin debate this morning at 10 o’clock and speak for up to 1 hour. Then the majority will have the hour from 11 to 12, and we will continue alternating 1-hour blocks of time between the two sides throughout the day. Members should plan their schedules accordingly to use the allocated time to make their statements. We will continue to work toward a final time for a vote on the nomination.
Mr. President, I suggest the absence of a quorum.
The PRESIDENT pro tempore. The clerk will call the roll.
The legislative clerk proceeded to call the roll.
Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.
The PRESIDENT pro tempore. Without objection, it is so ordered.
The Chair will state that the time from 11 a.m. to 12 p.m. shall be under the control of the majority leader or his designee, with each hour rotating back and forth in the same manner after that time.
The Senator is recognized.
Mr. LEAHY. I thank the distinguished President pro tempore, my friend of over 30 years. The debate has worked out well by going back and forth, showing the usual comity here in the Senate.
I began my discussion of Judge Alito’s nomination for a lifetime appointment to the Nation’s highest Court with the same issue I began my questions to Judge Alito and, before that, to now Chief Justice Roberts: That is the issue of checks and balances on Government power. Obviously, the answers given by Chief Justice Roberts I found satisfactory. I voted for him. The answers by Judge
Alito, as I will explain further, I did not find satisfactory.

It is important because we are at a pivotal point in our Nation’s history. This is a time of unprecedented governmental intrusion into the lives of ordinary Americans. We are faced with the extraordinary challenge of essentially unlimited power. There are troubling signs that this nomination is part of that effort by the President and Vice President to uphold Presidential claims of unchecked power and to upset the careful balance of our system of government, a system of government that was so carefully crafted by the Framers in our national charter, the Constitution. I have said I do not believe that Judge Alito would be that kind of a careful check and balance against Presidential overreaching. Because of that, I said I would not support his nomination.

I don’t take this position lightly. There are nine members of the Supreme Court, of them nominated by Republican Presidents. I have voted for eight of those nine, but I will not for this one. I feel that the judge’s record, his missed opportunities during the hearings to answer concerns about his record, and his refusal to answer whether or not he appreciates the role of the Supreme Court as a protector of Americans’ fundamental rights and liberties. It is a test he failed. The Supreme Court has to be a source of justice. It has to be an institution where the Bill of Rights and human dignity are honored. It must be an institution dedicated to the mission embodied in the words etched in Vermont marble above the entrance to the Court where it says “equal justice under the law.” It must be an institution which carries the spirit enshrined in our Constitution, refined following the Civil War, and re-actualized further over the course of landmark decisions in Brown v. Board of Education and Baker v. Carr. Judge Alito’s record and testimony demonstrate that he does not understand the vital role of the courts in implementing the constitutional guarantees of equal protection and equal dignity for all Americans.

A classic example of his failing the test took place during his confirmation hearing when I asked him a question Senator SPECTER had asked then Justice Rehnquist at his hearing to become the Chief Justice. I know; I was at the hearing. The question was a basic one: whether the Supreme Court can be stripped of jurisdiction to protect fundamental constitutional rights. I asked Judge Alito whether the Supreme Court could be stripped of jurisdiction to hear first amendment cases involving the press or the protection of freedom of religion or freedom of speech. The First Amendment is probably the greatest part of our Bill of Rights. I told him Senator Specter had previously insisted on an answer from Justice Rehnquist and that Justice Rehnquist had answered that it would not be constitutional to strip the Court of its jurisdiction, its vital function to protect our constitutional freedoms. Unlike the late Chief Justice, Judge Alito responded as though it were merely an academic question. He said that there are scholars on both sides. He refused to state his view. This is a basic and fundamental issue for anybody aspiring to be a member of the Supreme Court. Justice Rehnquist got it right. For that matter, Judge Bork got it right. Judge Alito got it wrong.

When he was asked to respond to my question, Senator SPECTER revisited it, but Judge Alito still failed the straightforward test. I asked the same question with respect to the fourth amendment, the fifth amendment, and the sixth amendment. There was no answer. These are the constitutional amendments that guarantee our privacy rights, our protection against unreasonable searches and seizures, our right to due process, our right against self-incrimination, our protection against Government takings, and our right to public trial and to counsel. These are basic American rights that help to define us as a free people. They control the intrusiveness of Government power.

Judge Alito has shown through his answers that he does not appreciate the constitutional role of the Supreme Court as the protector of America’s fundamental freedoms. In fact, in our system of checks and balances, the Supreme Court has to be the ultimate defender of Americans’ constitutional rights. Judge Alito’s refusal to acknowledge that his answers are more than deeply troubling. It is stunning that anybody up for a lifetime appointment to the Supreme Court of the United States would not answer such basic questions. Suppose if by legislative act we could remove the constitutional guarantees of religion or free speech how quickly we could remove our freedoms as Americans. Again, Justice Rehnquist and Judge Bork had it right. Judge Alito had it wrong.

I even gave him a concrete example. I asked whether in the early 1950s, Congress could have stripped the courts, including the Supreme Court, of jurisdiction to hear cases involving racial segregation. This historical hypothetical raised the question whether the Supreme Court could have been prevented from deciding Brown v. Board of Education and enforcing the equal protection clause of the Constitution to undo unconstitutional racial segregation. His answer was no better. He was clearly stumped.

No Senator who truly cares about civil rights, equal rights, freedom of religion and speech and the press can have any confidence that Judge Alito understands the critical role of the Supreme Court in protecting those rights.
striking African Americans from juries, Judge Alito contended that this was irrelevant and likened it to a study showing that a disproportionate number of recent Presidents have been Catholic.

In a 2004 case, Doe v. Grady, Judge Alito dissented from a ruling against police officers who searched a woman and her 10-year-old daughter while executing a search warrant authorizing the search of her husband and their home.

In submitting the course of the NAACP’s investigation into Judge Alito’s past we became convinced that he is unfit to sit on the United States Supreme Court because race and gender are real problems in the United States; a fact he appears to neither recognize nor appreciate.

Accordingly, as I said earlier, I hope you will ask questions, demand thorough answers, during the hearings that begin today on Judge Alito to try to determine even further the extent to which he is, or is not, committed to upholding and protecting the civil rights and civil liberties of all Americans. On behalf of the NAACP, I would also like to further express our strong opposition to the nomination and our hope that you urge your Senate colleagues to oppose and defeat Judge Samuel Alito’s nomination.

Please contact me, or my Bureau Counsel, Crispin C. De La Cruz, at (202) 588-2940 soon so I may know your position on this matter, and to let me know what I can do to work with you to ensure that President Bush nominates, and the Senate confirms, a moderate, not extremist, judicial candidates to the federal bench.

Sincerely,

HILARY O. SHELTON
Director
NATIONAL URBAN LEAGUE
January 10, 2006

DEAR SENATORS: As you know, the National Urban League, Inc. (“Urban League”) is the oldest community-based civil rights organization in the country. Through our 102 professionally-staffed affiliates, located in 34 states and in the District of Columbia, the Urban League works to ensure, in a non-partisan manner, that all people achieve social and economic parity and full civil rights for African-Americans and other people of color.

Nominations to the United States Supreme Court are of particular concern to the Urban League Movement because of the high Court’s tremendous power and impact on the issues relevant to our mission of securing civil rights and economic empowerment for African Americans. Since the President nominated Judge Samuel Alito, Jr. to be an Associate Justice of the United States Supreme Court, the National Urban League has carefully and exhaustively reviewed his judicial record, judicial philosophy, and professional qualifications.

Our study found that Judge Alito has a long and unambiguous history of opposition to critical and established voting rights protections, civil rights remedies and social justice guarantees. Our examination also established that Judge Alito frequently injects this philosophy into his judicial decision-making, often in direct contravention of settled law. A copy of our report is attached.

Based upon this review, it is our conclusion that Judge Alito’s stated opposition to reformed civil rights remedies and voting rights protections, and his consistent record of injecting these views into his decision-making to the degree that it undermines fundamental civil rights protections make him unsuitable for a seat on our nation’s highest court.

Therefore, we urge the Senate Judiciary Committee to reject the nomination of Judge Alito to be a Supreme Court Justice and look forward to working with you to ensure a fairer and more sensible interpretation of the Constitution by judges who will uphold fundamental civil rights protections.

Respectfully,

MARC H. MORIAL, President and CEO
NAACP LEGAL DEFENSE FUND OPPOSES ALITO NOMINATION
REPORT DETAILS HOSTILITY TO CIVIL RIGHTS AND WARNS OF TIPPED BALANCE ON HIGH COURT

On December 15, 2005, the NAACP Legal Defense and Educational Fund, Inc. (LDF) announced its opposition to the nomination of Samuel Alito, Jr. to the U.S. Supreme Court, citing his hostility to strong enforcement of civil rights laws. LDF warned that confirmation of Judge Alito would threaten to shift significantly the Supreme Court’s jurisprudence relating to affirmative action, voting rights, employment and criminal justice issues.

At a press conference in Washington, D.C., LDF released a 10-page report detailing what it called an “extreme” judicial approach by Judge Alito that would have a significant impact on important future decisions of the High Court. The LDF report cites cases in which Alito has attacked congressional legislative authority in a manner that his colleagues viewed as extreme. As a Justice Department lawyer, he argued to uphold police use of deadly force and undermine the rights of criminal defendants. In the area of affirmative action, LDF highlighted “troubling signals” that Alito would tip the delicate Court balance to unroll policies at the “epicenter of the modern civil rights agenda.”

“We can predict with substantial certainty that Judge Alito will very likely vote in a manner that, given the current composition of the Court, will cause a substantial shift in the Court’s civil rights jurisprudence with devastating effects,” the LDF report cautioned.

Judge Alito is scheduled to appear before the Senate Judiciary Committee in early January for confirmation hearings.

LDF Director-Counsel and President Theod-ore G. Johnson III said today that Alito’s record does not relish opposing a nomination to the Supreme Court and does so only when the nominee’s record is contrary to the goals of equal justice that are the hallmark of LDF’s work.

With the announcement of Justice Sandra Day O’Connor’s retirement, LDF called upon President Bush to nominate a successor who is not ideologically rigid and predictable, but who is fair and open-minded, and committed to protecting advances in civil rights. LDF emphasized that Justice O’Connor’s successor should not be a mis- driven ideologue but, even if a conserva- tive, should base their decisions on the Court with respect to civil rights issues.

To analyze Alito’s record, LDF reviewed published and unpublished opinions in cases decided by Judge Alito as well as documents released by the White House and the National Archives. Appointed by President George H.W. Bush to the U.S. Court of Appeals for the Third Circuit in 1990, Alito spent his entire legal career at the Depart- ment of Justice.

LDF’s report also reveals that Alito rejected Justice O’Connor cast pivotal votes in civil rights cases coming before the Supreme Court. While Justice O’Connor did not rule against civil rights litigants, at least 13 of his opinions, such as affirmative action “was always in play.” In contrast, a review of Samuel Alito’s tenure at the Justice Department reveals that he was directly involved in the Reagan Administration’s frontal attacks on affirmative action, arguing against affirmative action in three significant cases before the Court.

In his 15 years on the bench, he has ruled against African Americans on this issue.

Judge Alito’s record should be extremely troubling to minority workers, women and others who depend on affirmative action protections in the workplace. Although he has heard dozens of cases, Judge Alito has almost never ruled in favor of an African-American plaintiff in an employment discrimination case; he has never authored even one opinion favoring an African-American plaintiff on the merits in such a case.

Judge Alito’s criticism of the Warren Court’s reapportionment decisions is extremely troubling. These cases “set into motion a process that led to the dismantling of a political system, erected both by prejudice and other forms of patent electoral manipulation.” In his only opportunity on the bench to interpret the Voting Rights Act, Alito voted to uphold an at-large system of elect- ing members to a Delaware school district, perpetuating an electoral system that diluted the voting strength of racial minori- ties.

In the criminal justice area, Judge Alito has repeatedly parted ways with his colleagues and failed to heed Supreme Court precedent in important cases regarding race discrimination in jury selection, the right to effective assistance of counsel, and search and seizure issues.

LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW
WASHINGTON, DC, JANUARY 5, 2006

HON. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC
HON. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As the Co-Chairs of the Law- yers’ Committee for Civil Rights Under Law, we submit the enclosed “Statement of Board Members Opposing the Nomination of Judge Samuel Alito, Jr. to the Office of the Supreme Court of the United States” on behalf of the 114 individual members of the Board of Directors and Trustees who sub- scribe to the Statement.

These members of our Board oppose Judge Alito because the record demonstrates that his views are in direct conflict with the core civil rights principles to which the Lawyers’ Committee is dedicated, and that as a member of the Supreme Court, Judge Alito would cast votes and write opinions that would set back the cause of civil rights in our country and impede our progress toward the goal of equal justice for all. It is worth noting that in the Lawyers’ Committee’s 42-year history, 10 Directors and Trustees have opposed a Supreme Court nomination on previous occasions.

We also enclose a Final Report that ana- lyzes Judge Alito’s legal philosophy per- taining to civil rights and provides an in-depth examination of Judge Alito’s record. If Judge Alito’s testimony during confirmation hear- ings or other evidence justifies a change in the conclusions we have drawn, we will so inform you.

We hope the Statement and Report are of assistance to you and your staff. For the rea- sons noted in them, we strongly urge the Ju-
Mr. LEAHY. Judge Alito missed opportunities during the hearings on a number of issues. I am left with a deep and abiding concern about Judge Alito’s understanding of the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has failed them.

Despite Judge Alito’s attempts to retreat from several of the more outrageous statements in his 1985 job application for a political position in Edwin Meese’s Justice Department, his testimony at the hearing has done little to dispel my concerns. The consequences for all Americans of Judge Alito putting the beliefs he expressed in that job application into practice on the Supreme Court are too great.

This was a startling statement to make in 1985, just two decades ago. He was 35 years old and had been practicing law for almost a decade when he wrote that statement about his disinclination to make decisions on reapportionment. Even after being asked about this statement several times at the hearing, Judge Alito failed to adequately answer why he would seek to highlight a disagreement with the landmark equal protection cases by which the Supreme Court made electoral decisions fairer for all Americans and established the principle of “one person, one vote.”

The Warren Court’s reapportionment decisions were among the central achievements of the civil rights era. They ensured that voting districts which had been grossly mal- apportioned, often to the detriment of minority voters, would be fairly revised and that everyone’s elevated voice would be heard equally. It is clear from looking at the Republicans’ partisan redistricting in Texas that these cases did not solve all the problems. However, reapportionment cases like Baker v. Carr, 1962, and Reynolds v. Sims, 1964, are landmarks because they established that courts have a responsibility to make certain that voting districts meet constitutional standards.

It was Justice William Brennan of New Jersey who wrote the Court’s opinion in Baker. Two years later, in Reynolds, the Court, restating the “one person, one vote” standard because, as stated by Chief Justice Warren in his opinion in that case:

As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by the people, there is no right to elect legislators in a free and unimpaired fashion that is a bedrock of our political system.

At his hearing, Judge Alito was in retreat and had to concede that the concept of one person, one vote is well-settled and should not be reexamined. It was equally well-settled in 1985 when he made the statement in his job application. More importantly, Judge Alito’s testimony calls into question whether he truly understands that the courts have a responsibility in our constitutional system to intervene to ensure that constitutional guarantees of equal access to the political system are met. This is important in situations where the political system is corrupt or where the political branches lack the will to fight against entrenched power or to reform themselves.

In response to a question from Senator Kozintsev, Judge Alito sought to retreat from the unqualified disagreement with the reapportionment cases expressed in his 1985 application. He told the Committee that his disagreement was based only on certain details of later Warren Court decisions like the 1969 case, Kirkpatrick v. Preisler. Not only is this narrow objection to certain Warren Court decisions not a credible explanation for why he made his sweeping assertions of disagreement in 1985, but Judge Alito also contradicted it later in his testimony when he suggested that his disagreement with those decisions on reapportionment decisions was based on Alexander Bickel’s ideas about judicial self-restraint. Professor Bickel was not...
concerned merely with later applications of one person, one vote. Rather, his theory was critical of the courts having any role at all in helping to guarantee that access to the political system is fair and equal.

In the few circumstances in which Judge Alito saw a role for the courts, he drew a line to prevent the courts from applying the Constitution to change the city limits of the city of Tuskegee, a black community, simply because a few African Americans had run for public office. He refused to disavow—when pressed on this point by Senator Durbin to look at his whole record and we did. In fact, a study of Judge Alito’s opinions by The New York Times found that he was similarly dismissive of the constitutional rights of those public office holders to have elected office.

In the dissenting opinion in Reynolds v. Sims, as in all of Justice Harlan’s reapportionment dissents, he argued that there is no constitutional basis for one person, one vote and that courts should restrain themselves from “usurping” the state legislatures’ self-serving apportionment decisions. In his dissent in Reynolds, Justice Harlan wrote: “It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent functions of the States,” and “[w]hat is done today deepens my conviction that judicial entry into this field is profoundly ill-advised and constitutionally impermissible.” This dissent, described as one of Judge Alito’s favorites, hardly sounds like a disagreement only with certain aspects of later reapportionment decisions.

The effects of the Court’s decisions to intervene were dramatized by the Supreme Court’s decision in Baker v. Carr. In 1965, the massive disparities in the size of voting districts would not have been corrected in the 1960s. Nor would the underrepresentation of voters from urban areas, minority voters, have been corrected. Had the Court not acted we might still have poll taxes and other barriers to the ability of minorities to vote.

At the hearing we heard testimony from pioneering civil rights attorney Fred Gray, who spent a lifetime fighting for those who were denied the rights to equal protection and equal dignity under the law guaranteed by our Constitution. After he graduated from law school, Mr. Gray immediately went to work defending Rosa Parks and Dr. Martin Luther King, Jr., in the Montgomery bus boycott. He has a real-life appreciation for the role of courts in a check to protect individual rights and liberties. In the late 1950s, after the Alabama legislature changed the city limits of Tuskegee, excluding all but three or four African Americans who were registered to vote in the city, Mr. Gray brought before the Supreme Court the case of Gomillion v. Lightfoot. This unanimous decision securing the right to vote for African Americans laid the foundation for Baker v. Carr and the cases establishing one person, one vote.

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The difference is then, prior to these decisions, and even prior to Brown v. Board of Education, and prior to Gomillion v. Lightfoot and those cases that desegregated the buses, we had very few African Americans and other minorities registered. We had little or no African Americans in public office, in my state, in 1957 we had none. Now my State has approximately the same number of persons in our State legislature. It mirrors the population of African Americans and other minorities who are holding public office, and an additional thousand that those public office holders have appointed to elected office.

Judge Alito did not adequately explain his disagreement with the Warren Court reapportionment decisions. He refused to say that he changed his views. He did not repeat what he had suggested in some private meetings that he was merely saying what he thought people in the Reagan White House wanted to hear and that it was just a job application. Candidly, his testimony on this critical point makes no sense. This is too fundamental a test of the integrity of the candidate for the Supreme Court to be brushed aside with the phrase “just a job application.”

Judge Alito’s sweeping disagreement with the Court’s handling of the reapportionment decisions is not the only part of his 1985 job application which has caused me to doubt his understanding of the responsibility for the courts to intervene where the political process is broken down, corrupt or entrenched. Judge Alito also stated in that application that he believes in “the supremacy of the elected branches of government.” In the hearing, Judge Alito tried to retreat from this statement, describing it as “inapt” and “very misleading.” Indeed, he refused to disavow it, telling Senator Kennedy: “I haven’t changed my mind.”

The Supreme Court’s decisions to intervene in the reapportionment cases in the 1960s had a tremendous effect on the ability of millions of Americans to participate in the political process. Yet I am concerned that his 1985 written statement reveals that he will be too deferential to the President as “supreme.” If they are controlled by entrenched political corruption, After listening to several days of his testimony, I am left with serious questions and concerns about Judge Alito’s appreciation for this critical role of the courts. These concerns are heightened by his apparent adherence to the so-called doctrine of the “Unitary Executive.”

These concerns are heightened by his apparent adherence to the so-called doctrine of the “Unitary Executive.”

Judge Alito has failed to grasp the importance of the courts in providing a venue for all Americans to assert their rights. One of the clearest examples of this is Judge Alito’s distressing record in cases in which individuals allege discrimination based on race, gender, or disability. Judge Alito has consistently found ways to keep the “little guy” from having a day in court. For example, he has held in cases seeking to prove discrimination to an excessively high standard of proof, rendering their cases almost un-winnable. From the bench, he has favored the government and big companies accused of discriminating. He seems to view these cases not as examples of regular Americans struggling for equal treatment but, instead, as technical legal exercises.

Judge Alito’s supporters—and many on the other side of the aisle were lined up to support him well before the hearings—have cherry picked individual cases to try to show that Judge Alito was fair to average Americans. Judge Alito told us to look at his whole record and we did. In fact, a study of Judge Alito’s decisions by Knight Ridder newspapers found that Judge Alito was consistently skeptical of discrimination plaintiffs, generally setting high standards of proof and finding that the plaintiffs before him did not meet those standards.

In several cases, the Third Circuit criticized Judge Alito for taking positions which would make it almost impossible for people to prove discrimination. In Bray v. Marriott Hotels, Judge Alito would have denied an African-American worker the chance to show that her employers denied her a promotion based on race. The majority of Judge Alito’s dissenting opinion in those cases indicated that a key discrimination statute “would be eviscerated if our analysis were to halt where the dissent suggests.”

The case of Pirolli v World Flavors, Inc., is a particularly poignant example of the kind of case that gives me great concern about whether Judge Alito would uphold the rights of ordinary Americans seeking equal treatment. In that case, Kenneth Pirolli, a mentally retarded employee, brought a claim for hostile work environment based on sex and disability, alleging a pattern of sexual abuse and harassment that can only be described as disgusting. Judge Alito dissented from the Third Circuit’s decision that Mr. Pirolli’s case should go to a jury, not based on the merits of the claim, but essentially because he thought Mr. Pirolli’s lawyer’s legal brief was poorly drafted. Senator DURBIN asked Judge Alito about this matter and gave him every opportunity to address it. It represents an example of Judge Alito focusing on technical details rather than on the rights of real people.
As a former prosecutor, I am sensitive to the need for a fair process and a fair jury in all criminal cases, particularly the most serious ones. I am troubled that in Riley v. Taylor, Judge Alito dissented from an en banc decision in a case in which the Third Circuit granted a new trial because the prosecutor had improperly dismissed Black jurors. Judge Alito denied the defendant’s use of statistical evidence to show improper exclusion of Black jurors, comparing it to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents. The majority criticized Judge Alito’s inappropriate analogy, writing, “To suggest any comparability to the striking of jurors based on their race is to minimize the history of discrimination against prospective Black jurors and Black defendants.”

In response to the many cases in Judge Alito’s record in which he has ruled against the interests of discrimination victims, victims of government intrusion, and immigrants, Judge Alito’s Republican supporters searched hard to find a small set of cases to show Judge Alito has not always ruled against the “little guy.” But it is remarkable that in those efforts is that even in the cases they have trumpeted, Judge Alito often denied any meaningful relief to the average American. Several Republicans have raised the case of United States v. Kithcart. They incorrectly suggest that in Kithcart, Judge Alito ruled in favor of an African American in a racial profiling case. Mr. Kithcart was pulled over by the police because he was African American and searched and arrested. When the case came before Judge Alito, he sent it back to the trial court to give the government a second chance to prove that the stop and search of an African American were constitutional and were not motivated by race. Judge Alito dissented from the remand saying, “just as this record fails to establish that Officer Nelson had probable cause to arrest any Black male who happened to drive by in a black sports car, it fails to establish reasonable suspicion to justify stopping any and all such cars that happened to contain a Black male.” When the case came back to Judge Alito, he upheld the search and affirmed the conviction. So while he remanded the case back to the trial court, he then upheld the search and conviction in his final decision and afforded Mr. Kithcart no relief.

Judge Alito’s supporters have pointed to Patin v. INS as an example of a case in which Judge Alito sided with powerless immigrants and did not defer to the Government. This is another bad example because he ultimately ruled against the immigrant, Parasoo Patin, and she was deported. Ms. Patin was an Iranian woman whose family had opposed the Ayatollah Khomeini and who had come to the United States as a student. She was fighting deportation and requested asylum, arguing that she would be subjected to harsh treatment as a former opponent of Iranian regime, as someone who did not practice a strict form of Islam, and as a woman—who would have to wear a veil and live under great restrictions. Her supporters have noted, Judge Alito ruled in the case that gender-based persecution could be a basis for asylum. But Judge Alito went on to rule against Ms. Patin anyway. So he denied her petition for review and she was deported.

Judge Alito and Republican Senators seeking to bolster Judge Alito’s record cited Leveto v. Lapina as an example of a case in which he protected the rights of individuals against government intrusion. It is telling about Judge Alito’s record in the area of individual rights protection that in a case he trumpeted for his protection of the rights of individuals, he threw the Levetos out of court and denied them any remedy.

The facts of this case are egregious. In the course of an IRS tax fraud investigation of the Levetos, armed agents “rushed” Dr. Leveto to the veterinary hospital where he worked when he arrived there with his dog down, and then held him in a small room for over an hour, not allowing him to speak to anyone or make any calls. They then accompanied Dr. Leveto to his home where they patted down Mrs. Leveto, who was still in her nightgown, and then detained and interrogated her for 6 hours.

Meanwhile, other agents took Dr. Leveto back to the hospital where they held him in a closed room for 6 more hours. During this 6 hours, he was not permitted external communications, was accompanied on bathroom breaks, and was interrogated without Miranda warnings, while other agents searched the hospital. During the course of the search, police searched all employees’ homes and turned away clients in the parking lot, informing them that the hospital was closed until further notice.

Despite acknowledging numerous violations, Judge Alito dismissed the Levetos’ appeal and their case based on “uncertainty” in the case law, and threw them out of court.

Supporters of Judge Alito have cited the case of Brinson v. Vaughn as an example of a case in which Judge Alito sided with a victim of discrimination, reversing a conviction because Black jurors had been improperly excluded from the jury pool. This was an easy case given the extraordinary facts involved. In Brinson, the prosecutor dismissed 13 of 14 prospective Black jurors and had previously made a training video in which he urged prosecutors to dismiss Black prospective jurors from the jury pool. This does not reassure me about my concern that Judge Alito will only entertain claims of discrimination in extreme cases. Indeed, in Riley v. Taylor, when an en banc majority of the Third Circuit found that Black jurors had been improperly dismissed from the jury pool, Judge Alito disagreed and denigrated the defendant’s use of statistical evidence to show improper exclusion of Black jurors, comparing it, as has been previously noted, to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents.

The role of courts should be to protect and make sure there is a fair forum for the powerless and even the unpopular. This is why the courts are the one undemocratic branch. I am concerned that rather than demonstrating an understanding of the effect of the law on the lives of real Americans as Justice O’Connor was doing, Judge Alito would close the courthouse doors to those Americans most in need of the courts to protect their rights.

In the next few years, the Supreme Court will hear many challenges to political entitlements. Critical provisions of the Voting Rights Act, VRA, Congress’s part in guaranteeing equal access to voting, the fundamental machinery of democracy, were upheld by the Supreme Court in Georgia v. Katzenbach, 1966, by an 8 to 1 vote. The VRA will need to be reauthorized before it expires in 2007. Subsequent court challenges will be critical to fairness to minority voters.

The Supreme Court will soon hear a challenge to Texas Republicans’ partisan mid-Census redrawing of congressional districts. There are questions before the Supreme Court this term about campaign finance laws. We are seeing, exposed in the news every day a culture of corruption through money and access that has taken root in Washington, by which one political party has sought to entrench itself as a permanent majority. The cost to Americans is high if we in the Senate get it wrong. I go back to the central question I asked at the outset of Judge Alito’s hearing: Will this nominee serve to protect the fundamental rights and liberties of all Americans? Based on Judge Alito’s record, I have no confidence that he will provide a check against either an overreaching President or entrenched political power, nor that he will serve to protect Americans’ fundamental rights and liberties.

I thank the distinguished Presiding Officer.

I yield to the distinguished Senator from California.

THE PRESIDING OFFICER (Ms. Murkowski). The Senator from California.

Mrs. FEINSTEIN. I thank the ranking member of the Judiciary Committee and Chairman.

I come to the floor to offer my reasons for opposing Judge Alito. Let me begin with this: If the Supreme Court’s decisions were simply mathematical computations of legal points, our job would be easy and all of the Court’s decisions would be 9 to 0. But the legal philosophy and views of each individual Justice do play a role in decision-making on the Court. Perhaps not the
majority of the time, when the question before the Court is not controversial; but certainly when the question is controversial and divisive, legal views and philosophies do play a role.

We just had a recent example. Last week the Court upheld Oregon’s Death with Dignity Act by a 6-to-3 decision in a case called Gonzales v. Oregon. When then-Judge Roberts came before the Senate, I and others questioned him on his end-of-life views. He then replied that the Government should respect the rights of the patient. When I was discussing my point that he would not want the Government telling him what to do, he said:

The basic understanding that it’s a free country and the right to be left alone is one of our basic rights. He gave us the impression that he believed there was, in fact, a right to die.

However, just last week, Chief Justice Roberts joined the two most conserv-ative members of the Court, Justices Scalia and Thomas, in an opinion that, if it had carried the day, would have allowed the administration to invalidate the end-of-life initiative twice supported by Oregon voters in State elections, once when it was enacted and once when it was enacted.

Secondly, history reveals that legal views and philosophies have been the rationale for the rejection of at least 12 Presidential nominees for the Supreme Court. Members on the other side of the aisle often say these legal views and philosophies are not a bona fide consideration. But what I say is these have been used as the rationale for the rejection of at least a dozen Presidential nominees in history.

Let me mention a few of them. It began with President George Washington when he nominated John Rutledge in 1795. Rutledge was rejected by a vote of 10 to 14 because he made a speech denouncing the Jay Treaty between the United States and Great Britain.

Fifteen years later, President James Madison’s nomination of Alexander Wolcott was rejected by the Senate by a vote of 9 to 24, in part, based of his policies while a U.S. collector of customs and his actions strongly enforcing controversial embargoes.

President Andrew Jackson, in 1835, nominated Roger Taney to the Supreme Court. He had served as the Secretary of Treasury, and he removed the Government from guaranteeing deposits from the Bank of the United States. Senators who were opposed to that move offered a motion postponing his nomination indefinitely, which passed 24 to 21.

President James Polk, nominated George Y. Goodwin in 1845, and allegations arose that as a delegate to the 1837 Constitutional Convention, he introduced an amendment that would have prohibited any foreigners who came to Pennsylvania after 1841 from voting in that state.

President Ulysses S. Grant nominated Ebenezer Hoar in 1869, who had served as Attorney General. Senators were upset by the fact that he recommended nominees to the circuit courts without taking into consideration Senators’ preferences. His nomination was defeated 24 to 33.

The same thing happened in 1881, when President Rutherford Hayes nominated Stanley Matthews. He was defeated because of his close ties to railroad and financial interests.

President Warren Harding, in 1922, nominated Milton Butler. His nomination was blocked from consideration on the Senate floor because of an alleged procorruption bias and his previous advocacy for railroad issues that were coming before the Court.

In 1930, President Herbert Hoover’s choice of John Parker was rejected because he made statements opposing the participation of African Americans in politics and because of his labor record while chief judge of the U.S. Fourth Circuit Court.

Marshall Harlan II was nominated by Dwight Eisenhower in 1954. The nomination was never reported out of committee because some members felt he was “ultraconservative to the South and dedicated to reenfranchising the Constitution by ‘judicial fiat.'”

In 1968, President Lyndon Johnson nominated Abe Fortas to be elevated to Chief Justice of the Supreme Court. His nomination was defeated after the Senate failed to invoke cloture 45 to 43. One Senator is reported as saying that Fortas’ “judicial philosophy disqualiﬁes him for this high ofﬁce.”

It went on for one of President Nixon’s nominees, Clement F. Haynsworth, Jr. was rejected in 1969 by a vote of 45-5. At that time, five senators issued a joint statement that expressed “doubts about his record on the appellate bench,” and one senator opposed the nomination on the basis of his record on civil rights issues.

The other, G. Harrold Carswell, was rejected by a vote of 45-51, in part based on his judicial philosophy. A statement issued by senators at the time stated they opposed his nomination because his “decisions and his courtroom demeanor had been openly hostile to the black, the poor and the unpopular.”

And, of course, one of President Ronald Reagan’s nominees, Judge Robert Bork, whose views and legal philosophy were of great concern. Judge Bork believed Americans had no constitutional right to use contraception. He argued that if the states decided the matter, on a vote, the Court “stepped beyond its boundaries as an original matter.” And he had a broad view of Executive power. He once asserted that a law requiring the President to obtain a court order before removing a foreign diplomat in the United States, and against U.S. citizens was “a thoroughly bad idea and almost certainly unconstitu- tional.”

Most recently, White House Counsel Harriet Miers was withdrawn even before consideration by the Judiciary Committee due to the rightwing’s objections.

So it is abundantly clear that judicial philosophy and legal views have been evaluated by senators from both sides of the aisle throughout history, and they are valid reasons to reject a nominee for the U.S. Supreme Court.

I see no one arguing that evaluating one’s judicial philosophy is setting a new precedent is simply turning a blind eye to history. So while none of us can predict how any person will act in the future, we do have to thoroughly consider information available that provides insights into a nominee’s judicial philosophy and legal reasonings. I want to make clear,

Secondly, many of my colleagues on the Judiciary Committee have argued that the nomination of Justices Ginsburg and Breyer have set a precedent for how Supreme Court nominations should be handled, that no one questioned their judicial philosophy, and that they swept through by large votes. I want to take a moment to answer that.

The fact of the matter is that there was real advice and consent in the nominations of Justices Ginsburg and Breyer. Senator HATCH, in his book “Square Peg: Confessions of a Citizen Judge” who was a ranking member of the Judiciary Committee, gave the following account of the Ginsburg nomination:

It was not a surprise when the President called to talk about the appointment and what was thinking of doing.

So President Clinton told Senator HATCH what he was thinking of doing.

Senator HATCH goes on: President Clinton indicated he was leaning toward Bruce Babbitt. . . . Clinton asked for my reaction.

I told him the confirmation would not be easy. I explained to the President that although he might prevail in the end, he should consider whether he could have been smooth this time as political battle over his first appointment to the Court. I asked whether he had considered Judge Stephen Breyer, the Circuit Court of Appeals judge. He made it clear that Breyer was not an easy choice for the job. I think he had selected a liberal circuit court judge to represent the Northeast, and now he asked if he could have been smooth this time as political battle over his first appointment to the Court. I asked whether he had considered Judge Stephen Breyer, the Circuit Court of the District of Columbia Circuit Court of Appeals. I think he had selected a liberal circuit court judge to represent the Northeast.

Both were confirmed with relative ease. So since the ranking member of the Judiciary Committee—the minority ranking member—had recommended these nominees, it is not surprising that they moved through the confirmation process relatively easily. I am confident that if President Bush had decided to move any of the candidates suggested by the current ranking member of the committee, Senator LEAHY, the process could have been smooth this time as well. But he didn’t. With that said, I also believe that today is a very different day than the time when Justices Ginsburg and Justice Breyer were before the Senate. Let me point out some of the differences. There was not the polarization that there is within America today. There was not the clear effort to upset the current balance of the Court and move it far to the right.

When Justices Ginsburg and Breyer were before the Senate, it had been...
more than 50 years since any statute had been struck down by the Supreme Court on commerce clause grounds.

It wasn’t actually until April 26, 1995, after both Justices had been confirmed, that the Supreme Court began to revisit an area that had been well settled since the New Deal in the mid-1930s in its decision on a case known as Lopez. In U.S. v. Lopez, the Court struck down the Gun-Free School Zones Act that had been passed by the Congress, which essentially prohibited the possession of a firearm within a thousand feet of a school. It was this decision that signaled the beginning of the Rehnquist Court’s federalism “revolution.” In the next decade, from 1995 to 2005, the Rehnquist Court struck down all or portions of 30 congressionally enacted laws, 10 of them on federalism grounds. Here they are on this chart. I will point out some of them to you:

The Indian Gaming Regulatory Act, the Federal Election Campaign Act, the Cable Television Consumer Protection and Competition Act, the Religious Freedom Restoration Act, the Communications Decency Act, the Brady Handgun Violence Prevention Act, the Water Resources Development Act, the Architectural Barriers Act, section 316 of the Communications Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Violence Against Women Act, the Telecommunications Act, the Motor Vehicle Safety Act, section 2511 of the Omnibus Crime Control and Safe Streets Act, the FDA Modernization Act, the Child Pornography Act, the Bipartisan Campaign Reform Act, the Child Online Protection Act and on and on and on, using various sections of the Constitution to hold impermissible congressional actions in these areas.

Now, this is a major thrust of the Court, and it is a serious thrust. It is one of those areas that the Senate ought to understand because, with these actions, the Court was essentially declaring that the Congress cannot legislate in many important areas, areas that are very important to me and to my constituents.

When Justice Ginsburg and Justice Breyer were before the Senate, we were not in the midst of a war with Iraq, nor was our country faced with a war on terror that could last for our lifetime and, for our children’s lifetime. Few would have predicted that the President would authorize the use of torture in defiance of the Geneva Convention and the Convention Against Torture and Military Law; that the President would argue that he had inherent plenary authority to detain Americans without due process; and that the President would authorize the electronic surveillance of Americans in direct violation of the law, a law passed by this body, the other body, and signed by President Carter in 1978.

In addition, when Justices Ginsburg and Breyer were before the Senate, Planned Parenthood v. Casey had just recently been decided. Casey made it clear that Roe v. Wade remained controlling precedent; it affirmed a woman’s constitutional right to privacy; it clarified that States have an interest in protecting the life of the unborn; and it held that many State laws relating to abortion were valid.

With the Casey decision, there was a general acceptance that a woman’s right to choose was secure. There had been a change in the law. As a matter of fact, it has been challenged at least three dozen times—and the Court had affirmed in Casey Roe’s central holding.

Finally, as I noted when discussing Senator Harkin’s book “Square Peg” at the time Justices Ginsburg and Breyer were before the Senate, we didn’t have an administration that was bent on moving the Court dramatically in one direction. Yet today, when we are evaluating a nominee to replace Justice Sandra Day O’Connor—a pivotal Justice, a Justice who was the fifth vote in 148 out of 193 decisions—the President continues to assert that he will only nominate those who view the Constitution through a lens of strict constructionism. I think we must remember what these terms mean. I want to take a moment to do so. It is widely accepted among legal scholars that strict constructionists and originalists look to evaluate the Constitution based on what the words say as written and what the Framers intended those words to mean at the time they were written. If we examine what these terms could mean when applied to actual constitutional questions today, it becomes clear why most legal scholars view the Constitution as a living document, able to adjust to the differences of the country today. Remember, in colonial times, there were 13 colonies and around 3 million people. Today we are close to 300 million people and we are 50 States.

Justice Brennan wrote in 1986 about this, and I quote him: During colonial times, pillorying, flogging, branding, and cropping of the ears were practiced in this country. Thus, if we were to turn blindly to history for answers to troubling constitutional questions, we would have to conclude that these practices would withstand challenge under the cruel and unusual clause of the eighth amendment.

He wrote that in the Harvard Law Review in December of 1986. If an originalist analysis were applied to the 14th amendment, women would not be provided equal protection under the Constitution, interracial marriages could be outlawed, schools could still be segregated, and the principle of one man, one vote would not govern the way we elect our representatives.

My concerns about confirming a strict constructionist or originalist to the Court are heightened by what this legal reasoning could mean in three important areas: congressional authority to enact legislation, checks on Presidential powers, and individual liberty and privacy interests. I want to talk about these for a minute in the context of Judge Alito.

It is my conclusion that Judge Alito would most likely join Justices Thomas and Scalia in the originalist and strict constructionist interpretations of the Constitution. And those are the interpretations that have been used by the Rehnquist Court in the past decade to overturn all or portions of the 30 laws to which I just referred. I have come to this conclusion based on Judge Alito’s record in the Reagan administration and on the bench.

In 1986, Congress passed what seemed to me a pretty simple law. It was called the Truth in Mileage Act. It basically forbids anyone from tampering with odometers in automobiles. As a deputy at the Office of Legal Counsel, Judge Alito recommended that President Reagan veto this bill because it violated principles of federalism.

Judge Alito also drafted a statement for President Reagan to make when he vetoed the bill, asserting “it is the States and not the Federal Government that are charged with protecting the health, safety, and welfare of our citizens.”

It is the States, not the Federal Government. The implication is the Federal Government does not have a role in protecting the health, safety, and welfare of our citizens.

Judge Alito’s restricted views of congressional authority later surfaced in his decisions while on the Third Circuit. For me, a prime example is the case of U.S. v. Rybar. This case is significant because it was a case where Congress clearly had the authority to enact legislation, and yet Judge Alito wrote a separate opinion, a dissent, to argue against the law. He was the sole disserter, and he was outvoted.

In his opinion, he used a legal technicality that would have thrown out the conviction of a man who had illegally possessed and sold fully automatic machine guns in the State of Pennsylvania.

In reaching his conclusion, he seemed to ignore past precedents, clearly establishing congressional authority to regulate firearms, such as the Miller case of 1939.

He also dismissed previous statutes that had already outlined the obvious impact guns have on interstate commerce, even when sold within a State. The time that was a major indication of his thinking.

The facts in this case make this point even more obvious: one gun was from China, the other was a military M3 submachine gun made during World War II by General Motors. Clearly, both guns had traveled through interstate commerce before reaching Pennsylvania where the arrest took place.

Judge Alito’s views on congressional power could also limit Congress’s ability to protect the environment. In the next few years, the Supreme Court is likely to hear a number of cases challenging Congress’s authority to pass
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and Repress Invasions.

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress . . . and

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.

In other words, we are responsible to give the powers to the President for him to execute in these areas. That is a very important article, and it is the heart of congressional authority and the balance of power at a time of crisis.

Our national security and constitutional liberties suffer when either branch oversteps its bounds. Today our Nation is in a very different place than it was 10 years ago. We face new challenges to our constitutional framework of checks and balances.

This President has asserted unprecedented authority in many areas which has raised profound constitutional questions. They include:

May the President authorize torture?

Does the Constitution permit the President to enter and detain individuals inside the United States without due process or access to counsel?

Does the Constitution allow the President to violate laws based on inherent powers?

Is it constitutionally permissible for the President to authorize electronic surveillance of Americans without a warrant in violation of Federal law?

Given the critical importance of these questions to our national security and our constitutional democracy, I asked Judge Alito a variety of questions to get a sense of his vision of the balance of power between the President, the Congress, and the courts.

Rather than engage in a productive discussion about the issues, he simply repeated obvious truisms, such as "nobody is above or below the law," or agreed to the unsurprising proposition that the law of the land is supreme.

He did not answer whether the President had to follow these laws.

His answers were inadequate, so I was left to evaluate his views based on his prior record.

At the Department of Justice, Judge Alito was part of the effort to press for expanded Presidential power, and there is no doubt about that.

While serving in the Department of Justice, Judge Alito wrote a memo on Presidential signing statements, and here is what he argued:

From the perspective of the executive branch, the issuance of interpretive signing statements would . . . increase the power of the Executive to shape the law.

"The power of the Executive to shape the law." Do we believe this is correct, or do we believe that the ability to make and shape the law rests with the Congress, and the President can sign it or veto and indicate his reasons for so doing, but not shape the law to his specific demands? This question was raised before the Federalist Society in November of 2000, Judge Alito expressed his support for the unitary executive theory. In 1969, this unitary executive theory was rejected by the Supreme Court in a decision called Morrison v. Olson. It was rejected overwhelmingly. The majority was 7 to 1. The opinion was written by Justice Rehnquist. The Court rejected Justice Alito's argument that the independent counsel must be under the executive branch and report to the President. That took care of what is called the theory of the unitary executive.

Yet more than a decade later, Judge Alito declared:

I still think that this theory best captures the meaning of the Constitution's text and structure.

Clearly, this is a statement for expanded Presidential authority and for the unitary executive.

Judge Alito's vague answers at the hearing, coupled with the specific statements made a few years ago, lead me to conclude that he is a strong proponent of expanded Presidential authority and that he would be more committed to a proper system of checks and balances, which brings me to my third point.

If one is pro-choice in this day and age, with the balance of the Court at stake, one cannot confirm Judge Alito. I, for one, really believe there comes a time when you just have to stand up, particularly when you know the majority of people stand as you do. And I don't make that statement lightly. I got elected earlier this month, January 9, stated that 63 percent of Americans do not want to see Roe overturned. And that is backed up by other polls.

A Gallup poll released earlier this week, January 24, stated that 63 percent of Americans do not want the Supreme Court to overturn Roe.

A CNN/USA Today/Gallup poll released earlier this month, January 9, said a majority of Americans, 56 percent, do not believe Judge Alito should be confirmed if his confirmation hearing reveals he would vote to overturn a woman's right to have an abortion.

Around here when it comes to the issue of abortion the tail wags the dog. The minority is the dominant voice, while the majority of people out there feel very differently on the question. A majority of people, it is clear, in the United States of America believe that a woman should have certain rights of privacy—privacy that is limited by the State’s interest to protect potential life, but a certain right to privacy. If you think this nominee is not going to respect those rights but holds differing views, then you have to stand up.

I am very concerned about the impact Judge Alito could have on women's rights, including a woman's right to make certain reproductive choices as limited by State regulation.

When the issues of Roe and precedent came up during the hearings for Chief Justice Roberts, he engaged in a conversation with me and other Senators.

He acknowledged that Roe is well settled. He discussed the different factors the Court considered when Casey affirmed the central holding of Roe. In
fact, during Judge Alito’s hearings, I read part of the Roberts transcript to him and I gave him an opportunity to review it. I then asked him to tell me where he differed from Chief Justice Roberts and if he, too, believed Roe is well settled. He responded this way:

I think my 4-4 decision on what one means by the term well settled.

That was after reading an explicit and full description of what the now Chief Justice had said before us. His response clearly indicated, at least in my view, that he didn’t regard precedent that highly.

Next I tried to talk to him about his legal views and what he meant when he said “precedent is not an inexorable command.” I specifically stated:

There are the words that Justice Rehnquist used arguing for the overturning of Roe. So my question is did you mean it that way?

The most Judge Alito would say is this:

The statement that precedent is not an in-exorable command is a statement that has been in the Supreme Court case law for a long period of time. And sitting here, I can’t remember what the origin of it is. . . .

In providing nothing more than this for an explanation, Judge Alito spoke volumes about his view on Roe. I listened carefully to the testimony of many legal scholars, including professors in constitutional law. One I want to quote, and I quoted it in the committee at least, is Judge J. Michelle Landis. If you deal to me, is a professor of constitutional law at Harvard, Professor Larry Tribe. He said that, with the addition of Judge Alito:

The Court will cut back on Roe v. Wade, step by step, not just to the point where, as the moderate American center has it, abortion is cautiously restricted, but to the point where the fundamental underlying right to liberty becomes a hollow shell.

It is important to remember that Roe, as modified by Casey, is in fact a moderate compromise that considers both sides of the question. Together, Roe and Casey protect women’s privacy interest but also allow States to pass regulations to restrict that interest postvobility.

If you look carefully at Judge Alito’s decisions in three cases—Planned Parenthood v. Casey, Blackwell v. Knoll, and Planned Parenthood v. Farmer—you will see in his writing where serious questions about his views arise. While sustaining Roe in these cases, Judge Alito’s opinions also raised serious questions indicating if Judge Alito was not bound by precedent, or there was a gray area, he would weaken Roe by narrowly interpreting what constitutes an undue burden. Since in his dissent in Casey, Judge Alito argued that spousal notification was not an undue burden—a position rejected by the Supreme Court.

Judge Alito may have a different interpretation of when life begins that could dramatically alter the Court’s rulings and impact women’s access to contraception. This concern was heightened when in Alexander v. Whitman, Judge Alito wrote a separate opinion to clarify that he disagreed with the Court’s “suggestion that there could be ‘human beings’ who are not constitutional persons.”

Judge Alito may not agree with the Supreme Court’s holding in Roe that a woman’s health must be protected for a law to be constitutional. This issue was raised in Planned Parenthood v. Farm er where Judge Alito agreed with the decision of the Court striking down a New Jersey abortion law. However, he asserted that the Court’s opinion, including the discussion about the lack of a health exception, was “necessary.”

In addition, I was deeply troubled by Judge Alito’s 1985 job application. Let me tell you where he was in 1985. He was not a youngster, Senator Durbin pointed this out in the Judiciary Committee. He had already clerked at a New Jersey law firm. He had already clerked for a Federal court of appeals judge. He had spent 4 years as an assistant U.S. attorney, and he had spent 4 years as Assistant to the Solicitor General in the Department of Justice.

And I am not disavow what he wrote. That spoke to me. Is the exorable command is a statement that has been in the Supreme Court case law for a long period of time. And sitting here, I can’t remember what the origin of it is. . . .

Here again, there is a case, Riley v. Taylor, that is particularly troubling. This case took place in Delaware, where prosecutors had excluded every Black juror in four State first-degree murder trials that had taken place in a Delaware county that year. A majority of the Third Circuit, sitting en banc, concluded that excluding every Black juror in four State murder trials was evidence of race-based discrimination. I would conclude that, too. The Court noted that it is not “necessary to have a sophisticated analysis by a statistician to conclude that there is little chance of randomly selecting four consecutive all white juries.”

Judge Alito dissented. In contrast, he argued that “there is little chance of randomly selecting left-handers in five out of six Presidential elections. But does it follow that the voters cast their ballots based on whether a candidate was right-handed?”

This dissent demonstrates a failure to grasp the critical point. Left-handed individuals have not suffered the long history of discrimination, the same way other countries have. I think to use that, as a Federal appellate court judge, as a bona fide argument to say that you can have four consecutive murder trials in a county and exclude every African American from the jury shows you have a mode of thinking that is not in the mainstream of American legal thinking.

So, bottom line, based on all of the information before me, I have decided to vote against Judge Alito’s confirmation. The reasons I give is brought to me with the belief that a person’s legal reasoning and judicial philosophy, especially at a time of crisis, at times of...
conflict, and at times of controversy, do mean a great deal. It is my belief that this nominee’s legal philosophy and views will essentially swing the Court far out of the mainstream, toward legal philosophy and views that do not reflect the majority views of this country. I will vote no. I urge my colleagues to vote no.

I ask unanimous consent to have printed in the RECORD a list of California organizations that oppose Judge Alito’s confirmation and a set of letters from pro-choice organizations following my full remarks, and I yield the floor.

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

CALIFORNIA ORGANIZATIONS THAT OPPOSE JUDGE ALITO’S NOMINATION

ACLU of Northern California; ACLU of Southern California; AFSCME California; Alliance for Justice; Asian Pacific Law Caucus; Asian Pacific American Legal Center of Southern California; California Church Impact; California National Organization for Women; Community Legal Defense Network; Equal Rights Advocates; Executive Office of the Governor of California; Greenlining Institute; Lawyers Committee for Civil Rights of the San Francisco Bay Area; Mexican American Legal Defense and Educational Fund; MoveOn.org; NARAL Pro-Choice California; NAACP Legal Defense and Educational Fund; National Council of Jewish Women California; National Health Law Program; People For The American Way West; Planned Parenthood Affiliates of California; Planned Parenthood Golden Gate; National Lawyers Guild California; Planned Parenthood Los Angeles; Progressive Jewish Alliance; Public Advocates Inc.; Rainbow Push California; SEIU California State Council; Sierra Club; Women’s Employment Rights Clinic; and Women’s Leadership Alliance.

CATHOLICS FOR A FREE CHOICE

DEAR CHAIRMAN SPECTER, RANKING MEMBER LEAHY AND MEMBERS OF THE JUDICIARY COMMITTEE: I write to you today as president of Catholics for a Free Choice, an organization that supports and advances sexual and reproductive rights that are based on justice and reflect a commitment to women’s well being, to express our opposition to the nomination of Judge Alito Jr. to the Supreme Court of the United States.

Our decision to ask the U.S. Senate Committee on the Judiciary to reject this nomination and not to send this nominee for an up-or-down vote by the entire Senate is not one that we take lightly. Indeed, Catholics for a Free Choice was founded in 1975 with the express purpose of conducting an evenhanded and fair in his decisions?

And lastly, Judge Alito cannot be counted on to deliver justice in a manner that does not comingle previously stated strongly held personal views and opinions with the simmering passions and administration officials. And lastly, Judge Alito cannot be counted on to deliver justice in a manner that does not comingle previously stated strongly held personal views and opinions with the simmering passions and administration officials.

I urge you to vote no on this nomination and by doing so to save the rights to privacy and the individual freedoms and choice to all Americans—regardless of race, gender, religion or sexual orientation—are entitled.

Sincerely,

FRANCES KISSLING,
President.

NARAL PRO-CHOICE AMERICA

WASHINGTON, DC, January 11, 2006.

DEAR SENATOR: On behalf of NARAL Pro-Choice America, I am writing to express our opposition to the confirmation of Samuel Alito to the U.S. Supreme Court. During his career, Alito has consistently demonstrated hostility toward fundamental reproductive rights. If he is confirmed as an Associate Justice on the Supreme Court, women will likely lose critical protections that Roe v. Wade established.

At the Department of Justice in the 1980s, Alito actively worked to limit and ultimately overturn Roe v. Wade. As an assistant to the Solicitor General, he wrote a 70-page memo detailing strategies and administration officials in which he recommended that the Reagan administration intervene in a significant abortion-related case before the Supreme Court in order to advance the administration’s anti-choice agenda. In the memo, Alito detailed his legal strategy to dismantle the protections of Roe v. Wade, while pushing to withdraw the ultimate goal of overturning the landmark decision altogether. He supported even the most intrusive and unreasonable restrictions on reproductive freedom. Perhaps most disturbingly, he was wrong with the government forcing doctors to tell patients that their use of birth control may
cause abortion—an utterly inaccurate statement that defies scientific definitions endorsed by the medical community and the federal government.

Par from claims to the contrary, Alito’s work at the Department of Justice was hardly that of a government functionary. According to the Solicitor General’s office, Alito sought out the opportunity to work on the administration’s friend-of-the-court brief in the case, the collegues at the Department of Justice said that Alito was instrumental in crafting the brief, providing “the research, the thinking, as well as the legal research and analysis.” In application for another position at the Department of Justice, Alito later boasted that he was “particularly proud” of his contribution in the case “in which the government has argued in the Supreme Court does not protect a right to an abortion.” He emphasized that this was a “legal position” in which he personally believed “very strongly.”

It was my hope that, during his Senate hearings, Alito would explain further these writings and share with senators and the American public whether he still holds these legal opinions about a woman’s right to choose. Unfortunately, thus far, he has failed to do so. Indeed, he has failed to demonstrate a commitment to protecting the Constitution’s basic protections for reproductive rights, as well as working to advance the so-called traditional family and political rights of women. Because the United States Supreme Court wields the ultimate and unreviewable power to define the contours of women’s rights, reproductive rights, and other basic civil rights, Planned Parenthood believes that justices appointed to this Court must demonstrate an affirmative commitment to safeguarding these fundamental rights and freedoms. We believe that not only has Samuel Alito, Judge for the Third Circuit Court of Appeals, failed to demonstrate a commitment to protecting these rights, he has revealed himself to be actively hostile toward them. Indeed, his record as a judge shows a consistent effort to overturn constitutional protections for reproductive rights and freedoms. Therefore, PPFA strongly opposes his nomination to the United States Supreme Court.

Alito has made clear on repeated occasions his hostility toward the right to choose. In 1985, while serving as an Assistant to the Solicitor General in the Department of Justice, Alito designed and promoted a legal strategy to bring about the eventual overruling of Roe v. Wade, and, in the meantime, to “mitigate” the impact of Roe. In 1993, he submitted to become a Deputy Assistant U.S. Attorney General, he wrote that he was “particularly proud” of his work on cases that make it clear that the Constitution does not protect a right to an abortion.

His hostility continued as an appellate judge. Indeed, Judge Alito’s judicial record reflects and advanced the very legal strategy he laid out years earlier to undermine the right to choose. The one dissent in Planned Parenthood of Southeastern Pennsylvania v. Casey when the case went to the Supreme Court, he wrote a dissent that said that his government accurately reflects his views at the time, but then flatly, repeatedly, refused to answer whether he continues to believe that “the Constitution does not protect the right to abortion.” Especially given his willingness to state his legal views in other areas, we have no choice but to conclude that he in fact continues to hold this extremely troubling view of women’s fundamental freedom, and that he will vote to dismantle and ultimately overturn Roe v. Wade should he be confirmed.

Again, turning back to Alito’s career. After his appointment to U.S. Court of Appeals for the Third Circuit, Alito tried, in the single case before him affording an opportunity to shape the contours of reproductive-rights law, to allow states the greatest opportunity to shape the contours of reproductive freedom. The cumulative result is to dismantle that very standard. After much research and analysis of his own records on this issue of individual freedom it is clear that he is an advocate for further restricting this right.

It seems by all measures to be an experienced and capable jurist, but one who is out of step with mainstream Americans on the issue of abortion and maintaining the legal right to choose.

There is no crystal ball to predict how a Justice Alito would rule in future cases; therefore we have closely monitored the confirmation hearings with the hope that Judge Alito would offer some clarifying statements that would allay our concerns about his record. Instead, he side-stepped the issue of whether or not the right to privacy in the Constitution extends to reproductive choice. He avoided answering whether Roe was settled law and existing precedent required an exception to the health exception to statutes limiting a woman’s access to abortion.

Without such assurances, we can only calculate his judicial philosophy on reproductive rights through the lens of his past actions and statements. As the replacement for the architect of the “undue burden” standard, the stakes are too high for RNC to support an appointee who outlined a blueprint to dismantle that very standard.

The reality is that Judge Alito would not have voted to overturn Roe to be the architect of the denial of a woman’s right to choose. He could give lip service to respecting Roe while upholding the numerous legislative efforts to chip away at reproductive freedom. The cumulative result is that Roe v. Wade and its progeny are rendered meaningless.

Dean Alito’s position on choice, however, is not the only disappointment surrounding his nomination. The selection of Judge Alito sends a very clear message from the Bush Administration and Republican leadership in Congress that they are willing to continue steering the party into a marginalized corner that puts it at odds with moderates and women voters.

We have come to a point at which average Republicans are beginning to abandon the GOP policy and candidates. We have seen this in the public response to President Bush’s opposition to stem cell research; we saw it last November in the Virginia gubernatorial race, and we will see it again this year if Justice Alito’s seat on the High Court. Judge Alito would have the power to advance his closely held personal view that Roe should be overturned, to work to unravel settled law and to influence adversely the course of the Constitution’s basic protections for reproductive rights for more than a generation. Judge Alito’s record suggests that, if confirmed, he would do just that.

On behalf of the millions of women and men who count on us to protect their reproductive health, we urge you to oppose the nomination of Judge Samuel Alito to Associate Justice of the Supreme Court and protect the right to choose.

Sincerely,

Karen Pearl, Interim President

[Jan. 11, 2006]

RMC OPPOSES JUDGE ALITO FOR SUPREME COURT

The Republican Majority for Choice (RMC) regretfully announces its opposition to the nomination of Judge Samuel Alito to the Supreme Court.

RMC is an organization whose core mission is to protect the right to choose as outlined in Roe v. Wade and to represent the millions of Republicans who strongly support this right. After much research and analysis of Judge Alito’s own records on this issue of individual freedom it is clear that he is an advocate for further restricting this right.

Judge Alito seems by all measures to be an experienced and capable jurist, but one who is out of step with mainstream Americans on the issue of abortion and maintaining the legal right to choose.

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reasons, the National Abortion Federation deemed philosophy is clearly out of the mainstream. and demands of his far-right base and nominee candidate to the Supreme Court, Carhart, a case he no longer would be re-
only because he was required to follow the Planned Parenthood of Central New Jersey spousal notification was ultimately rejected abortion and limiting the right to privacy in Judge Alito supported restricting access to abortion and requiring for service on the Nation's highest Court. So it is not surprising that Judge Alito has received the American Bar Association's highest rating for any nominee. It was a unanimous "well qualified" rating. For those who are not familiar with the American Bar Association scores or the specific issues that the judges, the criteria that are looked to are criteria such as the judicial qualifications—the resume, the credentials; whether or not the individuals have presented themselves or conducted themselves free from bias, operating in a fair and impartial manner as a fair and impartial decisionmaker; and also looking to judicial temperament. The bar association, through its rating process, couldn't keep a scorecard as to whether the individual has ruled more times in favor of the big guy over the little guy. It is a process where truly judicial temperament, the qualification, the credentials, and the free-from-bias and fair decision-making, is the criteria that is looked at.
We have heard over the course of days and in the committee hearings about Samuel Alito's background. He has a very moving and a very American personal story. Born to immigrant par-
ents, Judge Alito is probably the first to admit to those people who admire him most is his father—his father who bat-
tled barriers of prejudice until he became both a teacher and the first direc-
tor of the New Jersey Office of Legislative Services.
Judge Alito excelled at his studies. He received degrees from two Ivy League institutions. But I sense—I cer-
tainly picked this up in my meeting with him—that Judge Alito is not one to forget where he came from or forget his modest roots. His testimony in the hearings was unassuming, unpretentious. He thoughtfully listened, and I believe sincerely responded, to the committee's questions, recognizing that there are certain limitations in terms of predict-
ing outcomes or sticking to the issues that might be before the Court should he be confirmed.
By all accounts, including those of those who were privileged to work with him, Judge Alito scrupulously lets the facts and the law—the facts and the law, not the politics—dictate his deci-
sions.
What struck me during the nomina-
tion process in the hearing was the test-
imony of so many of his colleagues—and not just Republican colleagues but a wide range of individuals, self-pro-
fessed liberals, and conservatives—who all spoke very highly of and who ac-
claimed Judge Alito.
I would like to mention a couple of the comments that were made in the course of the testimony. The testimony of the Third Circuit Court's senior judge, Judge Aldisert, had this about Judge Alito:
We who have heard his probing questions during oral arguments, of being privy to his wise insightful comments in our private conferences; we who have observed at firsthand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions; we—who are his colleagues—are convinced that he will also be a great Justice.
Here is another statement from one of his colleagues, from Judge Edward Becker, who serves on the Third Cir-
cuit, and who sat with Judge Alito on over 1,000 cases. He described the judge as:
"Brilliant . . . highly analytical, and metic-
ulous and careful . . . . The Sam Alito that I have sat with for fifteen years is not an iode-
logue. He is not a movement person. He is a real judge, deciding each case on the facts and the law, not on his personal views whatever they may be. He scrupulously adheres to precedent.
Still another colleague, Judge Leon-
ard Garth, described him as "an intel-
lectually gifted and morally principled judge . . . he will always vote in ac-
cordance with the Constitution and laws as enacted by Congress."
I believe these qualities are critical; for when Judge Alito is confirmed, as I believe he will be, he will have giant shoes to fill. The legacy that Justice Sandra Day O'Connor will leave is one of fair-mindedness, open-mindedness, and lack of an ideological agenda. Justice O'Connor once described her ap-
pellate craft in this way:
It cannot be too often stated that the greatest threats our constitutional freedom comes in times of crisis . . . . The only way
for judges to mediate these conflicting impulses is to do what they should do anyway: stay close to the record in each case that appears before them, and make their judgments based on that alone.

Based on my conversations with Judge Alito, his testimony before the committee, and the statements of so many of his colleagues who know his work best, I am confident that Judge Alito will have that open- and fair-mindedness. He told the Judiciary Committee:

Good judges are always open to the possibility of changing their minds... Result-oriented jurisprudence is never justified because not enough judges try to produce particular results.

In his opening statement, Judge Alito recalled the oath that he made at the time he was sworn as a judge of the court of appeals. He stated that he would “administer justice equally, both to the rich and the poor” and that he would “carry out the laws and the Constitution” to the best of his ability.

I believe Samuel Alito has done that for nearly two decades as a Federal judge. I will certainly look to him to do that in his new role—again, without agenda, without prejudgment, without bias.

I join many of my colleagues on the Senate floor this morning in supporting the nomination of Judge Samuel Alito to the U.S. Supreme Court. I yield the floor.

Mr. HAGEL. Mr. President. I rise to announce my intention to vote in favor of Judge Samuel Alito’s nomination to be an Associate Justice of the Supreme Court of the United States.

The Senate Judiciary Committee and others have thoroughly scrutinized his background and credentials. Hundreds of documents and memos he produced as a lawyer have been reviewed, along with hundreds of judicial opinions he authored in during his 15 years as a Federal court of appeals judge. Those documents have revealed a strong intelligence and a deep respect for the law and the Constitution.

Earlier this month, the Judiciary Committee held several days of hearings on Judge Alito’s nomination. Everything in those hearings reinforced my impression of Judge Alito from my meeting with him in November. He was forthcoming during the committee members’ questioning, candidly answering questions concerning specific cases, the law, and his judicial philosophy. His judicious temperament during the hearings was apparent.

During the hearings, I was also impressed by the comments of seven current and former Third Circuit Court of Appeals judges. They testified in support of Judge Alito’s nomination to the Supreme Court. This support by the individuals most familiar with Judge Alito’s skills and judgments carries great weight.

Finally, last month, the American Bar Association unanimously rated Judge Samuel Alito as “well qualified” for his appointment as Associate Justice of the Supreme Court. This is the highest rating that can be given to a judicial nominee. Given Judge Alito’s performance at the hearings and the strong support for his nomination, no one should be surprised by this top ABA rating.

I enthusiastically endorse and support Judge Alito’s nomination. I believe he will bring a solid base of legal and judicial experience to the Court. The President has chosen wisely, and I encourage my colleagues to join me in voting for this exceptional nominee.

Mr. VOINOVICH. Mr. President, I rise today to urge my colleagues to vote to confirm Judge Samuel Alito, Jr., as an Associate Justice of the U.S. Supreme Court.

Before I discuss my reasons for supporting Judge Alito, I would like to make a few remarks about the judicial confirmation process. Judge Alito is the second nominee to the Supreme Court since I was elected to the Senate. I have been pleased with how his nomination has been handled by both the White House and the Judiciary Committee.

I wish to compliment Senator Specter and Senator Leahy for their excellent job they have done in handling the confirmation hearings for Judge Alito. The hearings were fair and orderly. These hearings gave the country an important opportunity to see what type of person Judge Alito is: one with a long history of service to his country and with a true love of the law. As was the case with the confirmation hearings for Chief Justice Roberts, the “advice and consent” process gave the country a valuable lesson in constitutional law, showing that each branch of Government plays a valuable role in our democracy.

The President has nominated another fine candidate to the Supreme Court. History will look back on the nomination of Judge Alito, combined with President Bush’s nomination of Chief Justice Roberts, as one of the most important legacies of the Bush administration.

A Supreme Court nominee must have two qualities. First, a nominee must have an exceptional intellect. Second, a nominee must be committed to the rule of law. I am very pleased to say that based on everything I have seen and heard, Judge Alito has demonstrated both of these qualities.

It is difficult to see how Judge Alito could have more impressive professional credentials. From his academic record to his almost 30 years in government service, including 15 years on the U.S. Court of Appeals for the Third Circuit, Judge Alito has accumulated a remarkable record of achievement.

As my colleagues have previously noted, Judge Alito graduated from Princeton University, was selected to Phi Beta Kappa, and was selected as a Scholar of the Woodrow Wilson School of Public and International Affairs. Judge Alito then attended Yale Law School where he served as an editor of the Yale Law Journal.

Since his start as a young lawyer, Judge Alito has shown a commitment to public service in the Jeffersonian tradition of the citizen-lawyer. Judge Alito served as a law clerk to Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit. After completing his clerkship, Judge Alito began his legal career as an Assistant U.S. Attorney before and afterwards serving on the Third Circuit. I hope that Judge Alito’s commitment to public service is noted by law students and young lawyers around the country as they think about their career choices. Judge Alito’s experience stands as a model of public service and has led him to the opportunity to obtain one of the highest honors a lawyer can hope to achieve, a chance to serve his country as an Associate Justice of the U.S. Supreme Court.

In 1997, Judge Alito was nominated and approved by unanimous consent as the U.S. attorney for the District of New Jersey. As U.S. attorney, Judge Alito prosecuted a wide variety of cases, including those involving white collar and environmental drug trafficking, organized crime, and violations of civil rights. Judge Alito’s extensive experience as a Federal prosecutor will add a unique perspective to the Court’s decisionmaking process.

In 1990, Judge Alito was unanimously confirmed by the Senate to serve on the U.S. Court of Appeals for the Third Circuit. Throughout his 15 years as a judge on the Third Circuit, Judge Alito has developed a reputation as a methodical, gracious, even-tempered jurist with a history of fairness for all who appear before him. Judge Alito is also known for producing well-written and well-reasoned opinions. His 15 years on the Third Circuit give Judge Alito a unique and seasoned perspective on, and appreciation for, the courts.

His impressive educational and professional background makes Judge Alito well prepared to be an Associate Justice of the Supreme Court. As he displayed during his confirmation hearings, he has an encyclopedic knowledge of the Supreme Court and of constitutional law. Yet he also has diverse, real-world experience in government, as he interacts with the actual day-to-day operation of government. Judge Alito has the ideal balance of academic and practical experience.

Given his professional achievements, it is not surprising that the American Bar Association has given Judge Alito its highest rating. Mr. Stephen L. Tober, the chairman of the American Bar Association’s Standing Committee on the Federal Judiciary, noted in his statement, the ABA unanimously concluded that Judge Alito is “well qualified” to serve as Associate Justice on the U.S. Supreme Court. The ABA noted that “Judge Alito’s integrity,
professional competence, and judicial temperament are indeed found to be of the highest standing. Judge Alito is an individual who, we believe, sees majesty in the law, respects it, and remains a dedicated student of it to this day.

Judge Alito has shown a commitment to the rule of law. Now, no two people will agree on how to interpret every provision of the Constitution or of every statute. Nevertheless, Judge Alito believes that "there is nothing that is more important for our republic than the rule of law" is an important testament to his commitment to ensuring that the rule of law, and not individual preferences of justices, remains supreme. It is essential that any nominee displays a conscious commitment to deciding cases based on the law, rather than on his or her own personal views.

During Judge Alito’s confirmation hearings, I was struck by how dedicated he is to the law and to correctly applying the law as a judge. As Judge Alito noted, "The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and in interpreting the law to do justice with what it means and enforcing the law even if that’s unpopular.” He went on to state, "A judge can’t have any agenda. A judge can’t have any preferred outcome in any particular case. And a judge certainly doesn’t have a client. The judge’s only obligation—and it’s a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.”

I observed Judge Alito’s demeanor and conduct during this confirmation process, as he refused to abandon his judicial independence for the sake of political expediency. As Judge Alito noted, "We shouldn’t decide those questions, our own personal questions, without going through the whole process. If we announce—if a judge or a judicial nominee announced before even reading the briefs or getting the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would lose all their respect for the judicial system, and with justification, because that is not the way in which members of the judiciary are supposed to go about the work of deciding cases.”

Accordingly, I have every confidence that parties who appear before Judge Alito will encounter a judge who is committed to viewing each case without bias and to reaching a decision that is dictated by the rule of law alone.

Finally, I want to offer some personal observations about Judge Alito. Too often we view executive and judicial nominees through political or ideological lenses and not as human beings. Nominees quickly get labeled as being a “Republican nominee” or a “Democratic Nominee” or as belonging to a particular school of thought or being a follower of a particular thinker or politician. This is unfortunate as each nominee’s character gets overlooked and we fail to see this important aspect of each nominee. It is, however, a nominee’s character that can have the biggest impact on his or her work.

In Judge Alito, I believe the Senate has before it not only a nominee who has the capability to be a great Associate Justice but also a nominee who is simply a wonderful person. I share Judge Alito’s appreciation of the great and wonderful opportunities for all Americans. I was moved by Judge Alito’s sentiments about his father, as he recalled how a “small good deed” from a local Trenton area person allowed his father the chance to attend college and how this act of kindness eventually led to Judge Alito’s presence before the U.S. Senate. I can relate to the story of Judge Alito’s father because I, too, was profoundly influenced by my high school principal and a history teacher to stay in school rather than take a laborer’s job. With the strong encouragement from these two individuals, my father completed high school and Carnegie Tech on a Kroger Scholarship. Such stories are familiar to many descendants of immigrants and they show that the American Dream is still alive and well.

During my meeting with Judge Alito, he displayed a gracious manner and humble attitude. He is clearly very smart and engaging, and it was a pleasure to hear him explain his view of the Supreme Court and the rule of law. But he is also a very openminded person who listens to others with sincerity and a willingness to hear their views. For such a brilliant and successful person, I did not detect a hint of arrogance. He is a dedicated family man without a hint of humor whom I believe all Americans will be able to respect and admire.

I have also been pleased to hear that my impressions of Judge Alito have been echoed by so many others during the hearings. I point particularly to the testimony of Professor Nora Demleitner, a self-professed “left-leaning Democrat,” who served as a law clerk with Judge Alito after graduating from Yale Law School. Professor Demleitner described Judge Alito as a man of integrity, decency and character. Professor Demleitner also noted that Judge Alito is one of her role models and that he has one of the most brilliant legal minds of our generation.

In short, Judge Alito displays the openmindedness, humility and commitment to serving the public interest that should serve as the paradigm of judicial temperament for members of our highest Court.

In reviewing Judge Alito’s academic and professional record, his firm commitment to the rule of law, and his strong character, it is clear that Judge Alito is eminently qualified to serve on the Supreme Court. It would be truly unfortunate if we allow this nomination to fail victim to the partisanship that has been growing in the Senate.

I, therefore, urge my colleagues to support the nomination of Judge Alito to be the next Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, as a member of the majority and serving as the President of the Senate yesterday, I was able to hear several hours of debate on the nomination of Judge Sam Alito, Jr.

I heard time and again predictions that Judge Alito is going to give the executive branch complete authority over our Government, including himself on the Supreme Court. Those who oppose him never mentioned one single case where Judge Alito ruled in favor of the President's expanded Executive power—not once. They think if they just keep repeating the same far-left smear—one dreamt up by far-left groups such as Ralph Neas’ People for the American Way and Nan Aron’s Alliance for Justice—the American people will fall for it.

It is disturbing to me that those who oppose Sam Alito are taking their cues from people such as Nan Aron and the Alliance for Justice who, even before the hearings began, before we had any hearings, before the President announced, “You name it, we’ll do it,” to sink Judge Alito.

I think the American people and their elected representatives would rather base their views on the lawyers and judges from across the political spectrum who had actually known Judge Alito.

Former Third Circuit Judge Gibbons explained his faith in Judge Alito’s ability to fairly judge cases in which the government is asserting expanded Executive power. He said: “The committee members should not think for a moment that I support Judge Alito’s nomination because I am a dedicated defender of that administration. On the contrary. I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere, and we are certainly chagrined at the position that is being taken by the administration with respect to those detainees. I am confident, however, that as an able legal scholar and a fair-minded justice, he will give the arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration. President Bush’s opposition in favor of the position of the executive branch.”

Defense lawyers who litigated against Judge Alito confirm that when Judge Alito was part of the executive branch, he had a modest view of its power.

The New York Times reported that one defense attorney, Dan Ruhnke,
said that Judge Alito lacked the "cop mentality" of many career prosecutors and was "never a cheerleader for law enforcement."

Another defense attorney, Drew Barry, said that Judge Alito was "not a blank sheet, United States attorney," and that he was "a vigorous prosecutor who went after a wide variety of bad guys, but his reputation was not someone who would ask for the heaviest sentences."

As a member of the Judiciary Committee and, in my time in the Senate, this is a sorrowful time for me.

The politics of personal destruction were all too evident in the Senate hearing and continue on the floor of this body.

The "guilt by association" standard of those who oppose Sam Alito would disqualify anybody who would be nominated no matter who the President is.

The idea that politics guides the Supreme Court nominations process in the Senate is novel. The idea of the "results only in my eyes qualification" proves that those who challenge the integrity of Sam Alito require standards that they themselves could never live up to.

To be critical is fair to the process of confirmation, but destruction and absolute mischaracterization of one's record the way we have seen reaffirms the lack of fairness and conscience of those who carry out such tactics.

As a member of the Judiciary Committee, I spent 4 days listening, questioning, and watching—not only Sam Alito but all those who came to testify for him and those who came to testify against him.

Here is what I observed—not as a lawyer, not as a Senator, but as a physician trained in the art of observation and the art of listening.

Sam Alito is a man of high moral character. You do not hear the direct words challenging that, but you hear everything indirectly.

He is also a man of intellectual brilliance, impressing everyone who comes in contact with him.

He is a man of dedication to the law, to equal justice under the law.

He is a man who has shown dedicated commitment to the things that are important in our country.

He is a man who is completely sold out to one thing, and one thing only: His name is inscribed there where he has demonstrated equal justice under the law.

What I also observed was a great diversity of political background of those who support him, those who know him, those who have worked with him for the last 15 years, regardless of their political views, either liberal or conservative, regardless of their gender or their color, regardless of their view on abortion.

Those who know him uniformly support him as a great jurist, a man of integrity, a dedication to principles and not completely sold out to the idea that everyone in this country has equality under the law.

Those who know him, those who testified, of all stripes, of all political persuasions, would and are challenging what we have been hearing on the floor by those who oppose him—the mischaracterization of his rulings, the mischaracterization of his beliefs, the mischaracterization of his character.

What I also observed, which concerns me even more, was that those who don't know him but have a political agenda to keep the Court activist and beyond its constitutional bounds oppose him. But what they do know is judicial activism, making law where none exist, which they put before a judiciary committed to equal justice under the law.

That is why he is being opposed. Their greatest fear is the Court will return to a place where the Constitution, the statutes, and treaties are interpreted, but personal political agendas are left at the door.

They fear the battles lost in the legislatures will no longer be carried out by judicial fiat. The former Soviet Union is the great example. They had a constitution but there was not equal justice under that constitution.

During Chief Justice Roberts’ opening statement before the judiciary committee, he referenced the fact that the most powerful entity in the world, the U.S. Government, deferred to the rule of law when the Court was convinced that a private client was right on the law and the Government was not. He referenced President Reagan’s speeches about the Soviet Constitution and how it purported to grant wonderful rights to all sorts to people, but those rights were empty promises because that system did not have an independent judiciary to uphold the rule of law and enforce those rights. Roberts concluded:

We do, because of the wisdom of our founders and the sacrifices of our heroes over the generations to make their vision a reality.

Under our law, the mighty can be defeated by the weak.

We heard yesterday the philosophy of those who oppose this great jurist. Let me quote it exactly because it is very dangerous. This quote is from the Senator from Rhode Island:

"In truth the Supreme Court is the Constitution.

If that is so, we are no longer a nation of laws but rather a nation of judges. That is not America. That is not freedom. That creates nine kings, the exact opposite of what our Founders intended. That is the very thing the American people rejected in the election of 2004. It was about judges.

Finally, let’s talk about the real issue that will cause most people to oppose him. They fear he may truly believe in liberalism or is that just their fear. Let me explain. Senator Kennedy had a very eloquent quote during the hearing. I would like to repeat it:

"America is noblest when it is just to all of its citizens in equal measure. America is strongest when we can all share fairly in its prosperity. And we need a court that will hold us true to these guiding principles today and into the future."

But he did not mean "all," he meant all those except the truly innocent and truly weak, the preborn child. Behind me are two pictures, one of a 26-week-old preterm infant in a neonatal IC who you hold; and the other picture is of a 26-week preborn child’s face seen by ultrasound.

The Declaration of Independence states:

We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness . . .

So, America, ask yourself, how did we get to the point that the accidental killing of a 26-week unborn infant is a felony but taking of that same life by abortionists is legal? It is schizophrenic. Why should your liberty be based on your location inside the womb or out?

The Court’s jurisprudence on liberty and privacy interests is fundamentally flawed. They fear a correction in that flaw.

To quote Robbie George of Princeton University:

"The notion that a constitutional basis can we say that abortion is protected by ‘due process’ but a right to assisted suicide . . . is not? Why is sodomy protected and prostitution unprotected? Why does the right to privacy not extend to polygamy or the use of recreational drugs?"

That is the kind of justice you have when you are a nation of judges and not law. Hopefully, someone of Sam Alito’s character can steer the ship back to liberty for all, including the weakest and most innocent of all. Sam Alito was sold out to this document, the U.S. Constitution. He sold out to equal justice under the law. We need to speak truthfully about the opposition to him. We need to speak truthfully about the problems that have been created by an activist Court, and about the opposition to bring back and steer the ship to where the judges make judgment based on the Constitution, laws, and the treaties of this country, not their political philosophies.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TALENT. 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. TALENT. Mr. President, it is a privilege for me to spend a few minutes visiting with the Senate about Judge Alito. Based on my study of his record and my discussions with him, I believe, if confirmed, he will turn out to be one of our best Supreme Court Justices.

I know that nobody on the floor has contested his professional qualifications. He is certainly exceptionally qualified, at least based on
that, to serve on the Nation’s highest Court. He has the experience, the temperament, and integrity that America expects in a Supreme Court Justice.

Judge Alito has more prior judicial experience than any Supreme Court nominee in more than 70 years. He served for 15 years as a judge on the Court of Appeals for the Third Circuit. He participated in the decisions of more than 1,500 Federal appeals. He wrote more than 350 opinions. I think his colleagues believe he has to work pretty hard, but I have been so busy. This is why I wonder why some people say they do not know enough about what he might do. I do not know how any judge, how any candidate could qualify on that basis, if Judge Alito does not.

He served as the top Federal prosecutor in one of the Nation’s largest Federal districts. He was an appellate advocate for the United States in the Office of Solicitor General. He was a Deputy Assistant Attorney General in the Civil Rights Division. He received his bachelor’s degree from Princeton. I would not hold that against him. He was elected Phi Beta Kappa at the time. He went to Yale Law School, where he served as an editor of the Yale Law Journal. That is quite a record.

During last week’s hearing, Judge Alito answered over 700 questions for more than 18 hours. He was thoughtful and thorough in answering the tough questions. He was humble throughout the process, which is something I personally look for when considering anybody who is seeking a life appointment and particularly a judicial appointment. I think a big dose of “humility” is important if you want to be a judge because you are in the position, as a judge, to be rude to people and they cannot be rude back to you. I think you ought to have a temperament where you are not tempted to do that.

What does the record and the process reveal about this nominee? Simply that he is one of the finest nominees ever to come before the Senate. We learned a lot about him as a person during this process as well. He is certainly brilliant and hard working. He went before the Judiciary Committee without a note. He is a man of integrity. He is honest. He is devoted to his family. These are all qualities we want in the men and women who serve our Nation on the high Court. These are the kinds of qualities that will move America forward and move the judicial branch forward.

He has proven beyond any doubt that he has the qualifications, the temperament, the knowledge, and the understanding of the Constitution to serve on the United States Supreme Court. I do not know how you can prove it, if he has not proven it. I would imagine even those who are going to oppose his nomination for other reasons would agree he has all the kind of temperament and qualifications. He wants to be on the Court because he loves the law. And he is a judge because he wants to serve the United States. Those are the right reasons to want to be on the Supreme Court.

I made a point on other occasions about judicial nominations that I think is relevant here. It is, in a way, the judge’s philosophy. The judicial nominee being in or out of the mainstream of American jurisprudence because the truth is there is more than one mainstream. Lawyers are divided over which jurisprudential theory ought to guide judges in interpreting the statutes and in interpreting the Constitution. Just as we in the Senate disagree, legitimately, about political philosophy, lawyers also disagree about jurisprudential philosophy.

Oftentimes, there is not any one completely correct answer when you are interpreting a vague provision of the Constitution, but that does not mean there are no incorrect answers. Because reasonable people looking at the history and the text of the document might disagree as to what is exactly the right answer in a given case does not mean there are no wrong answers. And a wrong answer, as Judge Alito said so clearly in his introductory remarks before the Judiciary Committee and throughout his testimony, is an answer that does not respect the rule of law.

Here is what Judge Alito said:

The judge’s only obligation—and it’s a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires. A wrong answer is one that is based on an idea of the judicial role that allows the judge to do whatever he or she thinks they would want to do if they were in control of the policy involved in an issue. Whatever their theory of interpreting the Constitution is, they should be consistent in applying it. Judges should not work for a particular outcome or agenda.

Here is what Judge Alito said on this issue:

Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we are not implementing any sort of policy agenda or policy preferences that we have.

As Chief Justice Roberts said when he was testifying before the Judiciary Committee, Judges are umpires. They make the rules. The people are the rulemakers, through their representatives, in their laws and in their Constitution.

In another statement Judge Alito said:

I don’t think a judge should be keeping a scorecard about how many times the judge votes for one category of litigant versus another that might be a concern. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us. But I think that if anybody looks at the cases that I have voted on in any of the categories of cases that have been cited, they will see that there are decisions on both sides.

He went on to say:

In every type of employment discrimination case, for example, there are decisions on both sides.

Because of this respect for the rule of law, the individuals who know Judge Alito best—and that includes Republicans and Democrats, his colleagues on the bar and on the bench—have overwhelmingly supported his elevation to the United States Supreme Court. I think it is important, when you look at nominees, to make certain they have support from people from all parts of the political spectrum and all parts of the jurisprudential spectrum.

Let me quote a couple people. Professor John M. DeMelltner is the Vice dean for academic affairs and professor of law at Hofstra University School of Law. And to this point I have not cited anybody from Missouri supporting Judge Alito, but I am going to vote for him anyway. She said:

Now, since the very early days of my clerkship, I must admit that Judge Alito has really become my role model. I do think he is one of the most brilliant minds of our generation, or of his generation, and he is a man of great decency, integrity and character. And I say all of this as what I would consider to be a number one supporter; a woman, obviously; a member of the ACLU; and an immigrant.

This is Dean DeMelltner speaking.

In addition, Judge Aldisert, who has served with Judge Alito on the Third Circuit, had the following to say:

In May 1960, I campaigned with John F. Kennedy in the critical Presidential primaries of West Virginia. The next year, I ran for judge, and I was on the Democratic ticket, and I served eight years as a State trial judge. As the Chairman indicated, Senator Joseph Clark of Pennsylvania was my chief sponsor when President Lyndon B. Johnson nominated me to the Court of Appeals, and Senator Robert F. Kennedy from New York was one of my key supporters. Now, why do I say this? I make this as a point that political loyalties become irrelevant when I became a judge. The same has been true in the case of Judge Alito, who served honorably in two Republican administrations before he was appointed to our court.

Judicial independence is simply incompatible with political loyalties. And Judge Alito’s judicial record on our court bears witness to this fundamental truth.

I could go on with other quotes. I am not going to. I suppose everything really has been said about Judge Alito in the Senate, although not everybody said it, so the debate is going to go on for a while. But I do think the first and most basic right we all have as political actors—in the sense that every person who lives in this country shares in the running the Government—the first and most basic right we have is the right to govern ourselves through the processes set up in our Constitution. It is not out of a desire to avoid difficult decisions but out of a respect for that right that Judge Alito talked about the rule of law.

I want to say this. Whether your views about social policy are on the right side of the political spectrum or whether they are on the left side of the political spectrum, I believe we can all rally in support of the development of our culture and our society to the wisdom and the decency of the American people. The center in this country
As President Franklin Roosevelt said: This Nation will endure as it has endured, and not because of the courts, not because of the Congress, not because of the Cabinet, but because of the people. They will move us in an orderly and decent direction, as they have for 200 years. We do not need to be governed by guardians or dictators, whether they are in the form of judges or anybody else. That is what Judge Alito means when he was talking about the rule of law.

I have said from the beginning of this debate—and I withheld my decision about the judge until I had a chance to meet him and watch the hearings and get a feel for who he is—he deserved a fair and respectful confirmation process, ending in a timely up-or-down vote on the Senate floor. I hope he will receive that. I believe, if confirmed, he will respect the Constitution, he will apply his jurisprudence without imposing his personal views on the law. For that reason, I am pleased to vote to confirm Judge Alito. I am hopeful the full Senate will give this highly qualified nominee a fair up-or-down vote to enable him to service on the U.S. Supreme Court.

I thank the Chair and yield back whatever remains of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The legislative clerk proceeded to call the roll.

Mr. VITTER. 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. VITTER. Mr. President, I rise in support of the nomination of Judge Samuel A. Alito to be an Associate Justice of the U.S. Supreme Court. I am particularly in favor of Judge Alito's nomination because he is, No. 1, superbly qualified to sit on the Supreme Court, and, No. 2, and as important, he possesses the right view of the role of a judge, the right judicial philosophy, which I think is essential in terms of taking a seat on that high Court.

The appointments clause, article II, section 2, clause 2, of the Constitution gives the President the plenary power to nominate certain high-level officials and, as important, bestows on the Senate a crucial role, a crucial constitutional role, of advice and consent.

Like, I hope, every Member of this body, I take that constitutional duty of advice and consent very seriously. I owe it as high as any duty to the Louisiana people I represent. In line with that, I will neither provide a rubberstamp of approval for all of President Bush's nominees nor will I automatically disapprove any Democratic President's nominees for the Supreme Court or any other Federal court.

I think I have shown my seriousness of purpose in that regard in my short time in the Senate. I have studied the qualifications and legal writings of all nominees to see whether they possess a consistent and well-grounded judicial philosophy and have the right credentials and qualifications.

I was very upfront about being mindful of that responsibility when Harriet Miers was nominated. I looked very carefully at her qualifications and her judicial philosophy and, quite frankly, I expressed some real reservations about that.

And so, after Judge Alito was nominated, I focused on those qualifications and that judicial philosophy just as hard. I met him personally. I watched his confirmation hearings. I read his record. That is the process I used to reach this conclusion, that, No. 1, he is eminently qualified in terms of credentials and background, and, No. 2, he has the right judicial philosophy, the right view of the role of a judge in our society.

Let's talk, first, about those basic legal qualifications. Again, Judge Alito is superbly qualified. His academic achievements and his distinguished career make that clear.

He has a bachelor's degree from Princeton University and a J.D. from Yale Law School. After graduating from law school, Judge Alito began his career in public service as a clerk for Judge Leonard Garth on the Third Circuit Court of Appeals and is now a colleague of that court. He served as an assistant U.S. attorney, Assistant to the U.S. Solicitor General, Deputy Assistant Attorney General, and U.S. attorney for the District of New Jersey. He has argued specifically before the U.S. Supreme Court 12 cases, at least two dozen court of appeals cases; direct, relevant and impressive experience in terms of that sort of high-level litigation.

In 1980, President George H.W. Bush nominated Judge Alito to the Third Circuit Court of Appeals, and he was confirmed by unanimous consent in this body because of his strong credentials and clear and overwhelming qualifications. Of course, today those qualifications are even greater because he has served as a judge on that circuit court for the past 15 years. After being nominated to the U.S. Supreme Court, the ABA rated Judge Alito as "well qualified." That is the highest rating that court. He served as an associate judge. Everyone recognizes the ABA is not some conservative political group by any stretch of the imagination. If its membership has a slant, it is probably to the left. That is the gold standard, that rating of judicial qualifications and credentials. Again, Judge Alito received the highest rating.

Then he had his confirmation hearings. Despite some ugly questioning, frankly, and some smear tactics, in my opinion, he had an impressive performance. He demonstrated clear humility and in-depth understanding of legal matters. And perhaps most impressive in terms of what he faced from the minority side, he maintained his composure in an unfortunately partisan atmosphere.

As I said at the beginning, those credentials and qualifications, that legal background is the first important matter. But it is not the only matter. The second equally important matter I look to is a person's judicial philosophy. Do they understand the core role of a judge in society? I have thought a lot about that regarding all nominees who have come before this body. I thought about how we expressed that role precisely right when he talked about being an umpire and not a pitcher or a batter. Judge Alito has that same view of the appropriate role of a judge.

Throughout the debate over judicial nominees, this notion of whether a nominee possesses the right judicial philosophy has been asked a lot. Some may ask what this term means and why it is important. Again, it is important because it goes to the heart of the role of a judge and how this democracy works. I believe what it means is a commitment to the rule of law, a commitment to the Constitution as written, and a commitment not to let one's personal political beliefs or prejudices enter into any of those important decisions on the Court. It requires a judge to be openminded, to analyze the law carefully, to analyze the facts of each case based on the Constitution and the law. It requires a judge who can be tempting—intoxicating in terms of the power a judge can hold—not to make new law based on personal opinion, not to play legislator but to follow the law as enacted by the Congress or the State legislature.

Judge Alito has demonstrated that right judicial philosophy. He has demonstrated his unwillingness to change the law to fit his personal beliefs. He stated clearly:

There is nothing that is more important for our Republic than the rule of law. No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

What is vital and embedded in the concept of the rule of law is the application of the law as written, not judges becoming kings or legislators and imposing their views and legislating from the bench. I believe this is the second and crucial matter we must look to in the confirmation of judges, particularly those who would be Justices of the U.S. Supreme Court. I have great confidence in Judge Alito's correct understanding of the role of a judge.

What has troubled me throughout this confirmation process, some of my colleagues and many outside interest groups, many members of the press, have demonstrated a different view of the role of a judge. One way they have demonstrated that is by treating Judge Alito as more akin to a political office than a nominee for the highest Court. They have talked about judges taking sides, being on this side...
versus that side, taking the side of labor versus management, taking the side of environmentalists versus business groups, taking the side of the little guy versus the big guy. In talking in those terms, many Members of this body and many liberal interest groups and many of the members of the press have demonstrated a completely different view of the role of a judge which is inappropriate. Other than the fact that many of their characterizations of Judge Alito in these terms are false—far left groups have decided independently of employment discrimination plaintiffs in 22 percent of the cases, whereas the national average is 13 percent—it troubles me that the public is being led to believe that we should think of judges as legislators, that it should be a results-oriented discussion.

This goes to the heart of the confirmation process. The role of the judiciary is to interpret the law and to apply it to the facts of each case. It is not to legislate from the bench and vote on certain interests or certain political philosophies. I believe Judge Alito has the correct view, the opposite view, quite frankly, as has been demonstrated by some Members of this body and certainly by the liberal press and liberal interest groups. In his confirmation hearing, the judge made this clear. He described his disagreement with keeping a scorecard of how many times a judge rules for or against a particular party. He stated:

I don’t think a judge should be keeping a scorecard about how many times that judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us.

I wish to touch on one other specific type of case because I believe Judge Alito has the correct view of the role of a judge, and that is with regard to his strong record and experience in the area of civil rights. I have been disappointed that some of my Democratic colleagues have chosen to paint Judge Alito as having anything less than the stellar record on civil rights that he has. In doing so, they don’t really cite any evidence for this accusation. They think if they just keep repeating this smear, one dreamt up by far-left groups such as Ralph Neas’ People for the American Way and the Alliance for Justice, if they keep repeating the lie over and over, the American people will fall for it. The American people are smarter than that. The American people are listening to some distinguished people, including distinguished African Americans, with whom Judge Alito has served.

To cite a couple of examples, the late Judge Leon Higginbotham, the first African American to serve on the Federal District Court for the Eastern District of Pennsylvania and whom the L.A. Times called “a legendary liberal and scholar of U.S. racial history,” had said of Judge Alito:

Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn’t have an agenda. He is not an ideologue.

Former Third Circuit Judge Timothy K. Lewis, an African American, testified in support of Judge Alito. He joked that it was no coincidence he was sitting on “the far left” of the panel. He said:

I was there—as I am now—a committed and active Democrat. I learned in my year with Judge Alito that his approach to judging is not about partisan amnesia. Nor is he not result oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference.

And Judge Lewis emphasized:

If I sensed that Sam Alito during the time that he served with him or since then was hostile to civil rights as a justice of the United States Supreme Court, I absolutely would not be here today.

I hope the smear tactics will end, particularly on an issue as important and sensitive as civil rights. I am confident the American people are hearing from those sound voices, including African-American voices, who have served directly with Judge Alito, many of whom are liberal. If there are more of them, many of them are Democrats who say Judge Alito is fair. He is impartial. He is not results oriented.

That returns me to the central factor I have focused on in this process: Does Judge Alito have the right view of the role of a judge? Does he have the right judicial philosophy? Is he committed to the Constitution as written, to the rule of law as it is written not by him but by legislatures and the Congress? Is he committed to that and is he committed to not legislating from the bench? I believe his record and testimony and all of the evidence supports a firm conclusion that he is committed to that proper role of a judge. For that reason, I am proud to be supporting his nomination.

I yield the floor and suggest the absence of a quorum.
suggest that Judge Alito’s views on the powers of the President are long-held and strong.

A memo he generated early in his career with the Reagan administration amplifies this impression. In that memo, Judge Alito wrote on a President’s authority to modify an act of Congress by making a “signing statement” — a written document issued by a President on signing an act of Congress into law.

In the memo, Judge Alito wrote, that “the President’s understanding of the bill should be just as important as that of Congress.” This statement suggests that Judge Alito believes the President has a role in the legislative process not contemplated under the Constitution’s exclusive grant of legislative power to the Congress.

Judge Alito’s writings and speeches show how he personally believes that the Congress should have less power to check and balance the President.

His judicial opinions, issued in his official capacity as a judge on the Third Circuit, demonstrate a parallel conviction that the Congress should have less authority in general.

In United States v. Rybar, Judge Alito wrote a minority opinion asserting that the Congress had no authority to pass laws to regulate machine guns. The majority opinion criticized Judge Alito’s narrow and restrictive view of Congressional authority.

In Chittister v. Department of Community and Economic Development, Judge Alito ruled that the Congress had no authority to allow State employees to sue for damages under the Family Medical Leave Act. Judge Alito’s restrictive view on Congress’s authority was later invalidated by the Supreme Court when it considered the same issue in a later case.

Our Supreme Court shoulders the solemn task of discovering how the Constitution applies to the unique problems of the day. Through dialog, study, and debate, the judges bring to bear the collected experiences of the Nation, and forge justice from the Constitution by tempering its words with human compassion, wisdom, and integrity.

Judge Alito’s record suggests that he holds his personal beliefs on expanding the President’s power so strongly that they might come before the call of justice. Accordingly, I have concluded that I must oppose his nomination.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Asian American Justice Center, dated January 10, 2006, and a letter from the Japanese American Citizens League, dated January 8, 2006. Both letters refer to the nomination of Judge Alito.

There being no objection, the motion is granted.

MEMORANDUM

January 26, 2006

HON. ARLEN SPECTER,
Chairman,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER SPECTER:

It is with great concern and dimi-

nished hope that I offer my opposition to Judge Samuel Alito’s nomination to be Associate Justice of the Supreme Court of the United States.

We write to express our concern over the nomination of Judge Alito to the Supreme Court. We are writing on behalf of the oldest and largest Asian American civil rights organization, the Asian and Pacific American Legal Consortium. As a civil rights organization, we are not only troubled by Judge Alito’s ideological brand of conservatism, but also by his judicial record on constitutional protections of Asian Americans.

The record shows that Judge Alito once stated proudly his opposition to affirmative action; as a lawyer for the government, he has argued that immigrants can be denied basic protections and rights guaranteed by the Constitution; he has shown a proclivity to undermine due process rights; he has written an opinion that would deny a gender discrimination case; he has held that a woman’s rights, and only a woman’s rights, matter in employment cases; he has written an opinion that would have denied a gender discrimination case; he has held that a woman’s rights, and only a woman’s rights, matter in employment cases; he has held that a woman’s rights, and only a woman’s rights, matter in employment cases.

The Supreme Court is in many instances the final arbiter in protecting the rights of Americans and therefore should not be a vehicle for those who would push for a political agenda, be it from the left or the right of the political spectrum. Given the early pronouncements in his career and his legal opinions either as a government attorney or from the bench, we are not convinced that Judge Alito can serve the interests of the people as a member of the highest court of the land.

The Japanese American Citizens League urges you, as a member of the Senate Judiciary Committee, to vigorously question Judge Alito on his past record and only examine his current legal positions. The JACL strongly opposes Judge Alito’s nomination and does not believe that his confirmation as an Associate Justice of the Supreme Court serves the best interest of all the people of this great nation.

Yours truly,

JOHN TATETISHI,
President, and Executive Director.

JAPANESE AMERICAN CITIZENS LEAGUE,

HON. PATRICK J. LEAHY,
U.S. Senate, Ranking Minority Member, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY:

The Japanese American Citizens League, the oldest and largest Asian American civil rights organization, wishes to express our concern and opposition to the confirmation of Judge Samuel Alito to the United States Supreme Court.

Judge Alito’s legal opinions and writings over the past several years have left a clear record of an individual whose legal views could have serious negative impact on the rights of Asian American communities. As a civil rights organization, we are not only troubled by Judge Alito’s ideological brand of conservatism, but also by his judicial record on constitutional protections of Asian citizens.

The record shows that Judge Alito once stated proudly his opposition to affirmative action; as a lawyer for the government, he has argued that immigrants can be denied basic protections and rights guaranteed by the Constitution; he has shown a proclivity to undermine due process rights; he has written an opinion that would deny a gender discrimination case; he has held that a woman’s rights, and only a woman’s rights, matter in employment cases; he has written an opinion that would have denied a gender discrimination case; he has held that a woman’s rights, and only a woman’s rights, matter in employment cases.

The Supreme Court is in many instances the final arbiter in protecting the rights of Americans and therefore should not be a vehicle for those who would push for a political agenda, be it from the left or the right of the political spectrum. Given the early pronouncements in his career and his legal opinions either as a government attorney or from the bench, we are not convinced that Judge Alito can serve the interests of the people as a member of the highest court of the land.

The Japanese American Citizens League urges you, as a member of the Senate Judiciary Committee, to vigorously question Judge Alito on his past record and only examine his current legal positions. The JACL strongly opposes Judge Alito’s nomination and does not believe that his confirmation as an Associate Justice of the Supreme Court serves the best interest of all the people of this great nation.

Yours truly,

JOHN TATETISHI,
President, and Executive Director.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.
One of the things I found most troubling about Judge Alito was his statement that one of the factors that motivated him to study constitutional law was his disagreements with the Warren Court decisions in the areas of criminal procedures and voting rights. Frankly, I find this to be a stunning admission. I know this. I was there. I was the chairman of the Senate Judiciary Committee and the lead sponsor of the Americans with Disabilities Act. We had 25 years of testimony and reams of supporting evidence on this subject. Based on his record, I am gravely concerned that Judge Alito might seek to narrow if he is granted lifetime tenure on the Supreme Court.

I find this very troubling. I cannot help but wonder what other laws Justice Alito might seek to narrow if he is granted lifetime tenure on the Supreme Court. Another law that gives meaning to our Constitution’s promise of liberty and dignity is the Americans with Disabilities Act. Fifteen years ago—now approaching 16—I championed the ADA. As it is now known, because I had seen discrimination against the disabled firsthand, growing up with my brother Frank who was deaf. Through-out my life, Frank experienced active discrimination at the hands of both private individuals and the government, and this served to limit the choices before him.

Frank’s experience was by no means unusual, as Congress documented extensively prior to enacting the Americans with Disabilities Act. As part of the writing of that bill, we gathered a massive record of blatant discrimination against those with disabilities. We had 25 years of testimony and reports on disability discrimination. Fourteen congressional hearings and 63 field hearings by a special congressional task force were held in the 3 years prior to the passage of the Americans with Disabilities Act. We received boxes loaded with thousands of letters and pieces of testimony gathered in hearings and townhall meetings across the country. Stories of people whose lives had been damaged or destroyed by discrimination against people with disabilities. We had markups in five different committees. We had over 300 examples of discrimination by States—by States—against people with disabilities.

I know this. I was there. I was the chairman of the Disability Policy Subcommittee and the lead sponsor of the bill. Yet since enactment of the ADA, the Court has repeatedly questioned—or I should say a minority of the Court has repeatedly questioned—whether Congress had the authority to require States to comply with the ADA and, amazingly, whether Congress adequately documented discrimination. For example, in 2001, the Court narrowly held that an experienced nurse at a university hospital, who was diagnosed with breast cancer because her supervisor did not like being around sick people, was not covered by the ADA because she had the misfortune to work for a State hospital. If she had worked for a private hospital, she would have been covered, according to the Supreme Court.

In contrast, in 2004, again by a narrow margin, 5 to 4, with Justice O’Con-nor in the majority, the Court held that Congress did have the authority to require States to make courthouses accessible.

Over the next few years, the Court will likely look at whether other State and locally owned facilities are required to be accessible and in case anyone doubts that accessibility is still a day-to-day issue for the disabled in this country, I want to point out two stories recently in the Des Moines Register in the last week.

First, the fire alarm went off in the State capitol, and there was no way for people in wheelchairs, including a State legislator who was recently injured in a farming accident, to exit the building.

A second example is before that, a woman in a wheelchair had no way to get onto the stage to speak at a Martin Luther King Jr. Day tribute.

But there is no guarantee that the Court will continue to require that facilities be made accessible. Instead, we could end up with a crazy patchwork where courthouses are accessible but maybe libraries are not; prisons are accessible but maybe employment offices are not.

When we passed the ADA, we in Congress did not forbid employment discrimination against the disabled unless they work for the State. We didn’t say some services must be accessible. But that is what the Court has been saying. Talk about judicial activism.

To put a fine point on it, the ADA is at the mercy of the Supreme Court and of the nominee who assumes this seat. Based on his record, I am gravely concerned that Judge Alito does not believe that Congress has the authority to protect the fundamental rights of all Americans. Instead, his record is one that values the rights of the State over the rights of people.

In the two instances where Judge Alito has been required to interpret recent Supreme Court cases limiting the power of Congress to pass national legislation under the 14th amendment or under the commerce clause, he has gone further than the Court itself.

First, concerning a case involving the Family and Medical Leave Act, the law that allows Americans to take unpaid leave from work to care for a newborn child, a sick child, or an ailing parent.
Over 50 million Americans have taken unpaid family and medical leave since its passage, including 5 million State workers. Yet confronted with a case challenging whether State and local employers were required to grant unpaid family and medical leave, Judge Alito ruled 6 to 3 in favor of the FMLA. Chief Justice Rehnquist was the author of that opinion. He was joined by Justice O’Connor.

Think about this. Would that case have been decided the same way if Chief Justice Roberts had been there instead of Chief Justice Rehnquist? And if Justice Alito had been there instead of Justice O’Connor? I am afraid it would not.

Secondly, again in 2004, the Supreme Court issued a 5-to-4 decision that held similarly that Congress could order State courthouses to abide by the Americans with Disabilities Act. Justice O’Connor was in the majority, a 5-to-4 decision. Lane v. Tennessee. This is where a person with a disability had been cited for speeding and was given a ticket. He used a wheelchair. He showed up at the courthouse, and guess what. The court was on the second floor. There was no elevator. So they said: OK, we will carry you up. The first time he appeared in court they carried him up into the courtroom. Then the case was put over to another day. The second time Lane showed up, they said: OK, we will carry you up again.

He said: I’m not going to be carried up. I have too much dignity for that.

They said: OK, you are going to have to crawl. Get out of your wheelchair and crawl up the steps or, of course, the court will fine you because you did not appear in the courtroom.

This is a real case. This really happened. It went to the Supreme Court. A 5-to-4 decision held that courthouses must be accessible under the ADA.

If Justice Alito had been there instead of Justice O’Connor, given his limited view of congressional authority, it would be foolish to think that we would have had the same outcome, and Mr. Lane would, indeed, have to crawl up the steps of the courthouse or be carried up.

I want to digress here a moment. There may be those who say maybe it was an old courthouse and they couldn’t put in an elevator. The ADA does not require that. It says that services must be accessible. The judge can hold court wherever he wants. The judge could have gotten out of that second floor room and gone down to a room on the first floor and held court there, and Mr. Lane could have wheeled his wheelchair into that room.

Services must be accessible, and that is what we said in the ADA. But Mr. Alito does not see it that way. His failure to revere the Federal courts in protecting victims of discrimination can be seen even more directly.

In 1995, the Third Circuit, on which Mr. Alito sat, ruled that people with disabilities should be allowed to live in the community, not warehoused in institutions, whenever it was possible. The Third Circuit’s opinion was consistent with Justice Thurgood Marshall’s opinion in the Cleburne case. Justice Marshall wrote that persons with disabilities, and I quote Justice Thurgood Marshall:

... have been subject to a “lengthy and tragic history” of segmentation and discrimination that can only be called grotesque. (In the early 20th Century) a regime of state-mandated segregation and degradation emerged that in its virulence and bigotry rivaled, and indeed, exceeded the worst excesses of Jim Crow. [...] Lengthy and continuing isolation of the retarded has perpetuated the ignorance, irrational fears, and stereotyping they forged themselves.

The Third Circuit agreed that people should not be warehoused. They should be allowed to live in the community whenever possible. Yet after three judges on the circuit court ruled that such institutionalization was a form of discrimination, when Judge Alito argued that the Third Circuit should reconsider the opinion.

When asked about this issue at his Judiciary Committee hearing, Judge Alito suggested that his desire to re- hear the case did not suggest he had a disagreement with the outcome. Frankly, I find this response difficult to believe. I think most lawyers would agree that judges do not vote to rehear cases unless they disagree with the outcome or unless other factors, factors that were not present here, require such a rehearing.

Fortunately, Judge Alito’s desire to reconsider the Helen L. case was denied. The Supreme Court shortly after that held, in the landmark Olmstead decision, that unnecessary institutionalization is, in fact, a form of discrimination. Once again, Justice O’Connor sided with the majority in the Olmstead decision. Given Judge Alito’s judicial record, one can safely assume that he would have come down on the opposite side of this landmark ruling and might even have steered the Court in a different direction, and years of progress toward equal rights for the disabled might have been erased.

In case after case on the Third Circuit, Judge Alito seems to have been immune to the real-life struggles of the people in the cases before him. It is like: This is the legal theory. Don’t bother me with the facts. Don’t bother me with what is actually happening. There is some legal theory out there that I believe in, and somehow this legal theory trumps, overcomes the real-life travails of ordinary people. As I said—immune to the real-life struggles. The fact that the police strip-searched a 10-year-old girl, the fact that a mentally disabled worker was sexually assaulted, the fact that a farm family was threatened at gunpoint by U.S. Marshals without any resistance during an eviction process—all of this failed to sway him that these ordinary Americans even deserve to be able to present their cases against the Government. It failed to persuade the judge that they should even be allowed to present their cases against the Government. This is real life, real people, and real situations. But, no, Judge Alito had some other philosophy, some other theory that overcame this.

In the past few days, I have heard a number of my colleagues on the other side of the aisle express alarm or dismay that so many Democratic Senators have expressed their opposition to this nominee. I thought it was my friends on the other side who so loudly proclaimed individual liberty, the individual dignity of the person. Yet Judge Alito dismisses this under some rubric of a judicial philosophy or some theory that he has.

I must say, my alarm becomes more profound. Judge Alito has been there instead of Justice O’Connor. The record—Judge Alito’s record on Executive power. At a time when the President of the United States is illegally spying on American citizens, at a time when the President believes that he can ignore the clear intent of Congress—including a vote of 90 Senators—and continue the use of torture in the interrogation of criminal suspects, at a time when the President believes he can indefinitely detain American suspects without charges and without access to a lawyer, it is more important than ever to consider whether Judge Alito on the Supreme Court recognize the need to protect and preserve the balance of power envisioned by our Founding Fathers.

Judge Alito is not that Justice. He is, instead, an adherent of a legal theory that Presidential powers should be wholly unchecked. In fact, he is the author of the very strategy used by President Bush earlier this week when he essentially said to 90 Senators: I signed the amendment that says no torture, but I hereby declare that I can ignore it if I feel like it.

After reviewing Judge Alito’s record, it is not difficult to wonder, if Judge Alito had been on the Supreme Court during the consideration of Marbury v. Madison, would he have voted the other way? Would we have an imperial President today and not a Court that has the role as final arbiter? That strikes at the very heart of our Democratic form of government and our checks and balances.

But don’t take my word for it. Consider the words of the Justice whom...
 Judge Alito seeks to replace Justice O’Connor, who wrote in the Supreme Court’s recent decision in Hamdi v. Rumsfeld that it is:

... clear that a state of war is not a blank check for the President when it comes to the rights of citizenship. To me that Judge Alito is not committed to providing that check.

As recently as 2000, in a speech before the Federalist Society, Judge Alito said in his speech:

... the President has not just some executive powers, but the executive power—the whole thing.

What does that mean?

... the President has not just some executive powers, but the executive power—the whole thing.

What does Judge Alito mean by that? I find this to be a frightening theory, in some getting life tenure on the Supreme Court.

In closing, the new Supreme Court Justice will have a tremendous impact on our society. The decisions before the Court will determine whether we are true to our fundamental national values of fairness and justice and dignity for all. In Judge Alito, we have a nominee who reads the record, and testimony make clear that he holds an unduly restrictive view of the power of Congress to enact laws to protect workers, to protect public safety, to protect victims of discrimination, and that he holds a dangerous view of the Court’s proper role in providing a necessary check on Executive powers. Indeed, if Judge Alito is confirmed, I fear that many of the core protections provided to people with disabilities under the Americans With Disabilities Act and other laws simply disappear. For these reasons, I strongly oppose his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I rise today to state my intention to vote against the nomination of Judge Alito to be the next Associate Justice of the Supreme Court. Let me start by saying I certainly doubt Judge Alito’s qualifications, his integrity, his temperament. He has served on the Federal bench for over 15 years, and he has demonstrated during that time that he is, indeed, a very capable jurist. Nevertheless, after carefully looking at his judicial record and listening to his answers to the Senate Judiciary Committee, it is also clear to me that if confirmed, Judge Alito will move the Court in what I believe is the wrong direction for our country.

Judge Alito has been nominated to replace Justice Sandra Day O’Connor. She is a moderate who has been a critical fifth vote in cases impacting privacy rights, disability rights, civil rights, the environment, consumer protections, discrimination laws, access to the courts and campaign finance reforms, among others. It has taken us years to enact legislation aimed at protecting Americans in these areas. I have mentioned. Other Justices on the Court, particularly Justices Scalia and Thomas, have pressed to reverse many of the advances the Congress has made in these areas. I do not want to limit congressional power under the commerce clause and the ability of Congress to enact Federal civil rights legislation. I fear that Judge Alito will join Justices Scalia and Thomas in this regard.

Justice O’Connor’s vote has also been instrumental in ensuring that we do not surrender our civil liberties in times of war. Justice O’Connor’s statement in the Hamdi decision was just quoted by my colleague from Iowa. It was a resounding reaffirmation that the President could not indefinitely detain a U.S. citizen without providing adequate due process. The quote which was just made, and has been made by many of my colleagues, is that:

We have long since made clear that a state of war is not a blank check for a President when it comes to the rights of our Nation’s citizens.

At a time when the President has asserted expansive powers with regard to imprisoning U.S. prisoners without charges, with regard to wiretapping without warrants, with regard to using interrogation techniques that amount to torture. It is essential that we have Justices on the Supreme Court who are willing to provide a check on the authority of the executive branch. Judge Alito’s record indicates that he may not be the right person to provide this important check.

For example, he stated his support in varying degrees for this so-called unitary executive theory. This relatively obscure legal theory has very little support in the mainstream legal community, but it has profound implications for our understanding of the Constitution.

Just recently, Congress passed a law reiterating the prohibition on the use of torture. In signing the legislation, the President issued a statement reserving the right to take whatever action he deems necessary as Commander in Chief—in effect reserving the right to ignore the very law which he was at that time asked to sign. He cited his unitary executive theory as the legal basis for his power to disregard the plain text of the legislation.

We need to have a Supreme Court that is prepared to provide the necessary checks and balances to our democratic system of government. I believe Justice O’Connor charted a moderate course in terms of the authority of Congress to enact legislation aimed at protecting the welfare of Americans and with regard to upholding the rights of citizens vis-a-vis their own government, and I believe it is important to maintain that same course.

This is not to say that I have agreed with all of Justice O’Connor’s decisions. But her swing vote has helped to maintain a balance on the Court that has kept many decisions within the mainstream, and I believe Judge Alito’s confirmation will sway the existing balance on the Court in a manner that will jeopardize many of the protections afforded to the American public, many of which have been the result of many years of struggle. For these reasons, I am not able to support his nomination.

I yield the floor, and 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.

Mrs. LINCOLN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mrs. LINCOLN. Mr. President, I rise today to state my opposition to the nomination of Samuel Alito to the United States Supreme Court.

After thoroughly reviewing Judge Alito’s record during his time on the Federal bench, I am left with grave and serious concerns about his views on the power and scope of executive branch authority, the lack of discrimination against parents in the workplace, his general disposition toward cases involving civil rights, and his views on the scope of voter rights.

Because of these concerns, I cannot in good conscience support his nomination to the Supreme Court to replace Sandra Day O’Connor, the highest Court in the land with tremendous ability to exercise judgment over the People of this Nation.

Over the course of Judge Samuel Alito’s career and his tenure on the Federal bench, he has compiled a troubling record of personal statements and court decisions that signal his willingness to defer authority to the executive branch when questions of presidential power are deliberated before the Supreme Court.

I strongly believe that our Constitution calls for an independent and co-equal judicial branch that provides a check on the government’s power to encroach upon our individual rights of Americans.

At a time when many Arkansans have expressed concerns over the President’s authority to eavesdrop on Americans without court supervision and detain U.S. citizens without judicial review or due process, I cannot support a Supreme Court nominee who has repeatedly failed to uphold reasonable limits of presidential authority at the expense of constitutional liberties.

This issue is especially significant because Judge Alito would replace Justice Sandra Day O’Connor, who recently ruled in a 2004 case on executive authority that the use of war is not a blank check for the President when it comes to the rights of the nation’s citizens.}
While the legislative and executive branches of government are, by their very nature, political, we demand our judicial branch be above that. When one party controls both of the political branches, the independence of the judiciary is especially important. It is not just important to keep in check but also to maintain the confidence of the American people that their government is balanced and that it is there to serve them and not the politicians.

Our Founders created our country and its government with the memories of tyranny still fresh in their minds. The judicial branch was given exceptional authority for the specific reason that it provides a critical check on the two political branches of our government.

This is not to say that the judicial branch is charged with correcting the perceived wrongs of the party in power. It is simply charged with upholding the Constitution and the rights guaranteed to citizens under it. Upholding this requirement is the most important duty the court is given.

If a potential nominee to the Supreme Court cannot or will not uphold either part of this solemn duty, his or her appointment will serve to undermine the fundamental system of checks and balances on which our government depends.

Of equal concern is Judge Alito’s record on the issue of discrimination in the workplace.

In Chittister v. Department of Community and Economic Development, Judge Alito’s statement that the Family Medical Leave Act was a “disproportionate solution” to the problem of workplace discrimination is deeply troubling.

In an opinion rejecting the position of Judge Alito, Chief Justice Rehnquist explicitly noted that common workplace practices had been discriminatory toward both men and women by reinforcing the role of women as the sole domestic caregiver. I fear that Judge Alito’s inability to recognize this type of discrimination threatens dire consequences for rights hard won by women over the last few decades.

The majority of our Nation’s families depend on income from both parents just to get by. The future and strength of our Nation depends on the strength of the fabric that our families are made of. I cannot in good conscience vote to allow any of the gains that have allowed women to become an integral part of our Nation’s workforce while remaining exceptional mothers to their children to be rolled back.

As his record points out, Judge Alito has consistently set an unfairly high burden of proof in discrimination cases leading him to rule consistently against Americans who are merely attempting to assert their basic constitutional rights.

Judge Alito’s philosophy of deferring to the government and those in possession of authority threatens to undermine many of the laws established by Congress to ensure that discrimination does not prevent anyone from realizing his or her full potential—not just as an American, but as a human being.

Also of concern are Judge Alito’s comments on voter rights. He has stated his interest in constitutional law was motivated largely by his disagreements with the Supreme Court re-apportionment decision that established the principle of “one person, one vote.”

This landmark case became a cornerstone of our democracy by ensuring that everyone’s vote would be weighted equally, regardless of an individual’s economic background, their address, or the color of their skin.

If an individual is prevented from seeking a fair remedy at the ballot box by denial of his basic right to vote, the only avenue he has left is our judicial system.

Judge Alito’s skepticism of established principles of voter rights coupled with his skepticism of claims relating to discrimination is a dangerous combination that threatens to exclude many Americans from full and equal participation in their government and society.

I remind my colleagues that the strength of our Nation comes from the input of the diversity of individuals who make up this great land. We cannot diminish equal access to the ballot box.

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These rights came after much work and incredible sacrifice and to me they are too important to put at risk.

As I stated during the debate on Chief Justice Roberts’s nomination, considering a Supreme Court nomination is one of the most important duties we are called upon as Senators to fulfill.

I did not come to my decision on Judge Alito’s nomination lightly.

Ultimately, I supported the nomination of Chief Justice Roberts because I sincerely believed he cared more about the rule of law and our Nation’s judicial system than he did about ideology or political parties.

I sincerely regret I cannot draw the same conclusion about Judge Alito.

For me, this nomination is not about a single issue or controversy. It is much more important than that.

This nomination is about the rights and freedoms we cherish as Americans. It is about the future course of our Nation and the impact the decisions of the Supreme Court will have on the citizens of this great land.

I feel government has a commitment to those amongst us who face incredible challenges to ensure that the values we all hold dear as Americans apply equally to them.

I have real doubts about Judge Alito’s views on the role of government in protecting those rights. I respect the opinions of my constituents and colleagues on both sides of this issue. But in the end, after great prayer and research—and certainly after listening to all the principles I learned growing up as a farmer’s daughter in east Arkansas, in the rural part of this Nation—I made the decision that I believe is in the best interests of my State and of my country.

I appreciate the time attention of my colleagues. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the quorum call be rescinded.

Mr. GRASSLEY. Thank you.

Mr. President, I support the nomination of Samuel Alito. President Bush has made a very excellent choice in picking Alito. He has the intellect, judicial temperament, and integrity to be an excellent Justice.

He seems to have a very clear understanding of the proper role of the judiciary in our government. That came out very clearly in the hearings.

He commands the respect of his colleagues on the Third Circuit, as their testimony before our committee demonstrated.

He also has the respect of the lawyers who practice before him and the employees who have worked with him. That was demonstrated in testimony before our committee as well.

But we can’t always accurately predict how an individual ultimately will make decisions once he or she gets on the bench. But we do have a constitutional process in place, and we have to use our judgment within that process and trust the confirmation process.

I would say the 225-year history of our country succeeding as it has is an affirmation that the process has worked well.

We have confirmed many outstanding individuals to the Supreme Court, and the process has worked well thus far and will continue to work well with Judge Alito.

Judge Alito was very impressive in the hearings. He did an excellent job under a great deal of fire. He was thorough, he was candid, and he was forthright with all 18 of us on the committee, and demonstrated a deep understanding of the law and a deep understanding of the law and our Constitution.

Contrary to the claims of some of my colleagues from whom we have been hearing this morning and yesterday, Judge Alito’s testimony was very substantive, and he was responsive.
Let me quantify that. Judge Alito answered more than 650 questions during nearly 18 hours of testimony. Compared to the performances of Justice Ginsburg who answered 307 questions at her hearing, and Justice Breyer, who answered 291 questions, one can hardly swat a fly with the other side—that Judge Alito was not forthcoming with the Committee.

I easily conclude, as I think the public concludes, that he has been one of the least forthcoming nominees to come before the Judiciary Committee.

The Constitution provides the President with the power to nominate Supreme Court Justices. And it provides the Senate with advise and consent duties, presumably ending up in an up-or-down vote.

In Federalist No. 66, Alexander Hamilton wrote:

"It will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the executive, and obligre him to make another, but they cannot themselves choose who they can only ratify or reject the choice he may have made."

That is Alexander Hamilton commenting on the role of the President and the Senate in the judicial confirmation process. I have been on the Judiciary Committee for more than 25 years. I take this constitutional responsibility very seriously. Our work in committee allows us to evaluate whether a nominee has the requisite judicial temperament, intellect, and integrity. We also evaluate throughout that process whether the nominee understands the proper role of a Justice in our democratic system of government; mainly, but not limited to, respecting for the Constitution, all over any personal agenda the nominee might have. A Justice, to do justice, cannot have a personal agenda.

Specifically, a Supreme Court nominee should clearly understand that the role of a judge under the Constitution is a limited role, to say what the law is, rather than make the law.

I quote Alexander Hamilton, Federalist Paper No. 78:

"The courts must declare the sense of the law, and if they should be disposed to exercised will instead of judgment, the consequences would equally be the substitution of their pleasure to that of the legislative body."

In fact, most Americans want judges who will confine their job to interpreting the law and the Constitution, rather than making policy and societal choices from the bench. But what we have seen lately is a trend where the courts have expanded the role of the judiciary far beyond what was originally intended in the Constitution and by the Framers. The courts have taken on a role that is much more akin to what we call the legislative branch, making law, which is to make policy choices and to craft laws based on those choices.

As a consequence of this power grab by the courts, the judicial confirmation process also, unfortunately, has become extremely politicized. That is because when judges improperly assume the role of deciding essentially political questions rather than legal ones, the confirmation process also devolves into one focused less on whether a nominee can impartially and appropriately implement the law. Instead, the process devolves into one focused on whether a nominee will implement a desired political outcome from the bench, regardless of what the law says, regardless of what the Constitution requires.

But Judge Alito understands the proper role of a judge. Judge Alito understands the judicial branch plays a limited role in our system of government—but not surprisingly so because that is what the Constitution intended.

Judge Alito testified:

"The judiciary has to protect rights, and it should be vigilant, that, and it should be vigorous in enforcing the law and interpreting the law... in accordance with what it really means and enforcing the laws even if that's unpopular."

He continues:

"But although the judiciary has a very important role to play, it is a limited role. It should always be asking itself whether it is straying over the bounds, where it is invoking the legislature, for example, and whether it is making policy judgments rather than interpreting the law. And that has to be a constant process of re-examination of part of the bench..."

Judge Alito’s record is clear that he will not make law, but rather he will strictly interpret the law we write. His record is clear that he will do his very best to remain faithful to the actual meaning of the Constitution, rather than mold it into what he would like that Constitution to say.

Judge Alito said, along that line:

"Judges do not have the authority to change the Constitution. The whole theory of judicial review, in fact, I think, is contrary to that notion. The Constitution is an enduring document and the Constitution does not change. It does contain some important general principles that have to be applied to new factual situations that come up. But in doing that, the judiciary has to be very careful not to inject its own views into the matter. It has to apply the principles that are in the Constitution to the situations that come before the judiciary..."

Judge Alito possesses a knowledge and respect for the Constitution that is necessary for all Supreme Court Justices. Judge Alito, in his testimony, demonstrates an understanding of the proper role of a Justice. He understands and respects the separate functions of the judicial branch as opposed to the functions of the legislative and executive branch. And he is an effective check on abuses of power, both by the executive and the legislative branches of government.

In fact, as Judge Aldisert, who served with Judge Alito on the Third Circuit testified:

"Judicial independence is simply incompatible with political loyalties. Judge Alito's judicial record on our court bears witness to this fundamental truth."

Let me quote former Judge Gibbons, who also served with Judge Alito and who now is litigation with the Bush administration over the treatment of detainees held at Guantanamo. He believes Judge Alito will not shy away from checking Government abuses.

"Judge Alito also believes in justice and law and order; he votes with Judge Alito on the Third Circuit..."

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"Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this..."
the law and the Constitution, not just to Congress, but to every branch of government, and every person, because Judge Alito knows no one, including the President, is above the law.

Not only is Judge Alito an intelligent and distinguished jurist, he is also an open-minded and fair judge. I am telling everyone that, but anyone that saw the hearing knows that, from the 18 hours he testified before the Judiciary Committee 2 weeks ago. He is an open-minded and fair judge. He told the committee:

Good judges develop certain habits of mind. One . . . is the habit of delaying reaching conclusions until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague when the judges privately discuss the case.

How much more appropriate is that approach to the law than just yesterday, when the Court decided to hear an execution case of a person in Florida when they got the decision made and the word down as they were strapping him in to inject the lethal chemical into him: Wait, don’t make a decision on the facts you are in. So that person did not die last night.

In fact, Judge Alito acknowledged he has changed his opinion in the middle of the judicial process because he is waiting for all the facts, those motions, to be done before he finally concludes. He testified:

There have been numerous cases in which I’ve . . . been given the job of writing an opinion . . . and in the process of writing the opinion, I see that the position that I had previously was wrong. I changed my mind. And then I will write to the other members of the panel and I will say, I have thought this through and this is what I discovered and now I think we should do the opposite of what we agreed, and sometimes they’ll agree with me and sometimes they won’t.

Now, what do you hear from the people opposed to Judge Alito? His critics have tried to paint him out to be an extremist. An activist judge with some personal views, whatever they may be. He scrupulously adheres to precedent.

Let’s go to Judge Becker:

The Sam Alito that I have sat with for 15 years is not an ideologue. He’s not a movement person. He’s a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent.

Judge Becker said:

I have never seen him exhibit a bias against any class of litigation or litigants . . . His credo has always been fairness.

Chief Judge Scirica said:

Despite his extraordinary talents and accomplishments, Judge Alito is modest and unassuming. His thoughtful and inquiring mind, so evident in his opinions, is equally evident in his personal relationships. He is concerned and interested in the lives of those around him. He has impeccable work ethic, but he takes the time to be a thoughtful friend to his colleagues. He treats everyone on our court, and everyone on our court staff, with respect, with dignity, and with compassion. He is committed to his country and his profession. But he is equally committed to his family, his friends, and his community. He is an admirable judge and an admirable person.

Judge Barry said:

Samuel Alito set a standard of excellence that was contagious—his commitment to his work ethic, his scrupulous adherence to precedent in decision making, his thoroughness, his love of the law and his love of the Constitution. In my 39 years on the Third Circuit, he has been a great friend to his colleagues. He has been a person of deep faith, a person of integrity, and a person of great personal character.

Unfortunately, Judge Alito’s record—as you have heard for the last 2 days and as you heard 2 weeks ago in the hearing—has been wildly distorted. Contrary to these critics’ claims, Judge Alito has ruled for plaintiffs as well as defendants in civil rights, ADA, and employment discrimination cases. I think a statistical analysis of how many times a certain kind of plaintiff wins or loses is not the best way to judge a judge’s record. It is wrong to think there should be a scoreboard on how often plaintiffs should win, like some basketball game. Who should win depends upon the facts presented in the case and what the law says, just as it should be in a country based on the rule of law.

What is important to Judge Alito is that he rules on the specific facts in the case and the issue before his court, in accordance with the law and the Constitution. Judge Alito does not have a predisposed outcome in a case. He does not bow to special interests, but sticks to the law regardless of whether the results are popular or not. Similar to Chief Justice Roberts, Judge Alito rules for the “big guy” when the law and the Constitution say “big guy” should win. He rules for the “little guy” when the law and the Constitution say the “little guy” should win. That is precisely what good judging is all about, and that is precisely the kind of Justices who ought to sit on the Supreme Court and, for most of the time in our history, have been on the Supreme Court—I think it will be 110 of them when Alito gets there.

The claims that Judge Alito is somehow hostile to civil rights, minorities, women, and the disabled are really off the mark, and those arguments are intellectually dishonest. It is easy to cherry-pick cases and claim that a judge is out of the mainstream. His fellow judges on the Third Circuit, though, give you a completely different picture of Judge Alito than what you have seen painted here in the last 2 days. Fellow colleagues on the Third Circuit testified about Judge Alito’s fairness and impartiality with respect to all plaintiffs.

For example, Judge Garth testified:

I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the country, has there ever been anything expressed anything that could be described as an agenda for has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.

Judge Higgenbotham, Jr., a liberal judge, said:

Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of judge. He is intellectually honest. He doesn’t have an agenda.

Kate Pringle, a former Alito law clerk and Democrat who has known the judge since 1994, testified that:
[Judge Alito] was not, in my personal experience, an ideologue. He pays attention to the facts of cases and applies the law in a careful way. He is conservative in that sense. His opinions don’t demonstrate an ideological slant.

I found Judge Lewis’s testimony to be particularly compelling. Judge Lewis described himself to the committee this way. These are his words: “openly and unapologetically choice” and “a committed human rights and civil rights activist.” That is how he described himself, Judge Lewis.

He testified about Judge Alito:

[It] is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues.

Judge Lewis concluded:

And I can’t recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

Judge Lewis further said:

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would be here today. But in any sense of civil rights matters and how courts should approach them jurisprudentially might be a little different. . . . But I cannot argue with a more restrained approach. As long as my argument is going to be heard and respected, I know that I have a chance. And I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

Judge Lewis concluded:

I am here as a matter of principle and as a matter of my own commitment to justice, to fairness, and my sense that Sam Alito is uniformly qualified in all important respects to serve as a justice on the United States Supreme Court.

So who do you believe has accurately depicted Judge Alito’s qualifications and record? The speeches of opponents today and yesterday? Or the people who have worked with the judge, day in and day out for years, who know him personally, and who have seen him up close and in the trenches? I will pick those people who have worked with Judge Alito for 15 years, particularly because they come from different political backgrounds and different approaches to the law and the Constitution, as opposed to the partisan, liberal outside interest groups that have probably never even met Judge Alito. I, then, know whom I believe.

Not only that. If one wipes away the distorted and deceptive characterizations and calculated smears, Judge Alito’s record plainly shows that he is a dedicated public servant who practices what he preaches: integrity, modesty, judicial restraint, devotion to the law, and devotion to the Constitution.

Let me briefly address this issue which has been brought up that somehow Judge Alito’s appointment is going to upset the balance of the Court. As I said before, history will take care of the proper “balance” on the Court. But some of my colleagues—or maybe speaking for their outside liberal interest groups—have taken the position that Judge Alito has to share President George Bush’s judicial philosophy and voting record in order to take her seat on the Court. They argue that Judge Alito should not be confirmed, regardless of whether he is qualified or not, because he does not appear to be Justice O’Connor’s judicial philosophy “soul-mate,” and he would change the ideological balance of the Court.

Well, the last time I checked, the Supreme Court does not have seats that are reserved for a conservative or a liberal or a moderate or a Catholic or a Jew or a Protestant, one philosophy or another philosophy—no! The Senate has never taken the position, moreover, that like-minded individuals should replace like-minded Justices leaving the Court. And until just recently, most argued the argument from the other side of the aisle. That is, the Constitution says for the Senate to do. In fact, the Court’s composition has changed with the elected branches over the years. Almost half of the Supreme Court Justices have been replaced by individuals appointed by a President of a different political party.

The truth is that the Senate has never understood its role as maintaining any perceived ideological balance on the Court. In fact, the Senate outright rejected that kind of thinking when Ruth Bader Ginsburg came before us. She was a known liberal, a former general counsel for the ACLU, and she was overwhelmingly approved by the Senate by a vote of 96 to 3. She replaced whom? A conservative justice, Justice Byron White. Yet there were not any arguments from the other side of the aisle or from this side of the aisle that she would upset the balance of the Court. And she did—change the balance of the Court, radically swinging it to the left.

I certainly did not agree with Justice Ginsburg’s liberal judicial philosophy, but I voted for her. The fact is that the Senate confirmed Justice Ginsburg because President Clinton won the election. He made a promise in that election who he was going to appoint to the Supreme Court. He had a right to nominate who he wanted based upon the results of that election—the same thing for George Bush in the 2000 election that he is asking for now. Moreover, and more importantly, though, Justice Ginsburg had the requisite qualifications to serve on the Court, and she was not a political hack. So she was confirmed.

This was the same for Justice Breyer. I knew that Breyer was a liberal and that I probably would not agree with his judicial philosophy, but he was qualified. So I voted for him. The Senate confirmed Justice Breyer by a vote of 87 to 9. The President had made his choice. The Senate found him to be qualified, and we confirmed him. Republicans certainly did not put up any roadblocks to the Ginsburg and Breyer nominations. I would say that Judge Alito is no more out of the mainstream than Justices Breyer and Ginsburg.

The Democrats and liberal outside interest groups are intent on changing the rules of the game because they did not win at the ballot box in 2000 and 2004, or maybe over the last 10 years. The way the Democrats want to operate now is not the way we have operated in the past. But the truth is, by promoting and calling for examination process, and the nominees themselves, we will end up driving away our best and brightest minds from volunteering for public service. It is disappointing to me that many in the man family have to endure hurtful allegations and insinuations which are just plain false and, moreover, mean-spirited.

It is disappointing to me that so many of my colleagues are going down this path, creating a standard that can only harm the independence of the judiciary, and severely distort our system of government. Therefore, I conclude my remarks. I want to quote from a letter I received from an Iowa constituent. I will only quote it in part, but I will include it for the record. Her name is Joan Watson-Nelson, and she wrote about her very personal impressions of Judge Alito when they attended high school together in the late 1960s in New Jersey. I don’t know exactly how she got to Iowa. But she is there and she wanted me to know how she remembered Sam Alito. She wrote:

I remembered [Samuel Alito] because he stood out in his class and in the school. He was one of the leaders of the school. . . . I remember him being very bright, well-prepared, and brilliant. He appeared to be an individual with vision. . . . He stood out as a young man with a great deal of integrity. Many of his teachers from high school are gone now. But I know if they were here and could write letters on his behalf, they would have many stories to tell about the kind of student he was both inside and outside the classroom.

The letter continues:

I am not a very political person. I have some issues that I believe in deeply and others, I do not have a commitment about. I am sure that Sam and I do not agree on all the issues that will be placed before him. The abortion issue is likely to be one of them, as I understand from the media that he may be against abortion. However, I do strongly believe that he will listen to the arguments placed before him, research the law, and vote honestly.

She concludes her letter this way:

It has been nearly 40 years since he graduated from high school.
I think the implication is she hasn’t even talked to him in the last 40 years. She says:

And although I have a good memory for details, the specific details of my involvement with Sam are not as clear as I would like to have them. I do have an endorsement statement. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court justice. When we discussed that Sam was up for the appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons.

What I learned about the Supreme Court branch of government—

Talking about when she was in school—is that this part of the “checks” in our system is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

I think this is a very nice testimonial about the man we are going to vote on and hopefully confirm to become the next member of the Supreme Court. I appreciate Ms. Watson-Nelson’s letter letting me put her personal experience with Sam Alito. She hit the nail on the head. The Supreme Court needs to get out of the business of politics, and we need to stop crediting good nominees for political reasons.

She, like most Americans, knows what is going on.

So, it is clear to me, the people who know Judge Alito personally believe, without any reservation, that he is a judge who follows the law and the Constitution as written without any reservation, that he is a man of integrity.

I am pleased to support Judge Alito’s nomination. Judge Alito will be a great Justice, not a politician on the bench. He won’t impose his personal views or be a judicial activist, but will make decisions as they should be decided—in an impartial manner, with the appropriate restraint, in accordance with the laws and the Constitution.

I am proud to cast my vote in support of this decent and honorable man.

I wish this story would end with qualifications, integrity, and judicial restraint, because only those considerations should matter. But it looks as though the most partisan and political among us won’t let that happen. There may be some who will vote against Judge Alito’s confirmation, not because of qualifications or integrity, and not even because they want somebody to legislate from the bench or treat the Constitution as a blank slate that judges can freely draw upon.

No, it appears some Senators will vote against this nominee because they think doing so is a good political issue. Instead of applying the same standard we Republicans applied when the Senate overwhelmingly confirmed Justice Ginsburg, the most liberal Justice on the Court, these partisans will change the rules in the middle of the game once again. They will vote against Judge Alito with an eye toward the next election and the demands of their most extreme supporters.

The Washington Post had it right when it editorialized on January 15:

A Supreme Court nomination isn’t a forum to refight a presidential election.

I would go a step further than that editorial. A Supreme Court nomination is not a partisanship election. It is the time to perform one of our most important constitutional duties and decide whether a nominee is qualified to serve on the Nation’s highest court.

I hope my colleagues will cast their vote based on Judge Alito’s outstanding qualifications, rather than on the distorted claims of liberal outside-interest groups. I urge my colleagues to rise above partisan politics and support this worthy nominee, Samuel Alito Jr.

I ask unanimous consent to print in the RECORD the letter from which I quoted.

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

Dear Senator Grassley:

I am pleased to support Judge Alito’s nomination. Judge Alito will be a great Justice, not a politician on the bench.

I commend those on the committee that I believe Sam to be is that I believe that I have observed in you, Senator, over the years that you have been our State senator. Those qualities and values are the reason that I continue to support you. I think that this is the best endorsement that I can give to Sam. It has been nearly 40 years since he graduated from high school and he has continued to perform for over a good memory for details, the specific details of my involvement with Sam are not as clear as I would like them to be in my endorsement for him. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court justice.

I wish that with your hearings on his appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons. What I learned about the Supreme Court branch of government is that this part of the “checks” in our system is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

Sincerely,

Joan Watson-Nelson.
record or about this issue. But I believe this is one of the most important functions we have in the Senate; that is, our advice and consent, the confirmation process for our Federal judiciary. There is no question that it was intended to be an equal branch of Government: the judiciary, the executive, and the legislative. We all have responsibilities under the Constitution and under the law, and those have evolved over the years. Separation of power should not mean we become the body or the part of Government that becomes obstructionist or is always looking for a way to take on the executive or the judiciary. This is an important responsibility, and it is important every Senator have a chance to express his or her views on this topic.

This is such an important issue that it is good for the country, anytime we have a debate about the judiciary and what is the role of the Congress, the executive branch, the judiciary, the whole process: How should judges be selected and how should the hearings be held and what should they do when they get on the Court. This is good for the country, and we should look at it that way.

I do know that it has been a constant topic of discussion in much of the country since last summer with the process that led to the confirmation of Chief Justice Roberts and now the discussion about Alito. I had a call from a constituent in Jackson, MS. She expressed her support for the fact that the Judiciary Committee reported out this nomination and thought we were going to vote today, which we should be voting today on his confirmation as an Associate Justice. It said to me, once again, this is not a person involved in the judiciary, but people are paying attention to what we say and what we do. We should not trivialize in any way this important process.

Over the years I have asked myself, what should I do in analyzing Federal judicial nominations, particularly the Supreme Court, since they clearly can have a long-term effect. When we confirm these men and women for life terms, it is serious. We need to always be thinking about it. When I first came to the Senate after years in the House, I asked my senior colleague from Mississippi, a respected member and now chairman of the Appropriations Committee, to talk with me about what should be the criteria in debates for confirming judges. He gave me good advice, and it was pretty simple. He basically said that under our advice and consent responsibility, we should look to see if the nominee is qualified by character, education, experience, and temperament. Then if the nominee meets the basic criteria or qualifications in those areas, he or she should be confirmed. End of discussion. Not a ruling. That is all. No personal view on any subject, not one based on religious faith or any number of other issues. Are they qualified by character, which means do they have good integrity and ethics, are they educated for the job, do they have good experience, and do they have the right temperament to serve. That is the way it should be.

When I have looked at the issue, I am absolutely satisfied we have one of the most qualified nominees for the Supreme Court, probably one of the most qualified in at least 70 years, when we look at all he has done. I have applied the basic and absolute criteria. Alito, Republican or Democratic administration and Republican. Have I occasionally voted against nominees? Yes, for good and valid reasons. I voted against one because I thought he had a conflict of interest. I voted against one because I thought he had been a recess appointment inappropriately. I don’t think Federal judges should, generally get recess appointments, although it has been done in one case where I clearly felt it was fair. But it is not something I would want us to make a practice of.

I voted for Justice Ginsburg. A lot of people in my State said: Why? I voted for other so-called liberal judges I philosophically had problems with, but in the case of Justice Ginsburg, I thought she was a great character, education, experience, and by her temperament. I am sure I don’t agree with an awful lot of the decisions she has made on the Supreme Court, but she is qualified.

There is one other thing. It is called elections. When we elect a President, we should know what is going to be their position on appointing people to the Federal judiciary. This President, George W. Bush, made it clear he was going to be looking for strict constructionists, men and women of good character who would not write the laws but would interpret the laws. He talked about it. Nobody in America should be surprised that he would nominate a candidate who said that wouldn’t agree with him as far as their qualifications. Even the very active Democratic Governor of Pennsylvania, Mr. Rendell, has talked about elections and their meaning in this process. This President has selected this nominee and he is entitled to that and, basically, this judge should be confirmed. That was an interesting comment for a former chairman of the Democratic National Committee. But he took the right position, and I appreciate the fact that he did that.

When you look at Judge Alito’s background, it becomes clear he is highly qualified. He is a graduate of Princeton and Yale Law School. Some people might try to use that against him. I guess he couldn’t get into Vanderbilt or the University of Mississippi, but Princeton and Yale are not bad institutions.

Alito was a member of Phi Beta Kappa. He was an editor of the Yale Law Review. He clerked for Judge Leonard Garth of the Third Circuit. He was an assistant U.S. attorney for the District of New Jersey. He was Assistant to the Solicitor General of the United States beginning in 1981 where he argued 12 cases before the Supreme Court on behalf of the Federal Government. After serving as Deputy Assistant Attorney General in the Office of Legal Counsel, he was nominated for U.S. attorney for the District of New Jersey. He was unanimously confirmed by the Senate. Then, of course, he was nominated by President George H.W. Bush in 1990 to the Third Circuit Court of Appeals.

So he has good character. I think most people would agree with that. He is clearly well educated. It is hard to disagree with that. He clearly is brilliant. Maybe sometimes he is too smart for a lot of us; he knows the law, and he can talk about cases by name without referring to any notes. He has worked as a Federal judge in the Third Circuit. He was on the prosecution side as assistant U.S. attorney and as U.S. attorney. So these are all good qualifications.

Then he went on the Third Circuit, a very important and active circuit, where he has served 15 years. He cast approximately 5,000 votes, and he participated in the decisions of more than 1,500 Federal appeals and has written more than 350 opinions—a lot of work and a lot of good work.

If there was a problem with this judge and his opinions, do you really think the Judiciary Committee could not have found some cases or more problems when he was put up for all of these votes and wrote 350 opinions? I have been very impressed by the willingness of his colleagues, but not just from New Jersey, not just those who served with him in previous administrations, but six current and former Federal judges with all kinds of backgrounds and philosophies—people who admit, I am a Democrat, a liberal, but I know this man, his demeanor, how he handles himself when we were in conference, where he would disagree with these mystical decisions they develop in those quarters. That is where you see the real man. When you have people who have spoken up and made it clear about the quality of this nominee, I think that is very important.

The “holy grail,” the American Bar Association, has rated him well qualified. There again, a lot of people used to say that is the most important thing of all. Well, he got their top rating. Surely, that would affect us. Regardless of ideological philosophy, or positioning, the people who know him best have spoken up very aggressively in his support. That is very convincing to me.
I thought during the hearings he handled himself quite well. He answered over 600—maybe 700 questions, when he was given a chance. The statements and questions were a lot longer than the answers were allowed to be. I thought he handled himself well. I went through all these hoops that lawyers enjoy wresting with and judges have to comply with. I watched it. My wife thought I was strange for sitting there watching these committee hearings, but I felt it was part of my responsibility. I wanted to see what the Senators asked him and how he responded. I thought he handled himself well on his answers and how he responded on substance.

I was concerned when it turned from substance to what got close to character assassination, smear. It really got personal and ugly. I was embarrassed about that. I was ashamed, quite frankly, I realize that sometimes our spouses have to put up with a lot for those of us who are in government and politics and on the judiciary. But I thought it was a defining moment when the judge’s wife was driven to tears.

I have an appreciation for the fact that one of the Senators was saying, We are sorry that you had to put up with this. We know you are a man of character and integrity. I don’t think it needs to go farther.

Do we get carried away around here sometimes on both sides of the aisle? Sure. It is a tough, political, and partisan political place. But how much is enough? How low will we sink? Every year it seems we have drifted further and further down in how we deal with these Federal judicial appointments. Hopefully, we will finally reach the bottom and we will go back up.

There is no good reason to vote against this good man to be on the Supreme Court, even if you might disagree with him on some of his decisions. But he will be careful and studied and he will pay attention to the precedents—more so than I probably would like him to. But it is time to begin to try to go back and approach these nominations differently. Again, I am not absolving any of us for having misbehaved sometimes in the way we handle these issues.

The American people are watching, and they have to feel for this man. They were unhappy with what they saw from a lot of Senators on the Judiciary Committee, and I felt that he went through more than he should have, in terms of personal attacks. They would like for us not to go quite so far. I was encouraged, frankly, when we had the vote on Judge Roberts, to be the Chief Justice. I was pleased that it was as bipartisan as it was, and he received 78 votes. But now I see that slipping away in this case.

Some say: Wait a minute, this is extraordinarily important because this may tip the balance, and that Justice Sandra Day O’Connor became somewhat of a swing vote and probably would be interpreted by some people as being a moderate in some respect. Well, it may not. From my standpoint, I sure hope so. But I was not paying any attention to balance when I voted for Justice Ginsburg. I was voting on the merits of that particular nomination. I don’t think it is fair to Judge Alito to oppose him because he is conservative and may tilt the balance of the Supreme Court. These things swing back and forth. The pendulum has been way over there in the Supreme Court for a long time and, finally, it has become more moderate. Maybe it will become more conservative.

I think I have told the story in the Senate before about how I was talking to a personal friend of a former judge. He was inquiring in bemusement, and incredulously:

Why is it that the Federal judiciary is held in such low regard?

I could not believe he even asked. I said:

Your Honor, it is because of the dumb decisions that you all quite often make.

The people are outraged with decisions such as the Kelo v. City of New London case, dealing with eminent domain.

Time and time again, people see what is happening in Supreme Court rulings. They get in here when they should not and don’t get in there when they should. In many instances, they interpret the law wrongly or start to try to make laws. And it is not just the Supreme Court. I think over the years—recently, at least—if you look at the Supreme Court, they have been pretty good. But the eminent domain decision just absolutely floored me. We have to correct that. When you get down to the rest of the Federal judiciary, they are into all kinds of stuff all the time—social engineering, intervention when they have no business intervening, and they have lost a lot of respect from the American people.

That said, I want the Federal judiciary and the Congress and the President to be respected for the special institutions they are. So this is an important decision.

I am pleased the President nominated Judge Alito. I think that his experience over these years has clearly qualified him for it. He has 30 years of experience, and he went through 18 hours of questioning. He is a good man with a great background, with an American dream story, a first generation American from another country. He is everything I thought we should be looking for. So I am pleased and honored to be able to come and speak on behalf of his nomination and urge his confirmation, and I will vote for him.

In conclusion, let me say again that there are some who say we may still have a filibuster. We should not do that. We cannot do that. That is not fair to the process, not fair to this nominee, not fair to the President. I hope our colleagues will not impose a filibuster here and force action by the Senate to stop that sort of thing from happening.

I also want to say again that I think we have sort of lost our grip on how we treat these nominees. We need to find a way to pull back. It has gotten too ugly, too personal, and I think it undermines the credibility of the judiciary and those of us who sit in judgment on these men and women. I repeat again that we have all been a party to this, including me—I don’t deny it—over the years. But at some point there comes a time when you say to each other, regardless of philosophy or region or party, let’s see if we cannot do a better job, with more dignity and decorum, and that is more focused on the qualifications and character of the men and women and not on politics, partisanship, or ideology. I would like to be a part of making that happen.

Every now and then, I have colleagues say: What can we do about the atmosphere? Well, it begins with us. It begins with making us think that we are going to be more communicative and we are not going to be quite so partisan. I have been as partisan as anybody around here. I served in the House, and it tends to make you a partisan warrior when you have been in that minority. Some people say maybe you get to be kind of arrogant and mean when you get to be in the majority. We can make a difference. I hope we find a way to do it, and do it soon.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Mr. President, it is my understanding at this time that there is an allocation of time reserved for the Senator from Virginia, and I shall proceed, although we are slightly off schedule. I don’t wish to encroach on others, but I will proceed and watch the floor very carefully. People say maybe you get to be kind of arrogant and mean when you get to be in the majority. We can make a difference. I hope we find a way to do it, and do it soon.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator will suspend for a moment. I have been advised there are only 2 minutes left of the majority time for this allocation.

Mr. WARNER. Then I will proceed, if I may, and ask unanimous consent to speak for not to exceed 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object, Mr. President, we certainly have no objection. My friend and colleague from Connecticut is roughly scheduled on the hour, but that seems to be a reasonable request.
We could add the other 5 minutes at the end of the hour if that would be agreeable to the Senator from Virginia.

Mr. WARNER. Mr. President, I think that would work out. Perhaps the intervening hour will be such that we won’t need the additional 5 minutes because I think the managers and leadership have tried to carefully manage the time. I am just able to get started now because my colleagues gave very good speeches, and we all enjoyed it.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, article II, section 2 of the U.S. Constitution explicitly provides for the responsibilities of the executive branch and Government and the Senate with respect to judicial nominations. The Constitution reads in part that the President “shall nominate and, by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and of the inferior courts of the United States.” Thus, the Constitution provides the President of the United States with the responsibility of nominating individuals to serve on our Federal bench.

The Constitution provides the Senate with the responsibility of providing advice to the President on those nominations and with the responsibility of providing and withholding consent on those nominations. In this respect, article II, section 2 of our Constitution places our Federal judiciary in a unique posture with respect to the other two coequal branches of our Federal Government.

Unlike the executive branch and unlike the Congress, the Constitution places the composition and continuity of our Federal judiciary entirely within the coordinated exercise and responsibilities of the other two branches of the Government. Only if the President and the Senate clearly and objectively and, if I may say, in a timely manner exercise their respective constitutional powers can the judicial branch of Government be composed and maintained so that our courts can function and serve the American people.

For this reason, in my view, a Senator has no higher duty than his or her constitutional responsibilities under article II, section 2—the advise and consent clause.

With respect to the Senate’s advice responsibilities under article II, section 2, I believe our Founding Fathers explicitly used the word “advice” in our Constitution for a reason. This was to ensure consultation between a President and the Senate prior to the forwarding of a nominee to the Senate for consideration. Adequate consultation prior to the forwarding of a nominee is of utmost importance. And, I compliment our distinguished President for recognizing that in the case of now, Justice John Roberts, and with respect to this nomination.

But, let’s not forget that while the Constitution calls for the Senate to provide advice to a President on whom he shall nominate, the decision of whom to nominate solely rests with the President of the United States.

Alexander Hamilton made this point crystal clear in the Federalist Paper No. 66, which the Constitutions most enthusiastic acolyte publicly acknowledged. It will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may define one choice of the Executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President.

That is precisely why we are here in these closing days of a very prolonged procedure with regard to Judge Alito. I am privileged to indicate that I shall strongly support him at the time the vote is taken and cast my vote for him.

With respect to the issue of consent, I believe it is imperative that when a Senator considers whether to grant or withhold consent, he or she should receive all relevant, fair, and objective factors prior to deciding whether I will vote to provide consent on a nomination. I look at a wide range of factors, primarily: character, professional career, experience, integrity, and temperament for lifetime service on our courts. When I recognize political considerations, it is my practice not to be bound by them.

These same fair and objective factors that I have used during my 28 years in the Senate have guided my consideration of Judge Alito’s nomination.

When Judge Alito’s nomination was first announced, I wasn’t overly familiar with the nominee. But over the past few months, I have reviewed his record thoroughly. I met with the nominee twice—prior to his confirmation hearings before the Senate Judiciary Committee and the second time after the hearings. Each time I asked him a number of indepth questions. I have also reviewed a number of his judicial opinions and followed the confirmation hearings before the Judiciary Committee. In addition, many people have written, emailed, called my office, or spoken to me personally about this nominee, and I have respectfully considered the legislative considerations.

Having now completed my review of Judge Alito’s nomination, I can say, without equivocation, that of the numerous judicial nominees I have reviewed during my nearly three decades in the Senate, Judge Alito’s credentials and qualifications place him as very well qualified.

Judge Alito has an impressive record of legal accomplishments.

He received his bachelor’s degree from Princeton University and attended Yale Law School. While at Yale, he served as an editor on the Yale Law Journal. Following graduation from law school, he worked as a law clerk for a Federal circuit court judge. Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit.

Subsequent to his clerkship, Samuel Alito worked as an assistant U.S. attorney, an associate attorney, Solicitor General of the United States, and, in the Office of Legal Counsel in the U.S. Department of Justice. In 1987, Mr. Alito was unanimously confirmed by the Senate to serve as the U.S. attorney for the District of New Jersey. Three years later he was nominated and unanimously confirmed by voice vote to serve as a judge on the U.S. Court of Appeals for the Third Circuit, and he has served on this court for the last 15 years.

Without a doubt, Judge Alito has the requisite legal and professional experience to serve on the Supreme Court. Indeed, the American Bar Association, whose rating system of Federal judges is often referred to as the gold standard, recently awarded Judge Alito a rating of very well qualified—its highest rating.

But in addition to his impressive record of legal accomplishments, Judge Alito has also demonstrated—during his confirmation hearings and over the past 15 years on the Federal bench—a deep respect for legal precedent and for the constitutional responsibility of the legislative branch to write our laws. These qualities of Judge Alito were confirmed by the remarkable testimony before the Judiciary Committee of several current and retired Federal judges, appointed by both Republican and Democratic Presidents, who worked closely with Judge Alito on the Federal bench.

In my view, Judge Alito’s strong record and experience, coupled with his appearance before the Judiciary Committee, eliminate any question of the existence of “extraordinary circumstances” that would justify denying an up-or-down vote.

Judge Alito is an outstanding judicial nominee who I am proud to support for confirmation. I believe he will serve on the U.S. Supreme Court with distinction, and I commend our President on making such a fine nomination.

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

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

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. 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. LIEBERMAN. Mr. President, pursuant to the understanding between the Senator from Virginia and the Senator from Massachusetts, I now ask unanimous consent that there be an extension of time added at the end of this hour for this side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.
Mr. LIEBERMAN. I thank the Chair. Mr. President, I rise to discuss the nomination of Samuel Alito to be Associate Justice of the Supreme Court. This is the sixth opportunity I have had as a Senator to consider a President's High Court pick. It is surely one of the most awesome and important responsibilities of Members of this body because of the uniquely powerful and autonomous role the Supreme Court has in our governmental system and because, once confirmed, Supreme Court Justices serve for life, with accountability only to the Constitution, as they read it.

Similar to most of my colleagues, I judge the nominees based on four factors: their intellect and ability, their experience, their character, and their judicial philosophy.

On the first three factors—intellect, experience, and character—I conclude that Judge Alito more than passes the test. But on the fourth factor, judicial philosophy, I have so many doubts to vote to confirm this nominee for a lifetime of service on the U.S. Supreme Court.

Let me now go over these four areas of concern and explain the doubts.

First, intellect and ability. From the meeting I had with Judge Alito, the legal quality of his opinions, over 15 years as a judge, and his testimony before the Judiciary Committee, I believe Judge Alito has shown that he is a person of considerable intellect and ability.

Second, experience. Judge Alito’s curriculum vitae itself depicts his excellent and relevant experience as a law clerk, a Federal Government attorney, a U.S. attorney, and an appellate judge on the Third Circuit.

Third, his character. Judge Alito, I know, was questioned aggressively at his confirmation hearing. But I thought he emerged with his integrity and honor intact. The ABA standing committee confirmed that judgment when it concluded that “he is an individual of excellent integrity,” and that was based on more than 300 interviews with professional colleagues.

Fourth is judicial philosophy, and here is where, for me, the problems with this nomination begin and, in some sense, end. Judge Alito brings to this nomination process a more lengthy record of judicial opinions than any of the previous five nominees to the U.S. Supreme Court whom I have had the privilege to consider. In his 15 years on the Third Circuit Court, Judge Alito has written more than 350 opinions. Together, these opinions leave me with profound doubts about whether Judge Alito would protect and advance the special role the Constitution gives the Supreme Court as the single institution in our Government that provides remedies for popular political passions so that it could protect the rights our founding documents gave to every American.

Personal freedom and equal opportunity are America’s core ideals, and our courts have been and must be the great protectors of those ideals. To me, that work defines the vital mainstream of American jurisprudence.

Based on his personal statements during the 1980s when he was a Government attorney, and particularly on his 15 years of judicial opinions, I am left with profound concerns that Judge Alito would diminish the Supreme Court’s role as the ultimate guarantor of individual liberty in our country.

This is not about a single issue but about an accumulation of his opinions that leads me to a preponderance of doubts. For example, in civil rights cases, Judge Alito has repeatedly established a very high bar, an unusually high bar for entrance to our courts for people who believe they have been denied equal opportunity and fair treatment based on race or gender.

In one case, Marriott Hotels, the majority of his colleagues on the court said:

‘‘Title VII of the Civil Rights Act would be eviscerated if our analysis were to halt when we could discern the shadow of a doubt.’’

Judge Alito’s narrow reading of the commerce clause, as exemplified by his dissent in the case of United States v. Ryan, casts a shadow on Federal legislation passed to protect the rights of American citizens. When asked at his confirmation hearings about the question of personal privacy, Judge Alito accepted the 1965 decision of Griswold v. Connecticut as settled law. But when asked over and over, he refused to say the same about the 1973 decision in Roe v. Wade.

On that most divisive and difficult question of abortion, I personally believe that Roe achieved a just balance of rights and reflected a societal consensus that has continued and deepened in our country for more than three decades. I was left with serious concerns that Judge Alito would not uphold the basic tenets of Roe, and that is a very troubling conclusion.

Every time I have voted to confirm a nominee to the U.S. Supreme Court, as I have with Justices Souter, Breyer, Ginsburg, and Roberts—two appointed by Republican Presidents and two appointed by a Democratic President—I did so knowing, as we all do, that I was taking a risk because I could never know exactly how the particular Justice would rule on the many cases that would come before him or her in a lifetime on the bench. But I ultimately concluded, based on their records and their testimony, that those Justices would more likely than not uphold the unique responsibility the Supreme Court has as the most important guardian of freedom, opportunity, and privacy for every single American.

Unfortunately, I have not been able to reach the same conclusion about Judge Alito, and so I will respectfully vote “no” on his nomination.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from Connecticut for his excellent statement.

I spoke on this issue yesterday. I wish to include in the RECORD some letters that I have received from the representatives of the working families that I represent. I will include the RECORD. The first letter I am going to include in the RECORD is a letter I received from the AFL-CIO. Included in the comments are these words:

As the enclosed memorandum explains more fully, Judge Alito’s decisions and dissents show a disturbing tendency to take an extremely narrow and restrictive view of laws passed by Congress to protect workers’ rights, resulting in workers being deprived of wage and hour, health and safety, anti-discrimination, pension, and other important protections. On a number of occasions, Judge Alito and his colleagues on the Third Circuit have criticized his opinions for their excessively narrow view of worker protection and civil rights statutes. Judges who side with workers and taxpayers have been criticized by some in federal agencies to an unrealistically high standard when they seek to enforce worker protection laws, often reversing them on hyper-technical grounds and depriving workers of important protections as result.

It continues:

Working families are struggling mightily against an assault on our hard-won gains in the legislative arena and the bargaining table. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated, and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need and deserve Supreme Court Justices who understand and respect the importance of hard-fought rights and protections, not Justices who take an unduly narrow view of the law and who are quick to side with employers and protecting employers’ interests. Given the current composition of the Supreme Court, workers and taxpayers can count on the Supreme Court being with employers in protecting workers’ rights at the bargaining table.

For example:

As the enclosed memorandum explains more fully, Judge Alito’s narrow reading of the commerce clause, as exemplified by his dissent in the case of United States v. Ryan, casts a shadow on Federal legislation passed to protect the rights of individual Americans which has been and will remain an integral part of our commerce clause. When asked at his confirmation hearings about the question of personal privacy, Judge Alito accepted the 1965 decision of Griswold v. Connecticut as settled law. But when asked over and over, he refused to say the same about the 1973 decision in Roe v. Wade.

On that question of abortion, I personally believe that Roe achieved a just balance of rights and reflected a societal consensus that has continued and deepened in our country for more than three decades. I was left with serious concerns that Judge Alito would not uphold the basic tenets of Roe, and that is a very troubling conclusion.

Every time I have voted to confirm a nominee to the U.S. Supreme Court, as I have with Justices Souter, Breyer, Ginsburg, and Roberts—two appointed by Republican Presidents and two appointed by a Democratic President—I did so knowing, as we all do, that I was taking a risk because I could never know exactly how the particular Justice would rule on the many cases that would come before him or her in a lifetime on the bench. But I ultimately concluded, based on their records and their testimony, that those Justices would more likely than not uphold the unique responsibility the Supreme Court has as the most important guardian of freedom, opportunity, and privacy for every single American.

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I thank the Chair, and I yield the floor.
laws that protect the rights of workers and individuals. . . .

Then it says:

In one such case, Alito denied a female police officer’s sexual harassment claims despite overwhelming evidence that she had indeed been victimized.

Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Patient Protection and Affordable Care Act did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision in the FMLA. The Court concluded that state employees shall have access to the entirety of protections under the FMLA, thus rejecting Alito’s earlier ruling.

Perhaps most disturbing about Judge Alito’s judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Rights Act of 1964. . . .

It continues:

While Alito’s 15 years as a Judge raises major concerns, the time he spent as President Reagan’s White House counsel is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers. . . .

Alito wrote that protecting Americans is not the federal government’s job. He said in his memo, ‘‘This is the states, and not the federal government, that are charged with protecting the health, safety and welfare of their citizens. This philosophy is extremely narrow and restrictive. Workers who deserve to have federal worker protections apply to them as well.’’

That is a letter from Mr. Gerald W. McIntee.

There is a similar letter from the United Auto Workers.

I ask unanimous consent those letters be printed in the RECORD at the conclusion of my remarks.

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

Exhibit I

Mr. KENNEDY. Whoever is confirmed to succeed Justice Sandra Day O’Connor will have enormous power to affect Americans’ daily lives. We have a constitutional duty to ensure Justice O’Connor’s successor has demonstrated a core commitment to upholding the fundamental rights and freedoms on which our Nation was founded.

Our decision whether to confirm a Supreme Court nominee affects the rights and freedoms not only of our generation, but those of our children and grandchildren as well.

The Court’s decisions affect whether employees’ rights will be protected in the workplace. I have just referred to three letters that I have received. I have received many others that have been quite specific, pointing out the different areas where the judge has basically turned his back on the employees’ rights and workers’ rights.

They will affect the ability of Americans to be secure in their homes from unwarranted searches and seizures. They affect whether families will be able to obtain needed medical care under their health insurance policies.

And they affect whether people will actually receive the retirement benefits they were promised. They affect whether people will be free from discrimination in their daily lives. They affect whether Americans’ most private medical decisions will remain a family matter to be gathered up by government interference. And they affect whether students will be given fair consideration when they apply to college. They affect whether persons with disabilities will have access to public facilities. They affect whether we will have reasonable environmental laws that keep our air and water clean.

There they are. These are the issues which the Supreme Court has ruled on very recently. We wonder about the Supreme Court Justices, what judgments and decisions are they making that are so important to the average family. Why should an average family in America who is watching this debate think this is not a serious question and his decisions are going to affect them? That is a reasonable question.

Here you are. Employees, if you are a worker, you may question whether employees’ rights will be protected in the workplace. I will define several examples where there have been Supreme Court Justices who have denied workers fair consideration.

The ability of Americans to be secure in their own homes from unwarranted searches and seizures through the Groody case, Justice Alito permitting the strip-searching of a 10-year-old girl who was clearly not included in the warrant that was approved by the judge. He was criticized, not by those of us who have expressed reservations about the nominee, but criticized by a judge on the Third Circuit, talking about how Judge Alito’s actions were out of order.

They affect whether families will be able to obtain medical care under their health insurance policies. Remember the debates we had on the Patients’ Bill of Rights? We had legislation that passed here, passed the House. We came very close to getting legislation—doesn’t each HMO have to provide the types of coverage they have committed themselves to or do they not? Does that violate ERISA or doesn’t it violate ERISA? These are important judgments. It comes down to whether invisible insurance policies, we went through the Groody case, Justice Alito permitting the strip-searching of a 10-year-old girl who was clearly not included in the warrant that was approved by the judge. He was criticized, not by those of us who have expressed reservations about the nominee, but criticized by a judge on the Third Circuit, talking about how Judge Alito’s actions were out of order.

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They affect whether people will actually receive the retirement benefits they were promised. The retirement pensions are in free fall in the United States of America at the present time; absolutely free fall. They say for retirement you need to have your savings—that it is part of it. You need that Social Security, Medicare. And you need to have your retirement. Those are the three legs on the stool for a dignified retirement.

These are the issues involving pensions. We have now seen 700 pension funds collapse over the period of the last 4 years, and $8 billion that workers had put aside has effectively been lost. These issues will come up. What are the obligations of the companies in order to pay back workers? Those issues eventually come before the Supreme Court—whole lifeline savings. Those issues come up before the Supreme Court.

Mr. President, I see my friend from West Virginia who had been scheduled during this time. I have had an opportunity to speak previously. There are some additional comments I would like to make, but certainly the Senate looks forward to the words of the Senator from West Virginia. I yield at this time.

Exhibit I

American Federation of Labor and Congress of Industrial Organizations.


Dear Senator: The AFL-CIO, a federation of 58 national and international unions representing over nine million working women and men, has reviewed Judge Samuel Alito’s opinions and his judicial philosophy on these important questions. We are concerned that Judge Alito would be a threat to the rights and working conditions of all Americans.

While Alito’s judicial philosophy is his narrow view of the law, and of our rights and workers rights will be protected in the United States. . . .

We are also very concerned about Judge Alito’s views on the scope of Congressional power over certain areas of law, and his views about voting rights, given his criticism of the Warren Court and its reapportionment decisions. It is critical that Senators explore these and other areas thoroughly at Judge Alito’s upcoming confirmation hearings in order to understand his views and his judicial philosophy on these important issues.

Working families are struggling mightily against an assault on our hard-won gains in all legislative areas. Benefits and protections are under assault. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need a Supreme Court that judges who understand and respect the importance of our hard-fought rights and protections, not justices who take an undeservedly high standard when they seek to enforce worker protection laws, often reversing them on hypocritical grounds and depriving workers of important protections as a result.

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We are very concerned about Judge Alito’s views on the scope of Congressional power over certain areas of law, and his views about voting rights, given his criticism of the Warren Court and its reapportionment decisions. It is critical that Senators explore these and other areas thoroughly at Judge Alito’s upcoming confirmation hearings in order to understand his views and his judicial philosophy on these important issues.
further skewed against working families’ interests.

In recent years, many cases have been decided in the Supreme Court by a one-vote margin. This Court decided, in one-vote margins, two cases involving the question of whether certain groups of workers were covered by the National Labor Relations Act. Millions of state employees were deprived of their ability to seek relief in court under the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act because of decisions decided by a one-vote margin. The Court issued a decision restricting state workers to adopt their own workplace safety laws, again by a one-vote margin. By a one-vote margin, the Supreme Court excused employers from having to pay back pay when they all found to have discriminated against union supporters who happen to be undocumented workers. The interpretation of statutes protecting worker rights of workers, minorities and women.

The UAW urges you to oppose Judge Alito’s nomination and to insist on a more moderate nominee with a record demonstrating greater respect for workers’ rights. Sincerely,

John J. Sweeney, President.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW.

Washington, DC; December 19, 2005.

Dear Senator: Next month the Senate is expected to consider the nomination of Judge Samuel Alito to be an Associate Justice of the Supreme Court. Based on our review of his past writings and judicial decisions, the UAW opposes his confirmation.

While serving on the Third Circuit Court of Appeals, Judge Alito’s opinions have consistently reflected a narrow, constricted interpretation of civil rights laws that would make it much more difficult for women and minorities to obtain remedies when they are the victims of discrimination. We are especially troubled by the Supreme Court by a one-vote margin. This Court issued a solitary dissenting opinion that would have criminalized “no docking” rules that have been a common industrial practice.

In addition, Judge Alito’s opinions in race and gender employment discrimination cases have reflected a restrictive interpretation of civil rights laws that would make it much more difficult for women and minorities to obtain remedies when they are the victims of discrimination. We are especially troubled by his 1985 writings disagreeing with the concept of “one man, one vote”.

The UAW believes that nominee to the Supreme Court must demonstrate that they hold views that are within the judicial mainstream, and are committed to supporting the rights of workers, minorities and women. Unfortunately, we believe that Judge Alito fails to meet this essential test. Accordingly, the UAW urges you to oppose his nomination to the Supreme Court.

Thank you for considering our views on this important issue.

Sincerely,

Alan Reuther, Legislative Director.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO.

Washington, DC; December 19, 2005.

Dear Senator: As a member of the 17 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to oppose our organization’s nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. We have reviewed his record and do not believe he is too extreme and out of the mainstream of judicial philosophy. His presence on the Supreme Court therefore would further divide the country and disenfranchise average citizens and working Americans.

We believe that working people who are already seeing their rights and protections placed in jeopardy by the advent of Alito to the Supreme Court must demonstrate that they hold views that are within the judicial mainstream and determined that his views are far too extreme. This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.

The AFL-CIO urges you to oppose Judge Alito’s nomination and to insist on a more moderate nominee with a record demonstrating greater respect for workers’ rights. Sincerely,

John J. Sweeney, President.

The PRESIDING OFFICER. The time of the minority is open until 5 minutes after 4 p.m. The Senator has 41 minutes.

Mr. BYRD. Mr. President, I take this opportunity to offer comments on the manner in which the Senate has conducted its inquiry into the qualifications of Judge Samuel Al. Atto, Jr., to serve on the U.S. Supreme Court.

Regardless of any Senator’s particular views of Judge Alito, I think we can all agree that this nomination should be examined in the way in which the Senate and, indeed, the Nation have undertaken the examination of this nomination. We strongly urge the Senate to insist that all of the relevant information about Judge Alito be released, particularly the Solicitor General and the Office of Legal Counsel. We believe that there are underlying reasons why the Administration continues to resist releasing this vital information.

Judge Alito’s record is extremely troubling to AFSCME and the workers we represent. He is one of the most extreme federal judges in the whole country. If confirmed, Alito would tilt the court further to the right and place in jeopardy decades of progress protecting individual rights and freedoms.

For the foregoing reasons, AFSCME strongly urges the Senate to reject Judge Alito’s nomination. President Bush should nominate an individual that does not pose such an enormous threat to the rights and freedoms of working men and women.

Sincerely,

Gerald W. McIntire, International President.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank my colleagues from Massachusetts, my colleague and my friend, Senator Kennedy.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The time of the minority is open until 5 minutes after 4 p.m. The Senator has 41 minutes.

Mr. BYRD. Mr. President, I take this opportunity to offer comments on the manner in which the Senate has conducted its inquiry into the qualifications of Judge Samuel A. Alito, Jr., to serve on the U.S. Supreme Court.

Regardless of any Senator’s particular views of Judge Alito, I think we can all agree that this nomination should be examined in the way in which the Senate and, indeed, the Nation have undertaken the examination of this nomination.
nominee. Let me be clear. I mean no criticism of the chairman of the Senate Judiciary Committee or any particular member of that committee.

I feel compelled to address this issue, not to point fingers, not to scold, not to assign blame, but only to explain, in specific, sincere, heartfelt terms that have been brought to my attention by the people of West Virginia in particular. Many people, including foremost, as I say, the people of West Virginia, in no uncertain terms were, frankly, appalled.

In the reams of correspondence that I received during the Alito hearings, West Virginians—and the people I represent—West Virginians who wrote to criticize the way in which the hearings were conducted used the same two words. People with no connection to one another, people of different faiths, different views, different opinions, independently and respectively, used the same two words to describe the hearings. They called them an “outrage” and a “disgrace.”

These were not form letters, signed up by special interest groups on either the right or the left. These were handwritten, contemplative, old-fashioned letters written on lined paper and personal stationery. They were the sort of letters that people write while watching television, in the comfort of their living rooms, or sitting at the kitchen table.

It is especially telling that many who objected to the way in which the Alito hearings were conducted do not support Judge Alito. In fact, it is sorely apparent that even many who opposed Judge Alito’s nomination also opposed the seemingly “made for TV” antics that accompanied the hearings.

It is not just the Senate as an institution which is to blame. The virulence of some of the rhetoric that emanates from both sides of the political spectrum added fuel to the fire. Multimillion-dollar advertising campaigns either to proclaim or to denigrate Judge Alito’s fitness for the position raged across the airwaves.

A solemn constitutional responsibility is not helped when it takes on such a tone.

And then there were the media and the media’s contribution to the deterioration of this very important constitutional process.

Was it necessary to subject Mrs. Alito to the harsh glare of the television klieg lights as she fled the hearing room in tears, fighting to maintain her dignity in response to others with precious little of their own? Have we finally come to the point where our Nation’s assessment of its Supreme Court nominee turns more on a simple-minded sound bite or an exploitive snapshot than on the answers provided or withheld by the nominee?

Obviously, something is wrong with our judicial nomination process, and we in the Senate have the power to fix it.

The Framers of such a great document presumably had something better in mind when they vested the Senate with the authority to confirm Justices of the Supreme Court. In fact, we know they did. In 1789, Roger Sherman of Connecticut defended the role of the Senate in confirming appointments. He wrote: It appears to me that the Senate is the most important branch in the government . . . The Executive magistrate is to execute the laws. The Senate, being a branch of the legislature, will naturally inquire to see if they have them duly executed and, therefore, will advise to such appointments as will best attain the end.

Alexander Hamilton also had high hopes for the Senate’s ability to render its advice and consent function. He proclaimed: It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union.

Exactly what did the Framers mean when they gave the Senate the power to “consent” to the confirmation of the judicial nominees?

Historically, a majority of the Framers anticipated that the Senate’s confirmation or rejection of a judicial nominee would be based on the fitness of the nominee, not on partisan politics or extraneous matters.

Based on these assumptions, the Framers presumably did not expect the Senate to spend its allotted time on a nomination warfare instead of examining his or her qualifications.

Yet the Framers probably also would never have expected that a Senator of a nominee’s own party would refuse to ask the candidate meaningful questions. They certainly did not intend for Senators of the nominee’s own party to sit silently in quiet adulation, refusing to seek the truth, while smiling indulgently; thus, accomplishing nothing.

The Framers anticipated that the Senate would be a serious check to the confirmation process ought to be fair, ought to be impartial, ought to be thorough, and ought to exhibit appropriate respect for solemn duty and the dignity of both the process and the nominee.

I regret that we have come to a place in our history when both political parties—both political parties—exhibit such a “take no prisoners” attitude. All sides seek to use the debate over a Supreme Court nominee to air their particular wish list for or against abortion, euthanasia, Executive authority, freedom of the press, freedom of speech, wiretapping, the death penalty, workers’ rights, gun control, corporate greed, and dozens of other subjects. All of these issues should be debated, but the battle lines should not be drawn on the judiciary. They should be debated by the people’s representatives in the legislative branch.

However, too many Americans apparently believe that if they cannot get Congress to address an issue, then they must take it to the Court. As the saying goes, “If you can’t change the law, change the judge.”

This kind of thinking represents a gross misinterpretation of the separation of powers. It is the role of the Congress—the role of the legislative branch—to make and change the laws. Supreme Court Justices exist to interpret laws and be sure that they square with the Constitution and with settled law.

A better understanding of the Court’s role would do much to diminish the “hype” that now accompanies the judicial nomination process. The role of the Senate in the Alito debate is not to push legislation or to score points for those who either support or oppose specific legislative proposals. The purpose of the current debate is to evaluate the fitness of Samuel Alito to sit on the highest Court of our land, which includes his temperament, his intellectual ability, and his record.

In a perfect world, this heavy constitutional responsibility of the Senate would have little to do with party affiliation.

Unfortunately, during the first administration of George Washington, as far back as 1795, a bruising confirmation battle over the nomination of John Rutledge to be the Chief Justice of the Supreme Court established that the same Senators would consider not merely the qualifications but also the political views of a nominee in deciding whether to support or reject his nomination.

I am a Senator who takes this Constitution seriously. I refuse simply to toe the party line when it comes to Supreme Court Justices. And I will make up my own mind after careful contemplation. The President of the United States said partly in jest that he wanted to call me to lobby on the nomination. I said: Mr. President, I don’t lobby very easily. I take my Constitutional duties seriously. I will listen to what anybody has to say, and then, Mr. President, I will make up my own mind.

I am a registered Democrat. Everybody knows that. But when it comes to judges, I hale from a conservative background. Similar to a majority of my constituents, I prefer conservative judges. I have been saying that for years and years. That is, judges who do not try to make the law.

I was once approached by President Richard Nixon to inquire about my interest in being a U.S. Supreme Court Justice. I was proud to be considered. Whether I would have been nominated, I have no way of knowing. But as I said to my wife: I don’t think I would like that position. I would not like that kind of cloistered life. I like the rough-and-tumble of the legislative branch.

She said: Then you had better let the President know that.

I said the same thing to Senator John Pastore, and he responded in the same way. He said: You had better let the President know that.
I declined so that I might continue to serve the people of West Virginia, regardless of what the President may have in his heart and in his mind. This is not to say that I would vote for any judge just because he is a conservative. No. No, sir. If I think a conservative judge is a good choice, I will vote for him, nor would any other Senator vote for a nominee in that situation.

I have voted against judges on both sides of the political spectrum, who leaned respectively on their political views rather than on existing law, precedents and on the Constitution and who seemed to have a political agenda.

Much has been made of the fact that Judge Alito has expressed support of the concept of the “unitary executive.” Many are afraid his support for this concept means that he favors a broad expansion of Presidential power. And I shared some of that concern. Judge Alito, however, has stated repeatedly that his support for the concept of the unitary executive does not relate to broadening the scope of the power of the President.

Instead, Judge Alito says that this theory refers to the way in which the President utilizes his existing power to further his policy goals. The law as it applies to administrative agencies within the executive branch. In describing the unitary executive in his speech before the Federalist Society, Judge Alito stated article II, section 3 of the Constitution provides that the President “shall take care that the laws be faithfully executed.” “Thus,” he said, “the President has the power and the duty to supervise the way in which the subordinate executive branch officials exercise the President’s power of carrying Federal law into execution.”

Before the Judiciary Committee, Judge Alito was asked point blank whether he thought the concept of the unitary executive refers to expanding the scope of Presidential power, or instead to the President’s control over the executive branch. As I understood it, Judge Alito confirmed he was speaking of the latter.

Judge Alito was also asked whether he would support an expansion of the scope of Presidential power. Specifically, he was asked if he thought the President should have more power than he is expressly given under the Constitution and by law. Judge Alito stated several times that he would not support that point of view, and he noted, again, that the “scope” of the power of the President has nothing to do with the unitary executive.

I met with Judge Samuel Alito. I spent close to 2 hours with him. I asked him what he thought about the establishment clause and the free exercise clause and the power of the purse and the congressional power over the purse. I told him that I believed the Supreme Court has gone too far in prohibiting the free exercise of religion in this country. He listened respectfully and said that he understood. He did not pledge to overrule precedent, but he made it clear that he understood and respected my viewpoint.

I also advised him of my view that the executive branch is continually and improperly seeking to grab power, more power and more power, and that the separation of powers requires the judiciary to be ever vigilant in stopping the abuse of power by the President and in protecting the powers of the other two branches.

I urged Judge Alito, as I urged Judge Roberts before him, to recognize the importance of maintaining the equality of the three branches of our Government, protected by our Constitution. I stressed that he ought to be a Justice who will not forget the people’s branch, the legislative branch, the first branch, the primary branch mentioned in the Constitution under article I; the executive is mentioned later on in article II.

I requested he not rule in a way that would support any of an already expansionist executive. I reiterated that the Framers did not place the greatest power in the executive but, instead, the Framers put the greatest power in the people—the people, like you and me. The first three words in the Constitution are, as we all know, “We, the People.” The Framers ensured that the people, through us, their elected representatives in the Congress, would have the greatest power in our Government. In my response, Judge Alito reiterated that he respects the separation of powers and would not rule in support of a power-hungry President. I liked that answer.

I liked Judge Alito. He struck me as a man of his word, and I intend to vote for him.

I believe strongly that the Senate has a responsibility to provide its advice and consent with respect to a particular nominee based on the merits or demerits of that nominee, not on focus group popularity or binders filled with innuendo and slanted analysis or White House photo opportunities.

In truth, there is absolutely no way of knowing what any nominee for our Nation’s highest Court will do after that nominee is confirmed. One could cite many examples of Justices who surprised the President who nominated them, as well as the Members of the Senate who supported or opposed their confirmation. Women have achieved the high honor of a lifetime appointment to our Nation’s highest Court, a transformation may occur. The awesome responsibility of protecting our Constitution and preserving the checks and balances for succeeding generations of Americans must elevate and sharpen one’s judicial temperament in profound ways. The duty to preserve the freedom of our citizens as enshrined in our magnificent Bill of Rights must enable an already noble mind and character.

In the end, the heavy duty borne by Members of the Senate to evaluate and reject or approve the President’s nominee for the High Court should come down to each Senator’s personal judgment of the man or woman before us, augmented, of course, by such judicial records and writings as may exist. I may not know exactly what kind of Justice Samuel Alito will be. No one does. But from his record, from his answers to my own questions, from his obvious intelligence, and from his obvious sincerity, leads me to believe him to be an honorable man, a man who loves his country, the Constitution, and a man who will give of his best. Can we really ask for more?

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise today to explain why I will vote against Judge Samuel Alito’s nomination for Associate Justice to the U.S. Supreme Court.

After reviewing his record, I believe Judge Alito will move the Supreme Court too far to the conservative side of American jurisprudence. I believe Judge Alito’s judicial philosophy will also dangerously increase Executive power, injuring the checks and balances built into our Constitution that protect all of us. Judge Alito’s confirmation may roll back important civil rights protections, protections which were achieved in our country through the sacrifices of many and are vital to the future of the United States.

I hope, if Judge Alito is confirmed, history will prove my concerns wrong. But given his record, including his extensive written record, I cannot in good conscience support him.

I thank the Senate Judiciary Committee. It held fair, serious, and dignified hearings. Chairman SPECTER, Ranking Member LEAHY, the members of the committee, and the majority and minority staff have again earned our gratitude.

Judge Alito’s confirmation vote is particularly important for our country because this seat on our Supreme Court has been held by a champion of justice and mainstream America for a quarter century: Justice Sandra Day O’Connor. Our Nation owes Justice O’Connor a great debt of gratitude. Justice O’Connor served as an exemplary role model for all of us, including women, who have succeeded at the very highest level of our National Government.

Unfortunately, this nomination signals an undesirable retreat from diversity on the U.S. Supreme Court. Women make up more than half of the people of our country. Yet women have been represented in the Supreme Court in our entire history for more than two centuries by only two female justices—Justice O’Connor and Justice Ginsburg. Now Justice Ginsburg is left to be the only woman on the Court to represent the interests of women and for all of us in America who believe that all men and all women are truly created equal.
I regret that result, especially after it was the radical right of America that derailed the nomination of Harriet Miers. We all know there are thousands of highly qualified women lawyers and judges across America, and they could have provided exceptional service to the United States on the Supreme Court. Regardless of the merits or demerits of Judge Alito, I am saddened, at the daybreak of the 21st century, that the United States has retreated from a cause that rightfully embraces the character of the equality of women in our society.

Beyond the principle of gender diversity, Justice O’Connor consistently defined the center of the Supreme Court on many issues. She used her wisdom and her judgment to advance reasonable, commonsense, and mainstream legal doctrines that affect the lives of all Americans. That is why the choice of the replacement for Justice O’Connor is so important for our collective future.

The confirmation of a Supreme Court Justice is a solemn task. It is among the most important constitutional duties of the Senate. I have evaluated Judge Alito’s qualifications using the same criteria I used to evaluate Chief Justice John Roberts for whom I voted. I have reviewed Judge Alito’s record for evidence of his fairness, impartiality, and his proven record of upholding the law. However, I have decided that my concerns require that I vote against him.

My concerns with Judge Alito start with the 1985 memorandum he included with his job application to the White House. Judge Alito was then 35 years old. To me, this document is a very powerful document. It is evidence of how Judge Alito the man views the law and the Supreme Court. The document is very carefully written. It is packed full of Judge Alito’s political and jurisprudential ideas which he has adhered to over the years. In that memorandum, Judge Alito declared he strongly disagreed with the opinions of the Warren Court. Those opinions are now and then widely accepted. They encompass important constitutional protections such as opinions on reapportionment in Baker v. Carr, the case that established the principle of one person, one vote. They concern well-established rules about the relationship between church and state. I find Judge Alito’s views to be outside the mainstream of legal thought in 1985.

Since that time, based upon his decisions as an appellate judge and in his other writings, Judge Alito has ruled consistently with the legal philosophy he described in 1985. I believe that legal philosophy is wrong for our Nation. Specifically, I believe Judge Alito’s legal philosophy about the structure of our government under our Constitution will harm our country if ultimately adopted by the Supreme Court.

The Framers of our Constitution were geniuses. They created a legal structure for our country that has endured and prospered for more than two centuries. The Framers were not successful because they were abstract thinkers; they were successful because they were practical thinkers, practical Americans. The Framers knew human nature focused on the common frailties of people placed in positions of great power, human desires to gather more power, human tendencies to credit one particular view of the world above all others, and a willingness to understand the perspectives of others.

Out of their genius, the Framers created a system of checks and balances. The Framers made rules which require that the power must be shared. They created a system with explicit and implicit limits for the power of each branch. The system where the people who govern the United States are in constant tension with and against each other, always limiting and checking excesses that are all too human.

Judge Alito’s judicial philosophy will diminish our system of checks and balances. He will expand the powers of the executive branch to an extent that is dangerous to us all. I believe Judge Alito would grant the Executive power to overwhelm the congressional and judicial branches.

Let me cite a few examples from his record.

First, I am troubled by Judge Alito’s 1984 brief in the Mitchell case in which he asserted absolute immunity for high Government officials accused of illegal wiretapping.

I am troubled by his support in 1986 for the idea that Presidential signing statements—a President’s remarks accompanying unsigned laws—can change the intent of Congress, which debated and passed the bill into law. A President executes the law; a President does not rewrite or alter the law.

I am troubled by Judge Alito’s firm belief in a unitary executive—in an unwillingness to acknowledge checks and balances that exist within the executive branch itself.

I am troubled by Judge Alito’s pattern of great deference to the executive branch. Judge Alito’s judicial philosophy in this area is particularly striking against the backdrop of current events. The current administration has adopted a widespread, concerted legal strategy to increase Executive power under our Constitution. It is wrongly pushing beyond the well-established edges of Executive power in many cases, based on a carefully calculated position that the current concentration of political power allows the executive branch to transcend the rule of law and the explicit limits of our Constitution; it is the opposite. It is an activist legal strategy to expand beyond reason our constitutional law that has served our country very well for more than 200 years.

Let me be clear. My concerns are not based exclusively on my view of the current President or my ideas about how he would or would not wield dominant Executive power. We are talking about changes in the Court that could affect our Government for decades, as Presidents of both parties take office and govern.

Dominant Executive power is not a “safe bet” for anyone, regardless of one’s views of the current President. When considering a potential Supreme Court Justice, we must look beyond the politics of our time and we must protect the basic structure, the system of checks and balances among coequal branches. Administrations of varied ideology and vision must recognize that system of checks and balances.

I briefly want to turn to civil rights. When I rose on this floor on September 27 of last year to speak on behalf of Chief Justice Roberts, I spoke of the “age of diversity” in this country. I spoke of this country’s long history of slavery and our struggles—including our own Civil War—to put behind us the unequal treatment of our citizens.

I talked about Brown v. Board of Education and the central role our Supreme Court played to guide our country on to the path of equality and equal treatment for all. I spoke of the growing diversity of people in our country, and of the need to foster all the powerful strengths our diversity brings to our National body—our cultures and spirit, a wealth of ideas, and a widely varied community bound together by the common values of truth, honesty, and fair dealing among ourselves.

My life experiences and my years of public service convince me that recognizing and encouraging the strengths of diversity is the true constitutional path for our country. I also believe in the practicality of this approach. In fact, I believe it is the only way our country will thrive and prosper over the long run. I will vote against Judge Alito because I am convinced he is unlikely to support these principles of diversity.

Here is only a small part of the evidence that Judge Alito will lead our Nation in the wrong direction on issues of equal opportunity and diversity:

In Riley v. Taylor, Judge Alito was one of the three judges who voted to prevent a woman who had presented evidence of employment gender discrimination from going to trial. In PIRG of New Jersey, Judge Alito registered the lone dissenter against a Circuit Court decision when he, alone, concluded it was proper to exclude all Black jurors from sitting in judgment of a Black man.

In Ridder v. E.I. DuPont de Nemours, Judge Alito registered the lone dissent against a Circuit Court decision when he, alone, concluded it was proper to exclude all Black jurors from sitting in judgment of a Black man.

In Doe v. Groody, Judge Alito would have upheld the strip search of a 10-
year-old girl, denying her access to belief in the courts.

And in Chittester, Judge Alito would have precluded State employees from seeking damages in court under the Federal Medical Leave Act.

Analyses discussed during the Judiciary Committee hearing show Judge Alito almost never ruled for African Americans in employment discrimination cases. Analyses also show Judge Alito rarely sided with individuals in their cases against large and powerful institutions and corporate interests.

I believe Judge Alito will continue to rule that way on the U.S. Supreme Court. I think that is wrong because it will usher in an era of insensitivity to the weakest and the poorest among us. I hope and I pray I am wrong.

In conclusion, I believe Judge Alito will move the Supreme Court too far to the conservative side of American legal jurisprudence. Judge Alito’s judicial philosophy will dangerously increase Executive power, injuring the checks and balances built into our Constitution to protect us all.

And Judge Alito’s confirmation will roll back important civil rights protections—protections that were achieved in our courts through the sacrifices of many and which are critical to our Nation’s future.

I, therefore, will vote against this nomination.

Mr. President, I ask unanimous consent to have printed in the Record concerning Judge Alito. One is a letter from the League of United Latin American Citizens, and the other is a letter from the Colorado Hispanic Bar Association, in which they raise their opposition to the confirmation of Judge Alito.

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

**LEAGUE OF UNITED LATIN AMERICAN CITIZENS, Washington, DC, January 13, 2006.**

Re Nomination of Samuel A. Alito, to the United States Supreme Court.

Hon. AHLEN SCHEFFER, Chairman, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Hon. PATRICK LEAHY, Ranking Member, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS: We write to you as representatives of the millions of members of the immigrant, Latino, and faith communities who are extraordinarily concerned about the nomination of Judge Samuel A. Alito to the Supreme Court. We believe that all Americans should be able to count on the Supreme Court to uphold their rights, opportunities, and legal protections, and we are worried that Judge Alito’s record demonstrably that millions of Americans would not be able to count on him or the Court if he were confirmed.

While many concerns about Judge Alito’s record, we are especially troubled by recent reports that Judge Alito, during his time in the Reagan administration, continued the Justice Department’s policy of targeting immigrants and nonresident aliens from other countries have limited or “no due process rights” under the

Constitution. Judge Alito advocated this view in a memo he wrote in 1986 regarding FBI activities. In a Nov. 29 Washington Post article that focused on this 1986 document, then the chief judicial analyst Bruce Fein, who served with Judge Alito in the Reagan administration, seemed surprised by how extreme Judge Alito’s position was on immigration. The memo seems to be saying that there is no constitutional constraints (sic) placed on U.S. officials in their treatment of non-resident aliens or illegal aliens,” Fein told the Post. “Could you torture them? . . . It’s a very aggressive reading of cases that addressed much narrower issues.”

This is part of a deeply disturbing pattern of rulings and memos from Judge Alito’s record indicating that he gives great deference to the government’s power and shows little concern for protecting the rights of individuals. He has tried to make it harder for people who believe they have faced discrimination on the job to even have their case heard in court. He has seen no problem in some cases with racial discrimination on juries—or with keeping Spanish speakers off juries in a case where some evidence was in Spanish. He also tried to undermine the Family and Medical Leave Act, which allows people to keep their jobs and take care of family members in need.

Three times Judge Alito has passed up the opportunity to nominate a Latino to the Supreme Court. At the very least, we had hoped he would avoid nominating someone who is completely outside the basic interest of our community. But it appears Judge Alito may be such a nominee. That Judge Alito has actually expressed views so extreme that they would deprive many immigrants of basic human rights is extremely troublesome. Such views are legally wrong, and they run counter to our values.

Our rights are too important to entrust to someone who has seemingly indicated he doesn’t exist. We urge you to hold Judge Alito responsible for his views, and to take our strong concerns into account when you vote on whether to confirm him to the Supreme Court.

Sincerely,

Center for New Community
Hispanic Association of Colleges and Universities
Hispanic Federation
The PRLDEF Institute for Puerto Rican Policy
Latino Caucus in Official Relations with the American Public Health Association
Labor Council for Latin American Advancement
League of United Latin American Citizens
National Farm Workers Ministries
National Hispanic Environmental Council
National Latina Institute for Reproductive Health
National Latina-O Law Students Association
National Network for Immigrant and Refugee Rights
National Day Laborers Organizing Network
SistersSong Women of Color
Reproductive Health Collective
United Farm Workers of America.

CHBA, COLORADO HISPANIC BAR ASSOCIATION, January 16, 2006.

Senator KEN SALAZAR,
Chair Senate Office Building, Washington, DC.

DEAR SENATOR SALAZAR: The Colorado Hispanic Bar Association (CHBA), expresses its opposition to the confirmation of Samuel Alito as Associate Justice of the United States Supreme Court. After review of his opinions written during his tenure on the United States Court of Appeals for the Third Circuit, the CHBA is concerned that Judge Alito has not displayed sufficient respect for two fundamental legal principles: first, the role of the judge to resolve disputed questions of fact; and (2) the restraints that stare decisis imposes upon a judge’s decision-making.

However, principles are important—but limited—role that an individual judge plays in our justice system. Judge Alito’s resistance to these tenets is troubling. If confirmed, Judge Alito would move the Supreme Court too far to the conservative side of American legal philosophy. Although a detailed discussion of Judge Alito’s writings is outside the scope of this message, the CHBA offers a few examples to illustrate its concerns.

In a 1996 case brought under Title VII of the Civil Rights Act of 1964, an employee alleged that her employer had discriminated against her on the basis of sex. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061 (3rd Cir. 1996). At issue was the minimum evidentiary showing the plaintiff must make in order to permit the jury to decide her case. All of the reviewing judges agreed that the employer had prevailed. Refusing to conduct a prima facie case of illegal discrimination and enough evidence to permit the jury to decide whether the employer discriminated, the court dismissed the employee’s claim on the ground that no evidentiary burden was imposed upon the defendant to call witnesses and to provide evidence relative to any discrimination.

Alito’s position is flatly absurd. A woman who alleges that she was wrongfully passed over for an accounting position because she is female can show a prima facie case of illegal discrimination and enough evidence to permit the jury to decide whether the employer discriminated. All of the reviewing judges agreed that the employer had prevailed. But the court refused to conduct a prima facie case of illegal discrimination and enough evidence to permit the jury to decide whether the employer discriminated on the ground that no evidentiary burden was imposed upon the defendant to call witnesses and to provide evidence relative to any discrimination.

In another Title VII case, Judge Alito again in dissent, showed similar disregard for the jury’s role, voting to keep the case from the jury. Bray v. Marriott Hotels, 110 F.3d 986 (3rd Cir. 1997). Refusing to adopt Judge Alito’s analysis of the evidence, the majority of the court explained that a “factfinder may well agree with that interpretation, but that does not foreclose the defense from introducing evidence which will, for example, in a case like this, show that the en banc Third Circuit granted the defendant a writ of habeas corpus because the prosecution had violated the Equal Protection Clause of the Constitution.”

Both of these principles recognize the importance of the jury to resolve disputed questions of fact and to apply the law. Id. at 971-72. Alone among the 12 judges, Judge Alito dissented and expressed his view that the jury should not be allowed to weigh in any of the issues presented to it.

Moreover, Judge Alito has displayed a tendency to disregard stare decisis (adherence to the rule announced in prior cases). For example, in a case where the en banc Third Circuit denied the defendant a writ of habeas corpus because the prosecution had violated the Equal Protection Clause of the Constitution, Judge Alito dissented again. According to his colleagues, Judge Alito, rather than following precedent, “accord(ed) little weight to these authorities.” Id. The court also took issue with Judge Alito’s attempt to analogize the statistical evidence of the use of peremptory challenges to strike black jurors to the percent of left-handed presidential candidates at 292. The court found that Judge Alito had “overlooked the obvious fact that there is no provision in the Constitution that protects persons from dismissal based on right-handed or left-handed.” Id. Further, his fellow judges found that Judge Alito had
Elevate to the United States Supreme Court. Judge Alito’s opinions reveal a consistent and discomfiting inclination to arrogate undue authority to individual judges such as himself. Judge Alito’s activist streak stands in sharp contrast to the cautious pragmatism of Justice Sandra Day O’Connor, whom he would replace on the Court. The CHBA is particularly troubled by the addition of Judge Alito’s unrestrained view of judicial authority to a Supreme Court on which Hispanics are not represented. Given that the Hispanic community has no direct voice on the Court, Hispanics should be very concerned if the Court were to embark on an era in which it feels free to upset settled law and to assume new powers within our justice system. Hispanics expect this institution to be a court of Hispanics without a court order.

With the executive and the legislature at loggerheads, we may well need the Supreme Court to have the final say on constitutional issues in the event of a judicial crisis. In such a constitutional crisis, the Supreme Court can tell the executive it has gone too far, and require it to obey the law. Yet Judge Alito’s record and testimony strongly suggest that he would do what President Bush did with respect to the 15 beheaded Americans in the water: defer to the executive branch in case after case at the expense of individual rights.

Although he has not decided cases dealing with the Bill of Rights in wartime, he has a voluminous record on the bench: defer to the executive branch in case after case at the expense of individual rights.

A whole series of analyses by law professors and news organizations has shown that Judge Alito is more deferential toward the government, and one detailed analysis by the Washington Post concluded that he is more deferential than his Third Circuit colleagues and even than Republican-appointed appeals judges nationwide. This vividly demonstrates the concern I have about this nomination. The CHBA is not simply a conservative judge appointed by a conservative President. His record is that of a jurist with a clear inclination to rule in favor of the government and against individuals.

In particular, Judge Alito’s record in fourth amendment cases shows a recurring pattern. In almost every fourth amendment case in which Judge Alito wrote an opinion, he either found no constitutional violation or argued that the violation should not prevent the individual’s case from moving forward. He made no attempt to balance the government’s interest in national security against the interests of privacy and personal dignity protected by the fourth amendment and instead relies on technical readings of warrants so that he can authorize the government action.

Cases challenging government power comprise nearly half of the current Supreme Court’s docket. A Supreme Court Justice should protect individual freedoms against government intrusion where justified, and, specifically, appreciate the tremendous power that the fourth amendment serves to limit government power. As Yale Law School Professor Ronald Sullivan testified:

In the United States, perhaps no right is more precious—more worthy of protection—than the right of each and every individual to be free from government interference without the “unquestionable authority of the law. Judge Alito . . . shows an inadequate consideration for the important values that underwrite these norms of individual liberty—the very norms upon which the constitutional democracy relies for its sustenance. . . .” This Senate’s decision on whether to consent to Judge Alito’s nomination will profoundly impact how liberty is realized in the United States.

At the hearing, and many other Senators repeatedly asked Judge Alito whether the President can violate a clear statutory prohibition, such as the Foreign Intelligence Surveillance Act and the ban on torture. He never answered the question or again responded to a formulaic response that told us nothing at all: he said that the President must follow the Constitution and must follow the laws that are consistent with the Constitution. Any first-year law student could tell you that. That kind of stock phrase, which Judge Alito repeated over and over, tells us absolutely nothing about his view of whether the President can, consistent with the Constitution, violate a criminal law.

Judge Alito did point to Justice Jackson’s three-part analysis in Youngstown. That is an appropriate framework, but merely citing Youngstown doesn’t tell you anything about how he would apply that framework. Even when presented with the alarming hypothetical of whether a President can authorize a murder in the United States, Judge Alito would say no more. These practiced and opaque responses gave me no reassurance about Judge Alito’s commitment to this constitutional democracy relies for its sustenance.
and the political question doctrine—that is, he seemed to question whether the courts can even weigh in on these serious legal battles between the legislature and the executive. Although he said he thought the courts could address these issues, involving individual rights, Judge Alito’s instinct in discussing these historic issues was to focus on whether the courts even had a role to play. It wasn’t to talk about the gravity of the issues at stake for our system of courts, and, most importantly, to question whether he as a judge could even participate in the resolution of such critical constitutional conflicts.

I found that very disturbing, and it has played a significant role in my decision to vote against him. Judge Alito’s record and his testimony have led me to conclude that his impulse to defer to the executive branch would make him a dangerous addition to the Supreme Court at a time when cases involving executive overreach in the war on terror are likely to be such an important part of the Court’s work.

I am also concerned about Judge Alito’s record and testimony on cases involving the death penalty. The Supreme Court plays a crucial role in death penalty cases. Judge Alito participated in five death penalty cases that resulted in split panels, and in every single one of those he voted against the death row inmate. A Washington Post analysis found that he ruled against defendants and for the government in death penalty cases significantly more often than other judges. And his testimony gave me no reason to believe that he will approach these cases any differently as a Supreme Court Justice.

To be blunt, I found Judge Alito’s answers to questions about the death penalty to be chilling. He focused almost entirely on procedures and deference to state courts, and didn’t appear to recognize the extremely weighty constitutional and legal rights involved in any case where a person’s life is at stake.

I was particularly troubled by his refusal to say that an individual who went through a procedurally perfect trial, but was later proven innocent, had a constitutional right not to be exiled. The Constitution states that no one in this country will be deprived of life without due process of law. It is hard to see how any procedure that would allow the execution of someone who is known to be innocent could satisfy that requirement of our Bill of Rights. I pressed Judge Alito on this topic but rather than answering the question directly or acknowledging how horrific the idea of executing an innocent person is, or even pointing to the House v. Bell case currently pending in the Supreme Court on a related issue, Judge Alito mechanically laid out the procedures a person would have to follow in State and Federal court to raise an innocence claim, and the procedural barriers the person would have to surmount.

Judge Alito’s record and response suggest that he analyzes death penalty appeals as a series of procedural hurdles that inmates must overcome, rather than as a critical backstop to prevent grave miscarriages of justice. The Supreme Court plays a very unique role in death penalty cases, and Judge Alito left me with no assurance that he would be able to review these cases without a weight on the scale in favor of the government.

One important question that I had about Judge Alito was his view on the role of precedent and stare decisis in our legal system. At his hearing, while restating the doctrine of stare decisis, Judge Alito repeatedly qualified his answers with the comment that stare decisis is not an “inexorable command.” While this is most certainly true, his insistence on qualifying his answers with this formulation was inescapable evidence in a judicial record in which fellow judges have criticized his application of precedent in several cases. Judge Alito’s record and testimony do not give me the same comfort I had with Chief Justice Roberts. His record and his testimony have been disposed of fairly easily if Judge Alito is confirmed.

I was particularly disturbed by his refusal to say that he would analyze recusal motions related to the Third Circuit judges who testified on his behalf. I raised concerns about his approach to conflicts of interest. Judge Alito wrote that he thinks Supreme Court Justices have a “bias” to err on the side of the “recused” if there is a reason to believe recusal could lead to evenly divided decisions. But when Congress amended the Federal recusal law in 1974, it specifically removed any so-called “duty to sit” in favor of a general standard for recusal if there is a reasonable basis for doubting the judge’s impartiality. The purpose of that change was to enhance public confidence in the impartiality and fairness of the judicial system. In my view, Supreme Court Justices should have no more latitude in interpreting ethics rules than other judges; indeed, the recusal statute specifically applies to Supreme Court Justices.

I would argue that treating recusal issues seriously is even more important for Supreme Court Justices since they are solely responsible for their recusal decisions. There is no judicial review of their decisions, no formal procedure for the full Court review of such decisions, and, when a Justice improperly participates, a tainted constitutional decision cannot be undone. That is why it is so important to have Justices who adhere to the highest ethical standards. Judge Alito repeatedly told us that he seeks to enhance public confidence in the Court’s decisions. But as Justice Breyer pointed out, when given the opportunity at his confirmation hearing, Judge Alito failed to clear up the inconsistencies and implausibility of the reasons he gave for his failure to recuse himself in 2002.

This written answer to my question about how he would analyze recusal motions related to the Third Circuit judges who testified on his behalf raises questions about his approach to conflicts of interest. Judge Alito wrote that he thinks Supreme Court Justices have a “bias” to err on the side of the “recused.” This suggests that he would analyze recusal motions related to the Third Circuit judges who testified on his behalf as recusal if there is a reason to believe recusal could lead to evenly divided decisions. But when Congress amended the Federal recusal law in 1974, it specifically removed any so-called “duty to sit” in favor of a general standard for recusal if there is a reasonable basis for doubting the judge’s impartiality. The purpose of that change was to enhance public confidence in the impartiality and fairness of the judicial system. In my view, Supreme Court Justices should have no more latitude in interpreting ethics rules than other judges; indeed, the recusal statute specifically applies to Supreme Court Justices.

First, it is not clear to me that Judge Alito took his 1990 promise to the Judiciary Committee seriously. Second, Judge Alito failed to clear up the inconsistent explanations before or at the outset of his hearing, even after his pre-hearing deposition revealed that the real reasons were implausible and even though he knew that they were not the real reasons that he failed to recuse himself in 2002.

The concept of recusal, which recognizes that from time to time the public might reasonably believe that judges’ biases or interests may cast doubt on the integrity of a judicial decision, is part of ensuring due process and protecting the public’s confidence in the integrity of our system of justice. Despite numerous other reports of Judge Alito’s honesty and integrity, I am not satisfied that he appreciates the importance of recusal.

His written answer to my question about how he would analyze recusal motions related to the Third Circuit judges who testified on his behalf raises concerns about his approach to conflicts of interest. Judge Alito wrote that he thinks Supreme Court Justices have a “bias” to err on the side of the “recused.” This suggests that he would analyze recusal motions related to the Third Circuit judges who testified on his behalf as recusal if there is a reason to believe recusal could lead to evenly divided decisions. But when Congress amended the Federal recusal law in 1974, it specifically removed any so-called “duty to sit” in favor of a general standard for recusal if there is a reasonable basis for doubting the judge’s impartiality. The purpose of that change was to enhance public confidence in the impartiality and fairness of the judicial system. In my view, Supreme Court Justices should have no more latitude in interpreting ethics rules than other judges; indeed, the recusal statute specifically applies to Supreme Court Justices.

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this new Justice, who plainly has a keen legal mind, would be the kind of impartial, objective, and wise Justice that our Nation needs. But I do not, so I will vote no.

Mr. JEFFORDS. Mr. President, there is no higher legal authority in the United States than the U.S. Supreme Court. It is the final arbiter on the meaning of laws and the U.S. Constitution. The Supreme Court gives meaning to the scope of the right of privacy; whether Congress exceeded its power in passing a law.

A Supreme Court Justice could serve for the life of the nominee, thus the consequences of confirming a Supreme Court Justice last well beyond the term of the President who makes the nomination, a Senator's term, and maybe even the Senator's own life. Therefore, one of the most important votes a Senator takes is the confirmation of a U.S. Supreme Court Justice.

I have carefully considered the appointment of Judge Samuel Alito to the Supreme Court and have concluded I cannot support his nomination. My first step in evaluating a nominee is to consider whether the nominee is appropriately qualified and capable of handling the position for which he or she has been nominated. Looking over Judge Alito's qualifications, it is clear this minimum standard has been met. Judge Alito has served in the U.S. Department of Justice, has been a U.S. Attorney, and for the last 15 years has been a judge on the Third Circuit Court of Appeals. However, while I use this minimum standard in my evaluation of executive branch nominees, there are additional factors to be considered in my evaluation of a judicial nominee.

The Framers of our Constitution recognized the limits of democracy and created three coequal branches of government. That passion and whim could cause the elected representatives to enact legislation on the cause of the day, which treads near on constitutional rights. In addition, while the diversity of Congress can stop most of these ideas before they are adopted, no such check exists on the executive branch of our government.

Thus, the third branch of government, the judiciary, was created. This branch was to be independent, unaffected by the public's whim and opinion, and serving the law and the public.

The Framers split the responsibility of filling the judiciary between the executive and legislative branches. The President nominates an individual to be a judge, while the Senate has the duty to advise and consent on each nominee. This framework was established to ensure that the executive branch could not exercise so much control over the nominating process that the judiciary would lose its independence and become ideologically driven.

While the Senate's duty is to evaluate a nominee, the Constitution provides no guidance as to what exactly Senators should take into account. This decision is up to each individual Senator. I have already touched on one factor I consider, "qualified and capable of handling the duties of the position."

An additional consideration is the judicial philosophy of the nominee. Many of my colleagues argue that this factor should have no part in the Senate's consideration of a nominee to the Supreme Court. However, if judicial philosophy is the determining factor in the choice the President makes from a list of many qualified candidates, the Senate should also be allowed to consider this factor when deciding whether to approve or disapprove the nominee. Not allowing the Senate to consider this factor would shift the careful balance the Framers put in our Constitution away from equal partners toward giving the executive branch an unfair advantage.

In addition to considering the individual's judicial philosophy as a standalone matter, we must also consider the cumulative effect our approving a nominee will have on the Supreme Court. In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court. The Republican stamp on the current Court is undeniable. Consider the prospects for the Court in the coming years based on the ages of the sitting Justices and their years of service:

<table>
<thead>
<tr>
<th>Justice</th>
<th>Date of birth</th>
<th>Current age</th>
<th>Years on court</th>
<th>Appointment age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stevens</td>
<td>April 20, 1920</td>
<td>85</td>
<td>30</td>
<td>55</td>
</tr>
<tr>
<td>Ginsburg</td>
<td>March 15, 1933</td>
<td>72</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Scalia</td>
<td>March 11, 1936</td>
<td>69</td>
<td>19</td>
<td>50</td>
</tr>
<tr>
<td>Kennedy</td>
<td>July 23, 1936</td>
<td>69</td>
<td>17</td>
<td>52</td>
</tr>
<tr>
<td>Breyer</td>
<td>Aug. 15, 1938</td>
<td>71</td>
<td>11</td>
<td>56</td>
</tr>
<tr>
<td>Souter</td>
<td>Sept. 17, 1949</td>
<td>76</td>
<td>15</td>
<td>51</td>
</tr>
<tr>
<td>Thomas</td>
<td>June 29, 1948</td>
<td>77</td>
<td>14</td>
<td>45</td>
</tr>
<tr>
<td>Roberts</td>
<td>Jan. 27, 1955</td>
<td>79</td>
<td>1</td>
<td>56</td>
</tr>
</tbody>
</table>

This information clearly shows that the prospects of the Court becoming more moderate in the near future are unlikely, as the more liberal to moderate members are the more likely to be replaced.

The table also clearly lays out a concern about the shift in the balance of the court by replacing Justice O'Connor with a younger, more conservative Justice.

This concern is also made clear by looking at some important cases where Justice O'Connor provided the critical fifth vote for a moderate, common sense position. These cases include:

- Alaska Department of Environmental Conservation v. EPA (2001): The Court held that the Environmental Protection Agency can enforce the Clean Air Act and overrule a State decision to allow a major pollutant emitting facility to build a power generator when the State agency is not doing an adequate job of enforcement.

- Stenberg v. Carhart (2000): The Court upheld the principles that, before viability, women can choose to have an abortion, and that any restriction on the right to an abortion must have an exception for the mother's health.

- Tennessee v. Lane (2004): The Court held that as part of its enforcement power under the 14th amendment, Congress has the right under the Americans with Disabilities Act to force States to provide physical access to the courts.


Upon this backdrop, I have evaluated the decisions and writings of Judge Alito. I carefully watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination. I am concerned that Judge Alito did not provide complete answers on many important topics such as Roe v. Wade, and the limits of the executive branch's power. On the other hand, Chief Justice Roberts did provide answers to these questions during his nomination hearing and I voted for Justice Roberts. Given the importance of a Supreme Court Justice replacing Sandra Day O'Connor, we should expect even more complete answers than we received from Judge Alito.

After careful deliberation, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our county: Are there limits on the power of the presidency? Can the Congress regulate the activities of the States? How expansive is the right to privacy? What deference should be given to legislative acts of the Congress? While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

Mr. JOHNSON. Mr. President, there are few decisions with a more difficult, and profound consequence that a U.S. Senator must make than the decision whether to vote to confirm a nominee to a lifetime appointment to the U.S.
Supreme Court. Accordingly, I have reviewed the record and the commentary relative to the Samuel Alito nomination with great care and deliberation. The decision on the Alito nomination is more difficult than was the case for now Chief Justice John G. Roberts’ ascension to the Supreme Court. Judge Alito possesses a high level of conservative jurisprudential thinking, and that his views fall within the mainstream of contemporary conservative jurisprudential thinking. At the conclusion of Senate floor debate, I will oppose any effort to filibuster his nomination, and I will vote to confirm Judge Alito’s nomination to the Supreme Court.

While it is not the role of the Senate to “rubberstamp” any President’s judicial nominations, it is also true that any President’s choice deserves due deference. Judge Alito deserves the same deference that Republican Senators accorded the Supreme Court nominees of President Clinton. I am mindful that Justice Ginsburg, a former counsel to the ACLU, was confirmed with 96 Senate votes in her favor.

I do not believe that simple political ideology ought to be a deciding factor so long as the nominee’s views are not significantly outside the mainstream of American legal thinking. I also believe that the judicial nomination and confirmation process in recent years has become overly politicized to the detriment of the rule of law.

I am troubled by Judge Alito’s apparent views on matters such as Executive power, his past opposition to the principle of one person, one vote, and his narrow interpretation of certain civil rights laws. Even so, I cannot accept an argument that his views are so radical that the Senate is justified in denying his confirmation.

The PRESIDING OFFICER (Mr. ENYgren). The minority’s time has now expired.

Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have been asked by the majority leader to come to the floor, as manager of the proceedings, in my capacity as chair of the Judiciary Committee, to see if we can have a vote on Judge Alito. We have informed the Democrats of our interest in having a unanimous consent, but we will not ask for one until their leader is here. He is on his way, and I will await his arrival. In the interim, acting leader Senator Salazar, is on the floor, so he can always protect their interests. But I shall not move in a way precipitously until Senator Reid arrives.

I am advised we do not have any speakers for the Democrats tomorrow. We are now in the second full day of our discussion. The rules of the Senate require either that we speak or we vote. If there are no further speakers for the proceedings, then it would be my inclination we ought to follow regular order, we ought to vote. Either we speak or we vote. So long as there is somebody to speak, there is the right of unlimited debate, as we all know, and we respect that.

This is a lifetime appointment, and it is a controversial appointment. There is no doubt about that. But if we are not going to have debate, then, in my capacity as chair of the Judiciary Committee, it seems to me we ought to vote. We have a lot of other pressing business for the Senate.

I have just left the conference of the Republican Party where there had been a plan, months ago, to be out of town so we could make plans for the second session of this Congress. Because the nomination of Judge Alito is on the floor, we have altered those plans. I might say at considerable financial loss since reservations had been made.

But we are here not complaining about that. We are here to move the business of the Senate along.

There are a number of pressing matters which we could take up tomorrow or yet. One is the issue of appropriations of some $2 billion for LIHEAP. That is a matter for assistance for fuel in a cold winter. It is a cold day out there today. It is cold in Pennsylvania. It is colder in Vermont. It is colder in Maine. We need to resolve that issue.

We also have the PATRIOT Act, which is due to expire on February 3, a week from tomorrow. That is a very important matter both for security in our law enforcement fight against terrorism and also for a balance on civil rights. And we now have a motion to reconsider the cloture vote pending before the U.S. Senate.

There have been discussions about what to do. It is my hope that we would yet approve the conference report. We face the alternative of having the PATRIOT Act expire, which no one wants. We have the suggestion made for a 4-year extension of the current PATRIOT Act which, in my view, is much less desirable than having the conference report enacted. The conference report on a new PATRIOT Act gives much more for civil rights than does the existing act. It is not as good as the current PATRIOT Act, but the bill that came out unanimously from the Judiciary Committee and was passed by unanimous consent, but the conference report is a lot better than the current bill. So there are other important matters that we could address.

UNANIMOUS CONSENT REQUEST

Now that the distinguished Democratic leader is on the floor, on behalf of the majority leader, I ask unanimous consent that at 5:30 on Monday, January 30, the Senate proceed to a vote on the confirmation of the pending nomination of Samuel Alito.

And before the Chair rules, I would reiterate that we are prepared to debate the nomination through the weekend if Senators have additional comments or have not yet delivered their statements.

Now, Mr. President, I am glad to yield to my distinguished colleague, Senator Durbin.

The PRESIDENT PRO Tempore. The Democratic leader.

Mr. REID. Mr. President, preserving the right to object, we have seven speakers lined up this afternoon. We hope they will all show up. I am confident they will.

LIHEAP is something the distinguished majority leader and I have spoken of several times. We know it is an important issue. We have made comments to the Senator from Maine, Senator Snowe, and the Senator from Rhode Island, Senator Reed. It is something we need to do as soon as we can.

In regard to the PATRIOT Act, I had a number of conversations, again, with the distinguished majority leader. Also, I spoke yesterday afternoon to Senator Sununu, who indicated he has been in conversations with the White House and is confident he is not far away from working out that matter with other interested parties, one of whom is, of course, the chairman of the Judiciary Committee.

I also have had a number of conversations with the distinguished majority leader as to how we should move forward with the other issue which is Judge Alito, and there are a number of possibilities. I think we are at a point now where we may well enter into a unanimous consent later today. I would hope so.

Based on that, and based on the fact I have not spoken to Senator Frist yet today—we spoke several times yesterday—I object.

The PRESIDENT PRO Tempore. Objection is heard. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I inquire of the distinguished Democratic leader whether there will be speakers on his side of the aisle to speak tomorrow, Friday, or Saturday, or Sunday, or Monday, if we are to remain in session without voting on this nomination?

Mr. REID. Mr. President, I am happy to respond to my friend. We will have speakers tomorrow. The weekend will pass, and I have got the item on the agenda about that later, whether that is necessary.

Mr. SPECTER. Mr. President, may I further inquire of the distinguished Democratic leader when his side of the aisle would be prepared to vote on the nomination?

Mr. REID. As I indicated, I have spoken to the distinguished majority leader on several occasions—not today. Yesterday we had a number of conversations, in fact into the evening last night, and I think it would be best for Senator Frist and me to talk about this rather than now.

Mr. SPECTER. I thank the Democratic leader for those comments. But
Senator Frist, the majority leader, has asked me to come to the floor. He is engaged now in the Republican conference and has asked me to raise these issues so we can give some idea to our colleagues. We have a lot of Senators who are standing by as to what is going to happen. We have a lot of Senators who are not standing by. Quite a few of them are overseas. Quite a few senators are always overseas. We have more senators overseas customarily than in the Chamber. I think that is certain. We only have senators in the Chamber. I know we have a lot more senators overseas. So a lot of senators are trying to make their plans.

I came to make the point, and I made the point. I thank the Senator.

Mr. Reid. Mr. President, I appreciate the Senator from Pennsylvania. I enjoy my relationship with him. But the only thing I would do is defend the Senate a little bit more. I appreciate the way the Senator is here and the chair. I know we have more senators overseas than we have here ready to work.

Mr. Specter. Well, Mr. President, I did not say we had more senators overseas than senators prepared to work. I said we have more senators overseas than we have in the Chamber. I counted five, and now a sixth has joined on the floor.

Well, as I said earlier, I came to make the point, and I have made the point. The point is that we either debate or we ought to vote. Debate or vote, that is what we do. When the debate is over, we vote. If the debate continues, we may have to go to closure. We have rules to accommodate us there. There have been counts made that when you have the number of senators who have stated their intention to vote for cloture, plus the number of senators who have stated their intention to vote for Judge Alito, you come to that number.

We are ready to do the business of the Senate. I know Senator Frist is watching these proceedings because our conference, at a little after 3 o'clock in the afternoon, reaches a little low point, a little low on blood sugar, things get a little sleepy. So I am sure they turned on the television to watch this. It would be my hope that the Republican leader and the Democratic leader will be on the floor today, and we will work to some sort of a schedule so we all know what to do.

Mr. Specter. It is all comparative. If I may direct this comment to Senator Reid, you haven't been to a Republican conference. No matter how dull it is, let me tell you, it is lively here. It is exciting here by comparison to what goes on in our Republican conference. We speak with authority because I just came from there.

I thank my distinguished colleague and the Chair and yield the floor for some serious business because we have some specific facts. The Presiding Officer. The Senator from North Carolina.

Mr. Burr. Mr. President, I think it is safe to say that Chairman Specter has committed more time to the nomination of Samuel Alito than any single person in this body and in this country, with the exception of one, and that would be Judge Alito.

I rise today in support of the nomination of Samuel Alito to be Associate Justice of the Court. Voting on the nomination of a Supreme Court Justice is a rare event in the Senate, but this year this body has now considered two nominations in only a few short months. To cast this vote is a privilege, and it is one this Senate should not take lightly. Americans did not know Sam Alito 6 months ago, but now millions of citizens have seen him in the news. They have heard him answer countless questions during his confirmation hearing. We have learned a great deal about Judge Alito. We have seen his family. We have listened to his stories about his childhood. We have heard about his educational background, and we have learned of his service on the bench. We have learned that his temperament and his character, are in fact solid. I personally have had the opportunity to sit with him, and I believe he respects the U.S. Supreme Court and the seat for which he has been nominated.

Americans have probably also heard the Senate debate Judge Alito's nomination. I would guess by now most Americans understand that there is no substantive debate over Judge Alito's qualifications for the Supreme Court. Clearly, Judge Alito has the legal qualifications to be an Associate Justice. He has remarkable academic credentials, extensive experience, not only on the bench but in trying cases as an attorney, and he was given a unanimous "well qualified" rating by the American Bar Association. He has argued cases before the Supreme Court, and he served on the bench of the Third Circuit Court of Appeals for the past 15 years.

It is my assessment that those who oppose Judge Alito's nomination do it for purely political purposes. They believe he might take positions contrary to their own political ideologies. Therefore, they believe he should be disqualified. He should not be considered for a slot on the Supreme Court.

Let me take a moment to provide an example of how critics have severely distorted the facts about Judge Alito's record. Quite honestly, if those same critics chose to rely upon the facts rather than the political sound bites, they might be quite surprised.

Judge Alito has been viciously attacked by critics over his record on civil rights. As we all know, Judge Alito serves on the Third Circuit Court of Appeals. This appellate court in New Jersey has been described by the Associated Press as one of the most liberal courts in the nation. My guess is it is probably only secondarily a categorization, to the Ninth Circuit Court. It seems that opponents of Judge Alito have become so fixated on criticizing his record that they disregard the actual facts of his record. When analyzing Judge Alito's civil rights record based on the more than 4,800 cases he has decided, the facts are these: Judge Alito has agreed with the other members of his "liberal" Third Circuit judicial panel 94 percent of the time on civil rights issues. Judge Alito voted with President Clinton on that bench 95 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by Jimmy Carter on the Third Circuit Court 96 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by President Clinton on that bench 95 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by Democratic Presidents, the decision handed down in those cases was unanimous 100 percent of the time on the civil rights issues. Again, those are the facts. Those are the numbers.

Clearly, by the standards some in this body have chosen to apply to Judge Alito, no judge on the Third Circuit Court would therefore qualify to be considered for the Supreme Court. The statistics are one example of the distortion of Judge Alito's record by some. I could stand here on the floor for hours to discuss other misrepresentations of Judge Alito's record on individual issues, but I believe it is important to speak on why this Supreme Court confirmation should matter to the American people.

When I say I am going to speak about why this confirmation matters, I don't mean that I am going to talk about why the debate matters in the daily battles inside the beltway in Washington, DC. I want to speak about why it matters to the American people. It has become clear to me and to the 8 1/2 million people in North Carolina that I represent, and it is oversimplified by bipartisan bickering and is arguably more polarized now than ever before.

As I discussed in this Chamber and in front of this body when considering the nomination of Chief Justice Roberts a few months ago, my constituents in North Carolina care about civil liberties. They have questions about life and death, property rights, basic freedoms, as well as their own economic prosperity and personal security.

That is why this vote is important today. The Supreme Court affects every aspect of our daily lives. But
more importantly, the decisions being made on the High Court today will affect the lives of our children and future generations yet to come. I am a father and I am a husband first; I am a Senator second. I believe while it is part of my job to vote on Supreme Court confirmation hearings, we must keep in mind the terms of how it will affect my family as well as the rest of the families in North Carolina and across the country. When my sons are my age, how will this decision, my vote on Sam Alito, affect them or eventually affect their children? That is what we are here to debate.

As we all know, public opinion frequently changes with time as opposed to the Constitution which changes rarely. While the legislative bodies across the country are intended to be flexible branches of our government institution, charged with addressing the needs of the people by making new laws, the judiciary is intended to be the impartial branch, charged with preserving and protecting our Nation’s basic fundamental principles.

I believe a nominee’s judicial philosophy should translate to their legal interpretations and their political positions. The legislature makes the law and the judiciary interprets it. Both branches serve an equally legitimate and important function, but they are very different. My constituents want justice when they appeal the law, not judges who make the law.

Opponents of Judge Alito continuously cite political reasons to vote against his nomination. Unfortunately, this sounds all too much like your typical Washington, DC partisan battle. But I assure my colleagues, the American people outside of the beltway of this town don’t care to hear us bicker about partisan political issues when it comes to the future of the Supreme Court. This will be a thorough debate on an individual’s legal qualifications and judicial philosophy.

This debate is much bigger than Republicans and Democrats. This debate is about our children’s future. For me, it is about doing what is right, and about doing what is right as a father and a husband. It demands that this body, the Senate, come together. Stop the character assassination, the distortion of a nominee’s record, and support this nominee because of his expertise and his components.

After meeting Judge Alito, having the opportunity to review his questions in front of the Judiciary Committee, having an opportunity to ask him questions personally, I am confident that he does, in fact, have a sound judicial philosophy and that he will administer justice according to the strict interpretation of our Constitution. I am confident that he will preserve our Nation’s longstanding principles and that he will be a good jurist, a good judge, and not make it.

I am also convinced that Sam Alito is a man of character and honesty. Judge Alito is not only a good nominee, he is a good man. He deserves the support of every Member of the Senate. I will vote in favor of Judge Alito’s nomination to be an Associate Justice to the Supreme Court. I urge my colleagues in this body to join me and to come together to stop the character attack on Judge Alito. We must support a Court that will not only preserve the principles of this country, but will also preserve the future of our country.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, at the outset, I thank Mike Quello and Nick Pearson of my staff for the research and preparation they gave me in my deliberation and consideration of Samuel Alito, Jr., and his appointment to the Supreme Court. Further, as a second generation American, the grandson of a Swedish immigrant who came to this country about 11 years prior to Samuel Alito, Sr.’s coming to this country from Italy, I am pleased that in this debate I will have the chance to cast my vote to confirm Judge Alito as a Justice of the Supreme Court and reaffirm the promise that is the American dream of those who have come here from backgrounds diverse and far away, that they are a part of a great nation and have pledged their allegiance to all it stands for.

I have thought a lot about what I would say in confirming my vote on behalf of Judge Alito, and I decided, after due consideration, to leave the last couple of days, that I would try to draw a distinction that, to me, has been apparent in this debate but also is clearly the reason that I support Judge Alito. As we have heard today from a number of my colleagues, he has been criticized for being narrow and restrictive. It is important that we understand what the opposite of narrow and restrictive is to understand where those who oppose him are coming from.

The opposite of narrow and restrictive is broad and unlimited. The last thing the United States of America needs, or our Founding Fathers intended, is to have a Supreme Court that is unrestricted and broad in its interpretation of the Constitution and the laws the legislative branch passes under its authority. Therein lies the philosophical difference in this debate.

It has saddened me that through innuendo and reference in some of the recent recollection of the last couple of days, Judge Alito has been cast as being exactly the opposite of what Judge Alito really is. For example, in the recent aftermath of the tragedies in West Virginia, one speaker referred to Judge Alito’s dissenting opinion in the case of RNS Services v. Department of Labor as exemplifying the fact that Judge Alito was against the little man and the worker.

That was a case where a ruling was made on the application of a rule on limitations of attorneys with something at stake. Most important cases to the parties and attorneys with something at stake.

The opposite of narrow and restrictive is broad and unlimited. The last thing the United States of America needs, or our Founding Fathers intended, is to have a Supreme Court that is unrestricted and broad in its interpretation of the Constitution and the laws the legislative branch passes under its authority. Therein lies the philosophical difference in this debate.

Secondly, there have been those who have talked about his commitment to civil rights, or really his lack of commitment to civil rights, of the claims of a few. I went to do some research on that issue because everything I saw in Judge Alito when he and I talked was the opposite of what those allegations would imply. I went to the testimony of Jack White, an attorney from San Francisco, CA, an African American, a member of the American Civil Liberties Union who came to Washington, DC, and testified before the Judiciary Committee on behalf of witnesses. Rather than me trying to paraphrase what Jack White said, I would like to read it verbatim and then ask anyone who hears this speech the question whether Samuel Alito is a man who is not for the civil rights of all and the individual rights and liberties of every American:

Now, as I clerked for Judge Alito, I saw a deep sense of duty, diligence, humanity, and respect for his role as a Federal appellate judge. He uniformly applied the relevant law to the specific facts of every case. Judge Alito recognized that every case was the most important case to the parties and attorneys with something at stake.

Of course, I never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case. I left New Jersey without knowing Judge Alito’s personal beliefs on any of them. Now, the reason I didn’t know his personal beliefs on all these issues was that the ideologies that were foremost in my mind was whether Judge Alito heard.

You see, Jack White, who was an African-American law clerk for Judge Alito, said that when he left, he never saw the ideological beliefs of the judge interfere with his judgment of the law and his ruling in a case.

I yield my time to the leader of the opposite party.

I end my argument by reading simply what he said:

Without fail, I saw Judge Alito treat everyone, every individual, with dignity and respect.

I will take the word of Jack White, who worked for Sam Alito, any day over any of us who, through innuendo or what we may have heard, want to castigate this nominee on his commitment to civil rights. Jack White’s word, and his experience, is good enough for me. And Jack White knows what I know about Sam Alito—that he is committed to equity and fairness in the treatment of all Americans.
There has been something made of the fact that he is replacing Sandra Day O’Connor. I wish to talk about that for a minute.

Sandra Day O’Connor is one of my favorite Justices. I am not a lawyer. I came to the bench from the business world, but prior to my years in the House, I ran a small business. I am a businessman, and that is the interest I know and that which I know the best. Judge O’Connor was, without question, during her period on the bench the very best Justice in dealing with the complex issues of business that came before the U.S. Supreme Court. When I had the chance to meet with Judge Alito, I made that point to him and I asked him questions about American business, free enterprise, and the law. In every case, I became convinced that he had the same commitment Sandra Day O’Connor had.

To that end, and with regard to “narrow and restrictive” and with regard to the Justice’s vote in favor of Burger in his remarks on behalf of Samuel Alito by taking a second to talk about the Kelo v. New London case, the dissenting opinion which Sandra Day O’Connor wrote, and the answers to questions Judge Alito gave before our Judiciary Committee because they completely contravene any comment anybody has made about his commitment to the little guy or the benefit, or lack thereof, of narrow and restrictive ideology.

Justice Alito was one of the four dissenting Justices in the Kelo case. They didn’t believe in the broadening of eminent domain to take property just because somebody could pay more taxes and would benefit more from it, and I concur with that. I think they made the right ruling. She said:

For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property—

She is speaking within the context of the majority opinion.

Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any farm with a shopping mall, or any farm with a factory.

What more brilliant statement can be made on behalf of the little guy, the average American, or the small homeowner than Sandra Day O’Connor’s? What better affirmation of someone’s capacity to replace that distinguished Justice could you possibly make than by reading the last sentence of Judge Alito’s answer to that question before the Judiciary Committee when he was asked about the Kelo case? He said:

I would imagine that when someone’s home is being taken away, a modest home, for the purpose of building a very expensive commercial structure, that is particularly galling (to me).

Sandra Day O’Connor was a great Justice and did a great service to America. She broke the glass ceiling in being the first woman appointed to the U.S. Supreme Court. I believe Justice Alito will serve our people on this Court every bit in same way Justice O’Connor did. The criticisms of Judge Alito of being narrow and restrictive may, in fact, be, if you look at them in the perspective I have given, a great compliment to his ability and that which all of us seek, and that is a jurist who will rule based on the law, not legislate based on the position. A jurist understands the value and the strength and the power of the Constitution of the United States of America.

Mr. President, I look forward to casting my vote in favor of the nomination of Samuel Alito, Jr., to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I met with Judge Alito on the day after his nomination. I was very impressed with him from the start. After spending an hour or so with him, I could tell that he is a modest, honest, and fair man, a person with a solid understanding of the proper role of a judge. At the time, however, I said I would not make a final decision about his nomination at that point.

I started my career as a county prosecuting attorney, and I believe in trials before verdicts. We just had the trial, and during that trial, the hearing, this is what I saw: I saw a man who is forthright and honest. Over the course of 3 days before the Judiciary Committee, Judge Alito was asked 677 questions on issues ranging from abortion to executive power to Vanguard. He answered at least 659 of them, or 97.3 percent of the questions.

To give you some perspective on these numbers, Chief Justice Roberts, when he was in front of our committee, was asked only 574 questions and answered 597 percent of them. Justice Ginsburg was asked just 384 questions, answering only 80 percent of them. Justice Breyer was asked 355 questions, answering 82 percent. Judge Alito was asked more questions and gave more answers than any recent nominee to the U.S. Supreme Court.

At that hearing, I saw a man of character and integrity. Judges do not shed money. So while Vanguard was technically a defendant in the case, in the classic sense of the term, it really was not accused of anything. It didn’t stand to lose anything. The only thing that Vanguard would do is whether Vanguard would transfer the funds it held for Ms. Monga to another person. They just held the money. Nothing about this case could realistically have affected Vanguard as a company, nor Judge Alito. Judge Alito did not own Vanguard; he held mutual funds that were managed by Vanguard.

Mr. President, that is why everyone who has looked into that matter has concluded that the allegations against Judge Alito are absurd. The ABA looked into this allegation and unanimously concluded that Judge Alito was entitled to its highest rating, a rating which explicitly considers ethics and integrity. Five legal experts concluded that Judge Alito did nothing wrong. Judge Becker, the former Chief Judge of the Third Circuit, said he was “baffled” by these allegations. The Washington Post wrote in a January 13 editorial that Judge Alito’s own testimony “revealed the frivolousness of the charge.”

Before these hearings began, one of Judge Alito’s opponents, Nan Aron, president of the Alliance for Justice, said, “you name it, we’ll do it” to defeat Judge Alito.

With that, Judge Alito’s opponents resorted to an outrageous attack on him in an effort to undermine his integrity. This attack completely failed. Although some waged a full-scale war against Judge Alito, what Judge Becker said at the hearing remains true today: There is simply “not one chink in the armor of his integrity.”

At the hearing, I saw an experienced judge with a brilliant legal mind. Judge Alito came to the Judiciary Committee with a lengthy and distinguished legal career. He served for several years as a Federal prosecutor, taking on the mob, drug dealers, and
white-collar criminals. He argued 12 cases himself before the U.S. Supreme Court. And for more than 15 years, he has served as a judge on the Third Circuit, deciding thousands of cases and authoring hundreds of opinions with his own pen. This background certainly attests to his competence and shows why he received a unanimously well-qualified rating from the ABA.

His judicial opinions attest to his competence as well. He writes crisply and clearly without any kind of overstatement. For the most part, he decides only the issues before him and has proven himself capable of tackling complex areas of the law with clear and yet simple language.

In my mind, however, the way Judge Alito answered our questions is perhaps the best example of his extraordinary legal talent. During our hearings, he demonstrated a mastery of constitutional law and his own voluminous record. Even after the course of 3 days, he spoke clearly and succinctly without using notes. It was an amazing performance. He provided us with detailed information about how he thinks, how he reasons, how he comes to his conclusions. I found his testimony thorough, forthcoming, and informative, and I believe the American people felt the same way.

At the hearing, I also saw a man who is open-minded and fair, a man who is compassionate, and honest. During our hearings, someone complained that Judge Alito has a bias toward Government or big business, but that is not what was said by those who, again, know him best. Take, for example, the testimony of Judge Alito’s former law clerks.

Kate Pringle, a self-described “committed and active Democrat,” said that Judge Alito “approached each case without a predisposition toward one party or the other.” She said he treated all litigants “in a fair and open-minded way.”

Jack White, a member of the NAACP and the ACLU, said that Judge Alito had an “abiding loyalty to a fair judicial process,” not “an enslaved inclination toward a political or personal ideology.” In fact, Mr. White “never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case.”

Finally, Professor Nora Demleitner, who described herself as “a left-leaning Democrat, a member of the ACLU, a woman, and an immigrant,” also had praise for Judge Alito:

In the years I have known the judge, he has never decided a case based on a larger legal theory about the Constitution or conservative worldview, but instead has looked at the merits of each individual case.

Judge Alito also understands that judicial opinions are more than ink in the merits of each individual case.

I conclude by noting that when Judge Roberts was sworn in as our Nation’s 17th Chief Justice, he reminded us of a “bedrock principle,” and that is that “judging is different from politics.”

Similar to John Roberts, Samuel Alito understands the difference, and when he takes a seat on the Supreme Court, as I expect he will, I know he will remember that. When tough cases come up, he will, in fact, I am sure, act like a judge.

I thank the Chair, and I yield the floor.

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

The PRESIDING OFFICER (Mr. BURR). The CLERK WILL CALL THE ROLL.

The legislative clerk proceeded to call the roll.

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

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

Mr. OBAMA. Mr. President, it is my understanding that the hour is dedicated to the Democrats speaking with respect to the Alito nomination. I request 5 minutes of that time.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, first let me congratulate Senators SPECTER and LEAHY for moving yet another confirmation process along with a civility that speaks well of the Senate.

As all know, there has been a lot of discussion in the country about how the Senate should approach this confirmation process. There are some who believe that the President, having won the election, should have complete authority to appoint his nominee and the Senate should only decide whether the Justice is intellectually capable and an all-around good guy; that once you get beyond intellect and personal character, there should be no further question as to whether the judge should be confirmed.

I disagree with this view. I believe firmly that the Constitution calls for the Senate to advise and consent. I believe it calls for meaningful advice and consent and that includes an examination of a judge’s philosophy, ideology, and record. When I examine the philosophy, ideology, and record of Samuel Alito, I am deeply troubled.

I have no doubt Judge Alito has the training and qualifications necessary to serve. As has already stated, he has received the highest rating from the ABA. He is an intelligent man and an accomplished jurist. There is no indication that he is not a man of fine character.

But when you look at his record, when it comes to his understanding of the Constitution, I found that in almost every case he consistently sides on behalf of the powerful against the powerless; on behalf of a strong government or corporation against upholding Americans’ individual rights and liberties.

If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there is a case between prosecutors and defendants, if the Supreme Court has not provided a clear rule of decision, then he will rule in
favor of the State. He has rejected countless claims of employer discrimi-

nation, even refusing to give some plaintiffs a hearing for their case. He has refused to hold corporations ac-

countable numerous times for dumping toxic chemicals into waterways. The President should not be constrained by either congress or the checks of the judiciary. He believes in the over-

arching power of the President to engage in whatever policies the President deems to be appropriate.

As a consequence of this, I am extra-

ordinarily concerned about how Judge Alito might approach the numerous issues that are going to arise as a con-

sequence of the challenges we face with terrorism. There are issues such as wiretapping, monitoring of e-mails, other things that we just see surface over the last several months.

The Supreme Court may be called to judge as to whether the President can label an individual U.S. citizen an enemy combatant and thereby lock them up without the benefit of trial or due process. There may be consider-

ation with respect to how the Presi-

dent can prosecute the war in Iraq and issues related to torture. In all of these cases, we believe the President de-

serves our respect as Commander in Chief, but we also want to make sure the President is bound by the law, that he remains accountable to the people who put him there, that we respect the office and not just the man, and that that office is bounded and constrained by our Constitution and our laws. I don’t have confidence that Judge Alito shares that vision of our Constitution.

In sum, I have seen an extraor-

dinarily consistent attitude on the part of Judge Alito that does not, I believe, uphold the traditional role of the Su-

preme Court as a bastion of equality and justice for U.S. citizens. Should he be confirmed, I hope he proves me wrong. I hope he shows the independ-

ence that I think is absolutely neces-

sary in order for us to protect and preserve our liberties and our freedoms as citizens. But at this juncture, based on a careful review of his record, I do not have that confidence, and for that reason, I will vote no and urge my col-

leagues to vote no on this confirm-

ation.

Mr. President, I yield the floor.
back and override a President's objections, if we can muster the necessary votes. Meanwhile, the Supreme Court can rule that a law is, in part or in whole, unconstitutional, providing yet another important check on the power vested in the Congress and in the President.

Admittedly, it is not the most harmonious or quickest form of Government, but it has served our country well for over 200 years. Perhaps it was Churchill who said it best when he described the Supreme Court as the worst form of government devised by wit of man, but for all the rest.

I am concerned that, if confirmed, Judge Alito, during the decades he is likely to serve may well take the Court in a new direction that serves to undermine our system of checks and balances, threatening the rights and freedoms many of us hold dear.

Let me elaborate, if I may. In the past, Judge Alito has advocated for what is known as the unitary executive theory.

Until a couple of months ago, I had not heard of that. If you are like me, Mr. President, and you didn't go to law school, you are probably wondering what I am talking about. Let me put it simply. It basically means that Judge Alito feels that the President should largely be allowed to act without having to worry much about Congress or the Supreme Court stepping in and saying: With all due respect, you are out of line.

This line of thinking deeply concerns me and, I believe, many of my colleagues and the people we represent. And it should. Remember, our Nation declared her independence from Britain because we no longer wanted to be ruled by a king, or, frankly, by anyone with king-like powers. Our Founders wanted power to be invested in the people and shared equally by the three branches of Government.

To say then that there are times when a President's power should go largely unchecked except in very rare instances, in my opinion, goes against what our Founders intended. Moreover, unfettered Presidential power could have dangerous consequences, given how a particular President—either now or in the future—chooses to exercise that kind of unchecked power.

Let me give you a recent real-world example. Just a few months ago, the Bush administration has been embroiled in several controversies, as we know, over its policies concerning the torture of detainees, as well as its decision to spy on or intercept phone calls and e-mails apparently of thousands of people living in the United States who are suspected of being agents of foreign countries or entities. In both cases, the administration asserted that it should be able to act without the consent of Congress or the courts.

I disagree. I believe that our courts have an obligation under our laws to monitor an administration's actions concerning foreign prisoners and criminal suspects, and I believe administrations should have to justify, within reasonable periods of time, their decision to spy on Americans. I will be the first to acknowledge that there are times when the President—one or another President—needs the ability to conduct such operations. And I think most of us agree on that point.

The issue, however, is do Presidents have a constitutional right to conduct secret wiretaps without court authorization, without some other branch of Government making sure that that administration isn't breaking the law?

Again, the fundamental issue for me is the issue of checks and balances. In these instances, Congress and the courts provide a needed and important backstop to make sure that the administration doesn't become overzealous and abuse the rights of innocent people.

Americans may not understand why these issues are such a big deal. They may even agree with the reasons the Bush administration give, for instance, for circumventing the law—a law that has been in place since 1978 which we modified I think about 4 years ago.

But it is not a stretch to understand how a President—maybe not this one but one in the future—could overstep his or her authority and thereby infringe on the civil rights of innocent Americans.

For that reason alone, we should all have grave concerns about an unchecked President—Judge Alito and I agree.

Jeffrey Stone, a law professor at the University of Chicago, is a supporter of the Roberts nomination—and initially a supporter of the Alito nomination—wrote recently:

"Given the times in which we live, we need and deserve a Supreme Court willing to examine independently these extraordinary assertions of Executive power. We can fight and win the war on terrorism without infringing upon ourselves and our posterity another regrettable episode like the Red Scare and the Japanese internment."

Of the 1950s and 1940s, two shameful episodes in the history of our country where our Government seriously infringed on the rights of average Americans under the guise of national security. But as Professor Stone went on to say, we will only avoid such terrible excesses of governmental power "if the Justices of the Supreme Court are willing to fulfill their essential role in our constitutional system."

Based on his history and his opinions—in his own words—I fear that Judge Alito may well change the Court's approach and rule in favor of expanded Presidential power—not just at the expense of Congress and the courts but ultimately at the expense of the American people. I cannot and should not play witness to an unchecked Presidency, regardless of political party, regardless of whether the President is a Democrat or a Republican.

We need in this country for the courts and the Congress to ensure that this administration and future administrations abide by the laws of this land and the principles we hold dear.

Just as I am concerned about Judge Alito's views on expanded Presidential power, I am also concerned about Judge Alito's opinion on the role and powers of Congress.

Traditionally, Congress has enjoyed broad authority, as a coequal branch of Government, to debate and adopt laws that we believe protect the interests of the American people, such as keeping our water clean and our air clean and ensuring that fair labor laws and employment standards across the country are fair.

Back in the 1990s, Congress used that authority to pass a bill that banned the sale or possession of machineguns across State lines among everyday Americans. To me, that ban wasn't about whether people had the right to own guns for recreation or self-protection. Those rights are enshrined in our Constitution, as they should be. This was about whether people had the right to own, to buy, or to sell across State lines Army-style machineguns, which I think reasonable people can agree have little, if anything, to do with protecting our homes or going hunting.

Nevertheless, the constitutionality of the law was challenged in the courts. All nine Federal appeals courts that heard the subsequent challenges upheld the validity of the original law.

Judge Alito, as a member of the Federal appeals court that covers Delaware and our surrounding region in the Delaware Valley, heard one of those challenges. He sided up disagreeing with his own court's decision and that of eight other Federal appeals courts which ruled that Congress does indeed have the authority under our Constitution to ban the sale of machineguns across State lines.

My primary concern is that if Judge Alito thinks Congress shouldn't have the right to pass laws that arguably keep Americans safer, then what other laws might he believe Congress does not have the authority to adopt under the commerce clause of our Constitution? Laws that protect the air we breathe or the water we drink? Laws that allow men and women to take unblemished leave from the workplace for members of their family during times of crisis? I don't know, and that uncertainty—at least for me—is a cause of real concern.

A final concern I hold about Judge Alito relates to his views on other rights and freedoms we enjoy as Americans, particularly a woman's right to end a pregnancy prior to fetal viability. My own opinion about abortion is widely known and the principles we hold dear are reducing the number of abortions that still take place in America. I am sure on that point Judge Alito and I agree.
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But I am not certain Judge Alito agrees with me that we should not go back in time to a place where almost all abortion laws were illegal, where women who wanted to end a pregnancy were in too many instances forced into unhealthy behavior that often put their lives, and the lives of their potential offspring, at risk. That is why, during his confirmation hearing, I was disappointed that Judge Alito, unlike Judge Roberts, declined to acknowledge that the Supreme Court decision that held that women have a constitutional right to an early term pregnancy is "settled law."

Justice O'Connor, whom Judge Alito has been nominated to replace, has been the deciding vote on numerous cases that challenged this precedent. That is why I believe replacing Justice O'Connor with Judge Alito—given his rulings and statements on this subject—may well be putting this precedent in jeopardy.

Let me explain why. In the historic Planned Parenthood v. Casey case, Judge Alito voted to uphold a Pennsylvania law requiring married women to notify husbands before obtaining an abortion even during the early stages of pregnancy. That case eventually went to the Supreme Court, which ruled against Judge Alito's position, as we know.

Justice O'Connor, who cast the deciding vote in the Supreme Court overturning the Pennsylvania law and Judge Alito's position, wrote that women do not leave their Constitutional protection at the altar. Married women are entitled to the same protections as single women. I believe she is right.

I had the opportunity to talk with Judge Alito at length recently. I asked him—a conversation that I very much enjoyed—why he ruled the way he did in this instance. He told me he did not think the requirement placed an undue burden on women. I asked him if he felt the same way today, especially in light of the Supreme Court ruling in opposition to his view. He told me he basically thought the same way. While I respect that honesty, I respectfully disagree and question what other undue burdens he may decide to place on women in the future.

Let me close by saying that this is not an easy vote for me. I know it is not an easy one for a lot of our colleagues. I have concerns about Judge Alito's record, however, is one of the reasons why Justice O'Connor is so revered. It is not because she was always predictable or that she advocated an intractable world view. It is that she found the right balance, even in the most difficult, controversial, and emotional cases of our times.

My fear is that too often Judge Alito may not do so, and will not be supporting his nomination. My hope, though, is that once he is confirmed to the Supreme Court he will balance the scales of justice and not tip them too far in either direction.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, for the second time, this Congress we are considering the nomination to the Supreme Court, and I believe strongly that this administration or any other administration has the right to nominate judges of the same mind and philosophy. There are consequences in elections. If you win, you have the chance. If you are a Governor or a President, to nominate candidates of your choice for the bench. And I believe Senators should not automatically reject judges outright because of political affiliation or beliefs.

However, politicians of both stripes must take a stand and reject nominees that we believe will take the courts too far to the extreme right or to the extreme left. Wisely, in my State, Delaware, our State's constitution requires overall political balance in our State's courts.

For every Democrat who is appointed to serve as a judge, Delaware Governors have to nominate a Republican. The result has been an absence of political infighting and a balanced exception to the Federal Constitution. I believe our State judiciary that we are enormously proud of in our State.

Our Federal Constitution, regrettably, does not require similar political balance in the judiciary, but political balance should be one of our goals. The Founders of the U.S. Constitution tasked the Senate with finding that balance.

I fear, in the end, that Judge Alito may well upset the balance that exists on the Supreme Court for the better part of my lifetime and move the Court in a direction that will not be best for many of the people of this country.

So this time, unlike my vote for the nomination of John Roberts a few months ago, I cannot say that this Committee's opposition—that our entire democracy—is both an everlasting and ever-changing experiment. Our Constitution is not something to be strictly interpreted, nor is it something to be recklessly abandoned.

Success in life is often measured not just by the stakes we take but by the results we achieve. I believe that is one of the reasons why Justice O'Connor is so revered. It is not because she was always predictable or that she advocated an intractable world view. It is that she found the right balance, even in the most difficult, controversial, and emotional cases of our times.

My fear is that too often Judge Alito may not do so, and will not be supporting his nomination. My hope, though, is that once he is confirmed to the Supreme Court he will balance the scales of justice and not tip them too far in either direction.

The Constitution gives us no guidance on the factors the Senate should consider while we carry out this constitutional duty. In the end, each Senator must determine whether he or she believes a nominee is likely to bring to the Court an ideology that distorts his or her judgment, and brings into question his or her open mindedness and whether any of the nominee's policy values are inconsistent with fundamental principles of our Constitution.

Like Judge Roberts before him, Judge Alito has an impressive background and command of the law. He easily meets the educational and professional requirements of the position. Judge Alito has worked for the Justice Department, as the U.S. attorney for the District of New Jersey, and for nearly 16 years as a judge on the Third Circuit Court of Appeals. He is respected by his peers as a very decent person and is a person of high caliber and integrity.

That Judge Alito has a keen intellect and understands the nuances of the law is indisputable. That is not enough to warrant confirmation if his discernible views on key issues are at variance with fundamental principles of our Constitutional system. Because I am not convinced he will adequately protect the constitutional checks and balances that are the bedrock of our liberty, I cannot support his confirmation.

Judge Alito’s record, however, is one of undue deference to Executive power. In recent years, constitutional issues on the authority of the executive branch have multiplied. These include executive actions in areas of government eavesdropping, other government intrusions on personal privacy, including library records, medical records, and Internet searches. He has called into question and treatment of American citizens whom the President designates as "enemy combatants."

Our system of checks and balances requires the Supreme Court to enforce limits on Executive power, and the nominee’s views on executive authority under the Constitution are extremely important.

Judge Alito’s record, however, is one of undue deference to Executive power and raises significant doubts as to whether he would adequately apply the checks and balances that the Founders enshrined in the Constitution to protect, in part, against an overreaching Executive.
For example, while serving as Deputy Assistant Attorney General in 1986, Judge Alito recommended the President use bill signing statements to influence the Court’s interpretation of legislative history. He argued that “the President’s understanding of the bill should be just as important as that of Congress,” and that his signing statement proposal would “increase the power of the executive to shape the law.”

This issue took on renewed urgency when President Bush recently declined in a signing statement that he would ignore the ban on torture by executive branch personnel, a ban passed overwhelmingly by Congress in the very bill he was signing, if the ban hampered his actions as Commander in Chief. In a written question, I asked Judge Alito about the possible legal relevancy of Presidential signing statements. His response was erudite, as always, suggesting they might be relevant if the President participated in the crafting of the legislation.

In the case of the torture ban language, the President strongly and repeatedly opposed the language and unsuccessfullly sought, at a minimum, to obtain a Presidential waiver. Yet when asked at his Judiciary Committee hearing whether a signing statement could have relevancy in that context where the President strongly opposed the language and was not involved in its crafting, Judge Alito responded:

The role of signing statements and the interpretation is, I think, the territory that’s been unexplored by the Supreme Court.

That statement of fact was not responsive to a question about his views. Judge Alito, thereby, missed the chance to show that his views on this issue have evolved since 1986. His words in 1986 that signing statements can help achieve the goal of “increasing the power of the Executive to shape the law” are still relevant.

If Judge Alito were on the Supreme Court and voted to give constitutional weight to signing statements such as President Bush made when he signed the torture ban legislation, he would be creating a new and radical expansion of Executive power.

In 1988, the Supreme Court addressed the question of executive authority in Morrison v. Olson, the decision which upheld the Independent Counsel Act. The government had argued that the act was unconstitutional because it restricts the Attorney General’s power to remove an independent counsel and interfered with executive branch prerogatives, thereby disrupting the proper balance between the branches of Government.

Chief Justice Rehnquist rejected those arguments when he wrote for a 7-1 majority:

As we stated Buckley v. Valeo, the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as “a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.”

Nonetheless, just a year later, in remarks to the Federalist Society in 1989, Judge Alito, then the U.S. attorney for the District of New Jersey, called the Morrison v. Olson decision “stunning.” He described congressional checks on broad Presidential power as “pilfering.” He said:

... the Supreme Court [in Morrison] hit the doctrine of separation of powers about as hard as how would Kurtz Mike Tyson usually hits his opponents.

Yet in the setting of the Judiciary Committee hearings when asked whether the views he expressed to the Federalist Society were still his views, Judge Alito would only say:

Morrison is a settled precedent—it is a precedent of the court. It was an 8-1 decision (sic). It’s entitled to respect under stare decisis. It concerns the Independent Counsel Act, which is no longer in force.

He gave no indication that he has modified his earlier extreme view over time, but, again, he simply made a statement of obvious fact: that Morrison is a precedent of the Supreme Court and entitled to respect as such.

Although he was hesitant to check Presidential power, Judge Alito has been more than willing to check congressional power. In United States v. Rybar, the Third Circuit upheld a conviction under the Federal law prohibiting the possession of machine guns. In his dissent, Judge Alito said there was insufficient evidence in the RECORD to determine that Congress had the power under the commerce clause to enact that legislation. Not only did the majority strongly criticize his view, but the Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh circuits have all found the congressional machine-gun ban to be constitutional.

Undue restriction of legislative branch authority such as reflected in Judge Alito’s dissent in Rybar could lead to further unwise extension of executive branch powers. For instance, Congress has voted to require the executive branch to seek a warrant to eavesdrop on American citizens. We granted broad powers to tap phone lines where there is probable cause that a person is, or is linked to, a terrorist or a spy. We allow the executive branch to go ahead and tap a phone when there is no time to seek a warrant, first, as long as it subsequently seeks a warrant within 3 days. But Congress has prohibited the executive branch tapping phones of U.S. citizens except as provided for in that law. This was an explicit prohibition. You must follow the requirements of that law or else you must not tap American citizens.

Can a President ignore that prohibition, that check on his power? The Supreme Court ruled on the issue of executive authority in the seminal Youngstown case. As Justice Robert Jackson wrote in his renowned opinion:

When the President takes measures incompatible with the expressed will of Congress, his power is at its lowest ebb.

Three times at his hearing, however, Judge Alito characterized that circumstance where the President acts contrary to the explicit congressional prohibition as a “zone of twilight.” Justice Jackson reserved that zone of twilight, calling it “the twilight zone, that zone of ambiguity, for the circumstance where ‘the President acts in absence of either a congressional grant or denial of authority.’”

Again, where the President acts in defiance of a congressional prohibition, Presidential power, according to Jackson, is at its lowest ebb, not in a twilight zone of uncertainty.

More specifically, Judge Alito—referring to the congressional prohibition on executive wiretapping under the Foreign Intelligence Surveillance Act, FISA, the prohibition on executive wiretapping, except as provided for in that act, spoke as follows at his hearing:

Where the President is exercising executive power in the face of a contrary expression of congressional will through a statute or an implicit congressional will, you’d be in what Justice Jackson called the twilight zone, where the President’s power is at its lowest point.

And Judge Alito said:

What I am saying is that sometimes issues of executive power arise and they have to be analyzed under the framework that Justice Jackson set out. And you do get cases that are in the twilight zone.

Again, referring to the hypothetical presented to him where there was a specific congressional prohibition on wiretapping. Again, calling that a case that is in the twilight zone.

Later, Judge Alito said:

When you say regardless of what laws Congress passes, I think that puts us in that third category that Justice Jackson outlined. The twilight zone of ambiguity, for example, Justice Jackson has the various constitutional powers he possesses under Article II minus what is taken away by what the Congress has done in [the twilight zone].

The government has a right to express opposition or the enactment of a statute.

By repeated characterizations of Presidential action in the face of a prohibition on that action, as falling into a twilight zone of uncertainty rather than a zone of dubious constitutionality, Judge Alito, unwittingly or otherwise, reflected what I fear his real view of the twilight zone that he referenced is entered, according to the Youngstown test, when the President acts without congressional authorization, not when Congress has explicitly prohibited his actions. Again, for instance, Congress has prohibited domestic wiretapping in the absence of seeking a warrant. Presidential power is at its lowest ebb.

In the 1981 case of Dames and Moore v. Regan, Justice Rehnquist reaffirmed the twilight test, telling Congress that “the image of twilight is entered ‘when the President acts in the absence of congressional authorization,’” and reaffirming
Justice Jackson's opinion, Justice Rehnquist found that "when the President acts in contravention of the will of Congress 'his power is at its lowest ebb and the Court can sustain his actions [Justice Rehnquist said] 'only by disabling the Congress from action on the subject.'"

If Judge Alito had described the status of Presidential action in contradiction of congressional prohibition only one time, it could be argued that he slipped up and made a mistake. But since he repeatedly made the statement, it is more likely to represent his true feeling, particularly since Senator LEAHY pointed out this mischaracterization of Justice Jackson in the Youngstown case and Judge Alito did not correct himself.

Justice Jackson is a longtime and lifelong hero of mine. He was President Truman's Attorney General when Truman nominated him to the Supreme Court. But when President Truman seized upon the president's constitutional authority as Commander in Chief, Justice Jackson ruled against his old friend, now Commander in Chief, and wrote:

What is at stake is the equilibrium established by our constitutional system.

Similarly, Justice O'Connor recently cast the deciding vote in Hamdi v. Rumsfeld, which made clear that the President's powers during wartime are not unchecked under our Constitution.

Justice O'Connor wrote:

A state of war is a blank check for the President when it comes to the rights of the Nation's citizens.

The liberties of our people are in the hands of the Supreme Court. The willingness of this President and a number of Presidents before him to ignore the Constitution's limits on their power needs to be checked by the Supreme Court. While I am hopeful Judge Alito will join the long and revered list of Supreme Court Justices who have protected the Constitution's checks and balances, I have too many doubts to be confident he will do so and that he will stand up to excessive exercises of executive power, as Justice Jackson and Justice O'Connor and other Justices have done.

Judge Alito is a personable, decent man, a man of great integrity and extraordinary intellect. His associates vouch for his collegiality and his congeniality. But I am not confident Judge Alito will help provide the essential check on executive excess that has proven throughout our history to be the bedrock of our liberty.

During his hearings, he stated time and time again that the President is "not above the law," but in the end I am not persuaded there is real conviction behind that mantra.

I wish I could ignore my fears and vote my hopes. But the doubts are too nagging and the stakes are too high for me to overlook Judge Alito's nomination to the Supreme Court.

I thank the Chair, 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. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I am here today to discuss the nomination of Judge Samuel A. Alito, Jr. to be an Associate Justice of the Supreme Court.

Over 200 years ago, the Framers of the United States Constitution had a similar discussion. On the topic of judicial nominations, they emphasized the need for qualified judges—those who possess virtue, honor, requisite integrity, competent knowledge of the laws, fit character, and those who have the ability to conduct the job with utility and dignity.

They also talked about the courts that these judges sit on and warned that judicially exercising will instead of judgment, the consequence of which would be the substitution of the courts' pleasure to that of the legislative body. These principles have stood the test of time—have been a constant standard against which any constitutional obligation of advice and consent and—today, over two centuries later, we see these principles embodied in Judge Samuel Alito.

You can tell this by Judge Alito's record.

Judge Alito has served as a judge on the Third Circuit Court of Appeals for 15 years. He was confirmed unanimously by a voice vote and since his appointment, he has participated in more than 1,500 Federal appeals and written more than 350 opinions.

From 1987 to 1990, he was the U.S. attorney for the District of New Jersey—the chief Federal law enforcement officer in the State. As a Federal prosecutor, he toured the United States—on numerous organized crime figures, white-collar criminals, environmental polluters, drug traffickers, terrorists, and other Federal defendants.

Judge Alito also served as an Assistant to the Solicitor General from 1981–1985, arguing 12 cases before the Supreme Court and writing briefs or petitions in more than 250 cases.

He was a Deputy Assistant Attorney General in the Office of Legal Counsel, which assigns authority within the executive branch for answering legal questions and advising the federal government on complex statutory and constitutional questions.

He is also a distinguished student and scholar. He earned his bachelor's degree from Princeton University and his law degree from Yale Law School, where he served as editor of the Yale Law Journal.

You can also tell his qualifications by the kind of human being he is—and by the kind that others know him to be.

Judge Edward Becker, Senior Court of Appeals Judge for the Third Circuit, who served with Judge Alito for 15 years, called him a wonderful human being, gentle, kind, considerate, patient, self-effacing, brilliant, highly analytical and meticulous, a soul of honor, with no chinks in the armor of his integrity.

And Edna Axelrod, a former colleague and lifelong Democrat, called him a man of unquestionable ability and integrity, one who approaches each case in an openminded way, seeking to apply the law fairly.

You can also tell his qualifications from his judicial philosophy—and the way he judges.

Judge Becker testified that Judge Alito scrupulously adheres to precedent.

A former colleague and friend of 20 years likewise said that those who know him know that he is not an ideologue, he does not use his position to pursue personal agendas, and he has a profound respect for the law and precedent.

Judge Alito himself testified that he makes decisions knowing a judge can't have any agenda, a judge can't have personal outbursts, he can't have a particular case, and a judge certainly doesn't have a client. The judge's only obligation—and it is a solemn obligation—is to the rule of law. And that means in every single case, the judge has to do what the law requires.

All of these things—his record, character, and judicial integrity—don't simply make him qualified to be an Associate Justice of the Supreme Court—they make him well qualified, according to the American Bar Association.

After interviewing more than 300 people and analyzing nearly 350 published opinions, a panel at the ABA concluded that Judge Alito's integrity, his professional competence, and his judicial temperament are of the highest standard—and his time on the bench established a record of both proper judicial conduct and even-handed application in seeking to do what is fundamentally fair.

Some of those now opposing the nomination of Judge Alito used to agree.

When Judge Alito was in the process of being confirmed to the Third Circuit, one Senator said that Judge Alito "obviously had a very distinguished record" and commended him for his "outstanding service in the public interest."

Another, referring generally to the nominations process, said "we need to get away from rhetoric and litmus tests, and focus on rebuilding a constructive relationship between Congress and the courts . . . we do not need nominees put on hold for years . . . while we screen them for their Republican sympathies and associations."
And the Senate did this some years ago. I recall when the nomination of Ruth Bader Ginsburg to the Supreme Court came before the Senate in 1993, I was confronted with a nominee whose past revealed that she had a vastly different political ideology than my own. My colleagues in Idaho and I were clear just how different and how far out of the Idaho mainstream that ideology was.

However, Justice Ginsburg was a judge of great ability, character, intellect, and temperament. Her record was replete with evidence of these qualities. And although at one time she had been a vocal advocate for particular political issues, she had a sharp understanding of the limited character of the judiciary and her role within it as a neutral arbiter, not an advocate.

I voted for Ruth Bader Ginsburg. Not because she had the same ideology as I do, but because there was a lack of convincing evidence that she believed the opposite of what I believed. My own political dispositions had been a vocal advocate for particular political ideology rather than restraint.

Judge Alito’s record reflects the same belief, perhaps even more so than Justice Ginsburg’s. But now we have the same senators who supported him the first time around suddenly calling his record “ominous” and uniting their opposition on the basis of his alleged “extreme views of executive power.”

In a recent hearing, Judge Alito acknowledged that “the President, like everybody else, is bound by statutes that are enacted by Congress” and that there is “no question about that whatsoever.” He also testified that “as a judge, he would have no authority and certainly would not try to implement any policy ideas about federalism.” There is nothing in Judge Alito’s record to suggest otherwise.

What his record shows is a man of character, competence, and integrity who can apply the laws, regardless of his own political dispositions. It is hard to argue against that.

Let us vote to confirm Judge Samuel Alito as an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I understand the leader may be coming. If he does, I will suspend my remarks to allow him to speak, then I will resume. Are we in morning business?

The PRESIDING OFFICER. We are in executive session on the nomination of Judge Alito.

Mr. ALEXANDER. I rise to make a few remarks on Judge Alito. The Presiding Officer is from the next State over. North Carolina and Tennessee have the same mountains, and he may be familiar with a story we tell at home about the old Tennessee judge.

It is told in one of our mountain counties that the lawyers showed up one morning in the courthouse, all prepared to spend a day trial. They had their litigants and their witnesses and their books. They had done the research. The judge came in, sat down be-
legal arguments. He appears to be unswayed by the particular details of the case that are irrelevant to the legal issues at stake. He seems to understand that he is not to be on anybody's side, that he is supposed to enforce the law impartially and respect the Constitution. Samuel Alito has demonstrated judicial temperament suitable for a nominee.

I believe he will serve with distinction. I am pleased to support his confirmation as Associate Justice of the U.S. Supreme Court. I thank the Chair.

Mr. REID. I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

Mr. FRIST. 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. FRIST. Mr. President, I understand that earlier today, the distinguished chairman of the Judiciary Committee was on the Senate floor—actually several times. During recent discussion on the Senate floor, he asked unanimous consent for an up-or-down vote on this distinguished nominee to the Supreme Court. As all of our colleagues know, it is very important from our standpoint that this nominee be given plenty of time in terms of advice and consent on the floor of this body, and, indeed, he has had just that. It is time to establish an end point for that up-or-down vote. Although we have attempted to set a time certain to have that vote in the future, we have not been able to receive that from the other side of the aisle.

Again, this is a nominee who is well qualified, has the highest ABA rating. We heard seven of his circuit court fellow judges testify on his behalf. Now is the time to bring his vote to the floor of the Senate. There is objection to that, and it has been now 87 days. I believe this is the 87th day since he was initially nominated. We wanted to have hearings in November and December, and there was objection, so we pushed those off until January. In those hearings, Judge Alito testified and was present for 18 hours and answered over 650 questions. We have had debate today and yesterday, and the debate will continue tomorrow and possibly Saturday and Monday—however long it takes. I want to be adequately heard. But it is time to set that vote.

Even after we came out of committee, there was yet another delay in terms of bringing Judge Alito's nomination to the floor of this body. I was disappointed that he came out of committee on a party-line vote. That at least raises the specter that this becomes too partisan, and so I am very concerned. All that is behind us now, and it is time to move toward that up-or-down vote.

**CLOTURE MOTION**

Mr. FRIST. Mr. President, I send a cloture motion to the desk at this point.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk reads as follows:

**CLOTURE MOTION**

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Samuel A. Alito, Jr., of New Jersey to be an Associate Justice of the Supreme Court of the United States.


Mr. FRIST. Mr. President, I ask unanimous consent that the vote on cloture occur at 4:30 p.m. on Monday, January 30, with the mandatory quorum waived. I further ask consent that Senator Frist be authorized to vote at any point during debate. The motion to invoke cloture requires a vote of no less than 60 Senators.

Mr. FRIST. Mr. President, I ask unanimous consent that the vote on cloture occur at 4:30 p.m. on Monday, January 30, with the mandatory quorum waived. I further ask consent that Senator Frist be authorized to vote at any point during debate. The motion to invoke cloture requires a vote of no less than 60 Senators.

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Bill Frist, Elizabeth Dole, Michael B. Enzi, Jim DeMint, Wayne Allard, Kit Bond, John Ensign, Arlen Specter, Rick Santorum, Kay Bailey Hutchison, Pete Domenici, Judd Gregg, Lisa Murkowski, Norm Coleman, George Allen, Mitch McConnell.

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Mrs. DOLE. Mr. President, it is my great privilege to support Judge Samuel A. Alito, Jr., an outstanding choice for Associate Justice of the United States Supreme Court.

Judge Alito is indeed one of the most qualified nominees to ever come before the Senate. He has excelled at every level—high school valedictorian—Phi Beta Kappa from Princeton—Yale Law School—Editor of the Yale Law Journal—Federal prosecutor—distinguished and esteemed judge. His judicial experience and record are vast. During his 15 years on the bench, Judge Alito has participated in more than 1,500 decisions. He has written more than 350 opinions on issues across the legal spectrum. Of the 109 men and women who have been chosen to serve this country on the Supreme Court, Judge Alito has spent more time on the Federal bench than all but four. And no nominee to the high court has come before this body in the last 70 years with as much Federal judicial experience. Judge Alito is precisely the type of person America needs on the Supreme Court.

Yet, despite Judge Alito’s obvious qualifications for this important post, some members of the other party have resorted to personal attacks in an effort to deny this good and honorable public servant confirmation by the Senate. They have questioned his integrity, his commitment to fairness, even his view of executive power. Rather, these attacks are simply a pretext upon which to oppose Judge Alito’s nomination. His critics’ real fear is that he will refuse to rubber-stamp the agenda advanced by liberal interest groups. Make no mistake, they want Judge Alito—and the Supreme Court—to undermine marriage, religious expression, and protection of the unborn.

I do not know how Judge Alito will ultimately rule when confronted with difficult questions of law—and neither do my colleagues—because Judge Alito has rightly refused to prejudge cases that may come before him. But we can all take comfort in the principles that will guide his approach—respect for the Constitution and the rule of law, a commitment to being open-minded in argument with an open mind, impartiality and fairness to all parties, big or small, powerful or powerless.
Judge Alito’s judicial record and Senate testimony demonstrate an unwavering dedication to these principles. His colleagues on the bench and in the Justice Department, his clerks, and so many others who know him well, have testified that Samuel Alito is a man who will approach his job without bias. Like John Roberts, Samuel Alito understands that a Supreme Court justice should apply the law without regard to his personal views. I am confident that Judge Alito will bring this approach to the Court.

Mr. President, there is no question that confirmation hearings can be long, stressful, and exhausting—not only for the nominees but for their families and friends as well. But in earlier days, a nominee with Samuel Alito’s intellect, qualifications, and integrity would have been confirmed with overwhelming support. Indeed, the other side has not publicly ruled out the possibility of an attempted filibuster. This precedent will have a chilling effect—keeping our best and brightest from entering public service.

The responsibility of the United States Senate to give advice and consent to a Supreme Court nominee is among the most significant given to us. It is vital to our Government’s constitutional structure that the Senate discharge its duty by giving a Supreme Court nominee an up or down vote. And each Senator has ample resources upon which to base a decision.

Judge Alito has a judicial record far surpassing that which has customarily been available to us when considering a nominee for the highest court in the land. He also has answered more questions during the course of his hearing than any Supreme Court nominee in recent memory. If any question existed about Samuel Alito’s integrity, judicial temperament, or qualifications for the Supreme Court, it was put to rest before the Judiciary Committee. I ask that my fellow Senators therefore vote to confirm Samuel Alito as Associate Justice of the United States Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, on January 4, 2006, I was privileged to take the oath of office as a U.S. Senator. I raised my right hand and, alongside my colleagues Republican and Democrat, pledged to support and defend the Constitution of the United States.

Now, as this distinguished body considers the nomination of Judge Samuel Alito, I am reminded again of what that obligation means. The legal experts have had their say, so today I wish to speak not as a legal scholar but as a commonsense American citizen.

When our Founding Fathers framed our Constitution, they gave us an inextricable balance of checks and balances. We will always be indebted to those visionary leaders who understood that we would need a constant, fixed star by which to navigate the unpredictable and changing seas that we would encounter as a nation.

Today, over 200 years later, the wisdom of our Founders is clear as our Constitution continues to serve as a protector of individual freedom. But as this confirmation process continues to unfold, I fear that we have strayed far from where the Founders intended us to be.

I am afraid we have done a grave disservice not only to Judge Alito but to other qualified public servants who will certainly think twice before subjecting themselves to the dehumanizing process that this has become. As I watched Judge Alito’s hearings before the Judiciary Committee, I was struck by the harsh attacks some leveled against him. I was proud of my fellow Senator from South Carolina, Mr. Lindsey Graham, who expressed the outrage of the American people and apologized to Judge Alito and his family for the behavior that seemed more intent on slandering him than fairly examining his long, distinguished legal career.

Sadly, partisanship prevailed, and Democrats chose to vote in lockstep against a fair and independent servant. Every Democrat on the Judiciary Committee voted against this well-qualified judge.

Now, as this nomination comes before the full Senate, the unfair rhetoric and continued attempts to take an American’s home just to increase tax revenue. Increasingly, judges have legislated precedents that have little basis in written statute or the Constitution but instead are based on their own personal opinions.

This point was vividly made when Senator KOHL called for “an expansive and imaginative” interpretation of the Constitution, and further stated that the approach of a judge “just applying the law, is very often inadequate to ensure social progress [and] right historic wrongs. . . .” Judge Alito eloquently addressed this flawed argument with the fact that while previous court decisions are serving of our respect, if a decision is not supported by the text of the Constitution and the laws passed by Congress, then it should be overturned.

Furthermore, he pointed out that it was exactly this process, not an “imaginative interpretation,” that capably righted historic wrongs in the landmark civil rights case Brown v. Board of Education. To quote Judge Alito: “When Brown was finally decided, that was not an instance of the court changing the meaning of the equal protection clause; it simply allowed local states to do nothing except block what would already be happening otherwise.”

It is clear that we are facing the grave danger of the slippery slope in which bad precedent—by which I mean precedents not clearly derived from the Constitution or a law passed by Congress—builds upon bad precedent. Before you know it, the original meaning
of the law or phrase in question is lost to history.

The Democrats are simply on the wrong side of this important debate. The Constitution is not a list of suggestions. It is the constant fixed star that every action we take.

The issue before us today reaches far beyond the confirmation of Judge Alito. He has more judicial experience than any Supreme Court nominee in the last 75 years. There is no question that Judge Alito is eminently qualified to sit on the Nation’s highest Court.

Today we are debating which of these two diametrically opposed philosophies will prevail in the confirmation of future judges—the philosophy in which unelected judges create new law or the philosophy that returns a runaway judiciary to acting within the bounds of the checks and balances established by the Constitution.

In my travels in South Carolina, time and again, South Carolinians have asked me to fight for judges who will place the rule of law above their personal opinions. I support Judge Alito because he has shown that he will do just that. The consistent winner in his court has not been a person of business, a brand of Wall Street ideology. It has been the Constitution and our democracy.

When the speeches are done and the vote is called, I hope there will be those on the other side of the aisle who will look beyond partisan politics. I pray that we can join together in affirming the rule of law by voting yes to confirm Judge Samuel Alito as the next Associate Justice of the Supreme Court of the United States. The American people deserve no less.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SARBANES. Mr. President, for the second time in 4 months, the Senate is being called upon to carry out one of its most important constitutional responsibilities, which is to give its advice and consent to a nominee to be a life tenure member of the Supreme Court of the United States. We have many serious responsibilities in this body, but I must say I think this one ranks at or near the very top of any of the decisions we will be called upon to make. That is because it falls uniquely to the nine Justices of the Supreme Court to expound and interpret the Constitution and the laws passed pursuant to it. The installation of two new Justices within a short time period has the potential to alter fundamentally the constitutional framework that protects the rights and liberties of the people of this Nation.

Once again we see the argument being made that the President is entitled to his nominee, and that the Senate’s role in the appointment process is limited to confirming the President’s choice, barring some serious disqualification with the nominee. In effect, the presumption—a very heavy presumption—it is argued, is with the nominees and against the Senate.

In my view, this is not what the Constitution provides in requiring the Senate’s advice and consent to a nominee to the Federal bench, which is, after all, a third, separate, independent branch of our Government.

From a historical perspective, it is worth noting that over the course of our history, roughly one in every four nominations to the Court has not been confirmed by the Senate. There have been 158 nominations to the Supreme Court in the course of the history of the Republic, of which 114 were confirmed. Not all of the others were rejected. Some were rejected on votes taken in this body, some withdrew, and some were confirmed. But the notion of this heavy presumption runs contrary to historical practice in the Senate. Almost one out of every four—actually a little more than one out of every four—nominations has not been confirmed.

As Michael Gerhardt, distinguished professor of constitutional law at the University of North Carolina Law School, testified recently before the Judiciary Committee:

"Neither the plain language of the Appointment Clause nor the structure of the Constitution requires Senators to simply defer to a President’s Supreme Court nomination. Let me repeat that quote: Neither the plain language of the Appointment Clause nor the structure of the Constitution requires Senators to simply defer to a President’s Supreme Court nomination. In my view, the Senate’s duty to advise and consent on nominations is an integral part of the Constitution’s system of checks and balances among our institutions of government. A nomination alone does not constitute an entitlement to hold the office. Furthermore, some have said when considering a nominee that we look only to their experience, their qualifications, their character. These are all obviously very important criteria. But, in my view, the nominee’s judicial philosophy also must be given very serious consideration. We are facing a decision that is going to govern for life tenure. It could be 26, 30, or 35 years. Judge Alito is in his fifties, so we are talking about someone who is going to shape the interpretation of our Constitution over decades. You view that when you consider a nominee to the Supreme Court.

The nominee’s judicial philosophy should be given very serious consideration, as well put by former Chief Justice Rehnquist. Writing in 1958, long before he went on the Court, the late Chief Justice Rehnquist wrote that the Senate should follow the “practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him.”

In considering Judge Alito’s nomination to be an Associate Justice of the Supreme Court, in my view, the question of his judicial philosophy is not an optional item. It is indeed an essential question. Inquiring into a nominee’s judicial philosophy does not mean discovering how he or she would decide specific future cases. We are always left unearned about that, and there is no effort here to pre-determine that. Rather, it seeks to ascertain the nominee’s fundamental perspectives on the Constitution, how it protects our individual liberties, ensures equal protection of the law, maintains the separation of powers and the checks and balances encompassed within our Constitution.

Judge Alito has served on the U.S. Court of Appeals for the Third Circuit since 1990, during which time he has written hundreds of published opinions, and earlier he served 6 years in the U.S. Department of Justice. So there is much to consider in his record and many lessons to be drawn from it. The issues the Senate will face today are truly basic. Perhaps none is more basic than the proper reach and exercise of executive power. We are particularly focused on this issue now, but it is an issue that has recurred constantly throughout our history as we seek to maintain the careful balance the Founding Fathers placed in the Constitution.

They, in fact, established in the Constitution a complex system of democratic governance where the three equal branches of the Government. At the center of this system lies not any one of the three branches but rather a delicate balance amongst the three branches.

Looking at Judge Alito’s record, one sees a clear and constant deference to the executive, which, in my view, would significantly tip that delicate balance with respect to our constitutional framework.

The Constitution grants the legislative power expressly to Congress. It gives the President power to only approve or veto legislation. The veto power, of course, gives the President very significant authority with respect to legislation. But if a bill becomes the law, with or without the President’s approval, it then becomes his or her responsibility as the Chief Executive to see that the law is carried out, to see that the law is properly executed. The President has the responsibility as the Chief Executive to see that the law is properly executed.

Judge Alito’s record demonstrates he would seek to extend the President’s power to allow for modification of law by the executive alone. As one example, while he was an official in the Department of Justice, the Court is likely instrumental in advancing a policy of so-called Presidential statements, to create a platform from which the President could seek to alter the underlying purpose of legislation passed by the Congress without the concurrence of the Congress.

Such a deference to executive power, I think, is of deep concern, especially
as we see on occasion now when Presidents, rather than following constitutional process by seeking legislative change through the Congress, instead refuse to carry out statutes that the Executive finds not to his liking.

Under our constitutional system, the courts are the ultimate guarantors of individuals' rights and the defenders of our liberties. On this issue, too, Judge Alito has been quite clear and consistent.

President Goodwin Liu of Boalt Hall School of Law at the University of California at Berkeley summed up Judge Alito's work in his testimony to the Judiciary Committee:

Throughout his career, with few exceptions, Judge Alito has sided with the police, prosecutors, immigration officials, and other government agents while taking a minimalist approach to recognizing official error and abuse.

In an editorial on January 12, the New York Times made the same point in somewhat different terms:

[Judge Alito] time and again, as a lawyer and a judge, . . . has taken the side of the 'little guy,' supported employers against employees, and routinely rejected the claims of women, racial minorities and the disabled.

In a memorandum that he submitted when applying for a political position in the Justice Department in 1985, Judge Alito made a series of very sweeping statements about his understanding of the Constitution. He wrote that he was inspired to apply to law school by his opposition to certain decisions of the Warren Court—the Court headed by Chief Justice Earl Warren—decisions which are now considered bedrock provisions of constitutional law, decisions involving criminal procedure, the Establishment clause of the Constitution, and reapportionment.

In that very same memo, he also took strong positions in opposition to Court decisions on affirmative action and the right to choose. When asked about the memo during his confirmation hearing, Judge Alito explained that the 1985 memo reflected his views of the Constitution at that time. He did not, however, explicitly disavow those views, and nothing in the hearing record demonstrates they have changed. In fact, his decisions as a judge on the Third Circuit reflect that these are the views he has continued to hold and to espouse.

The Baltimore Sun concluded in an editorial that:

Despite Judge Alito’s periodic assurances of having an open mind, the disturbing impression from the hearings is that on critical issues such as abortion, civil rights and the limits of executive power, he does not.

That is a very perceptive observation with respect to Judge Alito's testimony before the Judiciary Committee.

I am not persuaded that Judge Alito recognizes either the critically important role the Supreme Court must play in preserving the constitutional balance of power among the three branches of our Government, that delicate balance to which I made reference earlier which was so much a part of the thinking of that distinguished assembly which gathered in Philadelphia in the summer of 1787 to frame our Constitution.

I have this concern about his view of the role the Supreme Court must play in preserving the constitutional balance of power among the three branches of Government and whether he recognizes the role of the Court as the ultimate guarantor of every individual's constitutional rights and liberties.

For the people all across our country, the rulings of the Supreme Court can be of immense importance in terms of providing for their rights and liberties.

Because I am not persuaded in this regard about the appropriateness of Judge Alito's nomination, when the time comes to vote, I will vote against his nomination to become an Associate Justice on the Supreme Court of the United States. 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. INHOFE. 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. INHOFE. Mr. President, I have just learned that two of our distinguished Senators, both from Massachusetts, have made the statement that they are trying to drum up support for a filibuster. This is not going to happen. I know that people get desperate. They get desperate because they are afraid something might happen to their liberal agenda. But the Constitution is very clear.

We have discussed this, we have debated this, and there is not going to be any prohibition. But I think it is worth bringing to the attention of the American people that this is actually taking place right now. Nowhere did our Founding Fathers say that to confirm a judge, you had to have a super-majority, and I do not believe this is going to happen.

Let me share a couple thoughts with you. First of all, I am not a lawyer. I am not a member of the Judiciary Committee. In a way, that puts me in a very positive position; I am better than a lot of my colleagues who are. In fact, most of the people who have spoken are members of the Judiciary Committee. But, by now, we have heard so much about Judge Samuel Alito's resume, about the type of person he is, I would have to say, yes, he is guilty, he is guilty of being a strict constructionist, of being a strict interpreter of the Constitution, and he will rule according to settled law. I do not think anyone has any doubt in their mind that he will.

The problem is that some of the Democrats have made it clear they are going to make this a partisan fight, now even talking about perhaps even a filibuster. They have a litmus test. They do not confirm any nominee of any President unless that nominee makes some type of a commitment and passes a litmus test for their far-left liberal agenda, whether it is abortion on demand or any of the rest of it. That is really what it is about. We do not talk about this. They kind of dance around this issue, too, but that is the real reason they do not like this guy, because he is not going to line up and give a litmus test to some liberal agenda.

One of the things that bothers me about this is, this is all new. This did not happen in the past. I can remember when Judge Scalia was up for confirmation. People talk about Judges Scalia and Alito not just because their names sound similar, but their temperament is the same and their background is the same, their writings are the same—very similar. We went through a very long process with Judge Scalia during his confirmation, and he ended up being confirmed by a unanimous vote—a unanimous vote.

If you will remember, that is when William Rehnquist was taken from the bench and made Chief Justice, which created the vacancy. A lot of people did not want to have someone who was a strict constructionist, but they realized he was qualified, and they realized he was appointed by a President who was Ronald Reagan, and they went ahead and confirmed him. It was unanimous. Now this is something that is really changing now because there is no way in the world Judge Alito is going to be unanimously confirmed.

Back in the Clinton administration, I remember so well when President Clinton nominated Judge Ginsburg and then Breyer. And keep in mind, we Republicans were not real excited about that. They did not like his very conservative background, and yet they were overwhelmingly confirmed.

That is the change I see happening. It is not like it used to be. Ginsburg was 96 to 3. Breyer was 87 to 9. They were overwhelmingly confirmed.

Not too long ago, just the other day, JEFF SESSIONS, who is our colleague from Alabama, made a statement. He said if we really get into this thing where we are looking at it philosophically, then you are going to remember—and the way he worded it was—"the knife cuts both ways." He said if this new standard is affirmed, then it will be more difficult for future Democrat Presidents to have their nominees confirmed. I agree with this. If a Democrat President comes up and makes a nomination, it will be more difficult for future Democrat Presidents to have their nominees confirmed. I agree with this.

Not too long ago, we were talking about this. If a Democrat President comes up and makes a nomination, it will be more difficult for future Democrat Presidents to have their nominees confirmed. I agree with this.

On the plane coming up here just a few minutes ago—we just landed, after this recess—my wife and I were talking about this, and I told her about the comments of Senator SESSIONS. I said:
What I think I will do in my speech on the floor tonight on the confirmation of Judge Alito is make the statement that if they adhere to this litmus test, that if I am around—I do not think there is going to be a Democrat President, but if there is and I am still in the U.S. Senate, I am going to hold them to the same thing. I am going to hold them to a litmus test. My wife said: No, don’t do that. Don’t stoop to that just because they are doing it. So I am not doing it. I learned a long time ago that—after I have been married 46 years—I do what I am told.

So anyway, this is something that is a change of what we have observed, and I think it warrants our consideration.

Now, the Democrats are also making outrageous accusations, trying to justify partisan votes. I believe in my heart that they do not believe these accusations they are making, but what they do want to do is have some excuse so they can go home and say: ‘I voted against Alito, but not tell them the real reasons. Let’s go over some of these accusations that are made. I start out with Senator Kennedy, who inaccurately stated that Alito opposes the one-person, one-vote principle, but this is just flat not true. The fact is, Senator Kennedy, that Senator Schumer, what he said is just flat not true, and I am sure he knows it was true, but it is not.

Here is another statement made by Senator Kennedy. He is trying to make a position that Judge Alito wants, through the Presidential signing statements—Presidential signing statements are statements that are made by the President when a new law is passed, it is his interpretation of that. This is my interpretation of it. Well, I think it is not true. I think it is an outrageous statement. Senator Kennedy, on January 9 said:

It expresses outright hostility to the basic principle of one person, one vote, affirmed by the Constitution and I am trying to ensure that all Americans have a voice in their government.

Now, the fact is, Judge Alito has stated that the principle of one person, one vote is a bedrock principle of American constitutional law. He has never taken issue with that principle. And to quote him, he said:

[The principle of one person, one vote is a fundamental part of our constitutional law. . . ]

I do not see any reason why it should be reexamined. And I do not know if this is a very well settled principle, but it is out there in the constitutional law of our country.

I would adhere to that. Well, he could not be more emphatic than that.

Again, Senator Kennedy—who said he is not true. I know he wants it to be true. He wishes it was true, but it is not.

Then along came Senator Schumer from New York. In attacking Judge Alito’s jurisprudence, Senator Schumer tried to paint Alito as someone who is “too conservative.” His statement was:

Judge Alito, in case after case, you give the impression of applying careful legal reasoning, but, too many times, you happen to reach the most conservative result.

Well, the fact is, Senator Schumer’s characterization of Alito overlooks the bulk of Alito’s record of nearly 5,000 votes as a court of appeals judge reached on the law and the facts, which are inconsistent with Senator Schumer’s characterization of Alito.

Now, if you question this, the statement that was made by Senator Schumer, if you believe there might be some merit to it, let’s stop. The easiest way to refute that is to read an editorial that was in the Washington Post. There is not a person who belongs to this body or anyone within earshot of what I am saying right now who is going to say the Washington Post is a conservative publication or a Republican publication. It is not. Yet what they said about Alito was:

[Judge Alito’s dissent is not the work of an unblinking ideologue. ]

They are the work of a judge whose arguments deserve respect—a respect evident among his colleagues even when their positions differ.

And that is not the Washington Times; this is the Washington Post making this statement. So I would say, like Senator Kennedy, that Senator Schumer, what he said is just flat not true, and it is not.

Here is another statement made by Senator Kennedy. He is trying to make a position that Judge Alito wants, through the Presidential signing statements—Presidential signing statements are statements that are made by the President when a new law is passed, it is his interpretation of that. This is my interpretation of it. Well, I think it is not true. I think it is an outrageous statement. Senator Kennedy, on January 9 said:

You argued that the Attorney General should have the absolute immunity, even for actions that he knows to be unlawful or unconstitutional; suggested that the court should give a President’s Signing Statement great deference in determining the meaning and the intent of the act and, as it pertains to your own political and judicial philosophy, for an almost all-powerful presidency.

Well, the fact is, the President’s signing statement is a device developed long before Alito came along.

They try to imply that he had something to do with this. This has been embraced by Democratic and Republican Presidents for years and years, and all the way back to Presidents Monroe and Jackson. The suggestion that Alito somehow invented this notion is patently absurd. I, again, Senator Kennedy is wrong. His statement is not true.

He further cites false and inaccurate Knight Ridder analysis. This is rather interesting. Senator Kennedy made more outrageous statements this time about Alito’s view of government searches. Senator Kennedy, on January 10:

Mr. Chairman, at this point, I’d like to include in the appropriate place in the RECORD the Knight Ridder studies that concluded that Judge Alito never found a government search unconstitutional.

Knight Ridder’s writers, Stephen Henderson and Howard Mintz, have repeatedly been accused of biased reporting on Alito’s record. The National Journal’s Stuart Taylor wrote:

I focus here not . . . on such egregious factual errors as the assertion on C-SPAN, by Stephen Henderson and Howard Mintz, that in a study of Alito’s more than 300 judicial opinions, “we didn’t find a single case in which Judge Alito sided with African-Americans . . . [who were] alleging racial bias.”

He went on to say:

What is remarkable is that any reporter could have overlooked (case after case after case) in which Alito sided with African-Americans alleging racial bias.

In a few minutes, I am going to be specific on some of these, but there would be too many to cite for the amount of time we have. Senator Kennedy’s statements are inaccurate and untrue. I know he wishes they were true, but they are not. These guys are grasping at straws.

Then Senator Biden came in with inaccurate statements on Presidential treatment toward the State. Senator Biden charged Alito with ruling in favor of the State against the individual. This is what he said:

But as I’ve tried diligently to look at your record, you seem to come down more often on the side of the state than of the individual. You seem to lean—that in close cases, you lean to the state versus the individual.

The facts belie that. The fact is, Alito’s record shows he consistently takes each case based on the law and the facts. He rules for plaintiffs and for defendants when the law supports him. He rules for the corporation or the State when the law supports their position. This is the appropriate role for judges. It is clearly in the Constitution that Alito understands the importance of the independence of the judiciary and has a healthy respect for its role as the bulwark against executive overreaching.

Alito often cites Alexander Hamilton. I think Alito has quoted Alexander Hamilton more than anyone else, at least it seems that way to me. He said:

[Al]s Alexander Hamilton aptly put it in Federalist No. 78, the court should carry out [the judicial power] with “firmness and independence.” “Without this,” he observed, “all the reservations of particular rights or privileges [in the Constitution] would amount to nothing.”

Alito continued:

When a constitutional or statutory violation [by other governmental institutions] is proven, a court should not hesitate to impose a strong and lawful remedy if that is what is needed to provide full redress. Some of the finest chapters in the history of the Federal Courts have been written when federal judges, despite oft-readestforensically enforced remedies for deeply rooted constitutional violations.

During his 15 years on the bench, Judge Alito has repeatedly ruled to restrain executive authority, reflecting his approach to the law and the role of the judiciary to protect the constitutional rights, separation of powers, and so forth. What Senator Biden said is not true. I know he wishes it were.

Next we had Senator Feinstein. She was approaching something to which I am particularly sensitive. I chair the committee called Environment and Public Works. The Presiding Officer is a member of that committee. We deal
with environmental issues. Senator FEINSTEIN mischaracterized Alito’s environmental record.

Let me say this for anyone who might be listening: If there is nothing better going on right now, these Senators are very critical of, I love them dearly. That is possible. It doesn’t happen in the other body, seeing a Senator here who also served in the House at the time that I was there. We can love our friends, our Senators, with whom we serve, and we can deplore their philosophy and their agenda. I learned this the hard way.

I will share this story. Back in 1994, I came from the House to the Senate. And on the day I had always considered,看向 in the House, there happened to be a Senator on the floor named Wendell Ford from Kentucky. He was known as the junkyard dog of the Senate. I disagreed with him. I came down here. That was the opening day, the first day I was elected and confirmed in a special election. I went down and I took him on. It was mean. It was wicked. And we are yelling and screaming. Afterwards I felt pretty good. I went to go back to the Russell Building, went down the elevator and ran into none other than Senator Bob BYRD.

Bob BYRD said: Ride along with me. He said: Young man, I appreciate your spunk.

I liked that because that happened to be November 17, 1994. It was my 60th birthday.

He said: Young man, I appreciate your spunk, but this isn’t the way we do it in the Senate. He explained to me the history of the Senate, how it must have been divinely inspired, so that there is a genuine love for your fellow Senators, something that doesn’t exist in the other body. I don’t know why I said all that.

But Senator FEINSTEIN accused Alito of ruling against the Clean Water Act. She said:

In Public Interest Research Group of New Jersey v. Magnesson Electric, a citizens environmental group had sued under the Clean Water Act for polluting a river by users of members of the group . . . your decision, as I understand it, was based upon your conclusion that the environmental group did not have standing to sue under the Clean Water Act because even though members of the environmental group had stopped using the river due to the pollution, they did not prove any injury to the environment. The decision, if broadly applied, would have gutted the Citizen Lawsuit Provision of the Clean Water Act.

That is what Senator FEINSTEIN said. Keep in mind Alito’s vote would not have gutted the Citizen Lawsuit Provision. This decision was a 92-1 decision in which the Supreme Court required that in order to file suit, a plaintiff must allege the actual injury, not just have this great concern over activities such as pollution.

What we are saying here is that Senator FEINSTEIN should have read this. He was interpreting a law he may have agreed on or may not have, but this law was settled law. It was settled law established by the U.S. Supreme Court. Alito’s vote, which he didn’t write, was one based in law. I think what Senator FEINSTEIN said was not true. It needs to be answered. That is the answer.

Another one is Senator KENNEDY researched. Senator KENNEDY charged that Alito rarely votes for the little guy. Senator KENNEDY charged Alito with false accusations saying that he was biased toward the rich and powerful. This is Senator KENNEDY talking about the rich and powerful. He was biased toward the rich and powerful and against the little man. I will use the quote that he used. He said:

And on the cases he decided in case after case after case of affirmative actions and inconsistent reasoning to bend over backwards to help the powerful.

This is on January 12, stated by Senator KENNEDY. Time after time during his hearings, Alito has never written a longer statute of limitations and inconsistent reasoning to bend over backwards to help the powerful.

What we are saying here is that Senator KENNEDY was biased toward the rich and powerful and against the little man. I will use the quote that he used. He said:

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This is on January 12, stated by Senator KENNEDY. Time after time during his hearings, Alito has never written a longer statute of limitations and inconsistent reasoning to bend over backwards to help the powerful.

The next one is Senator FEINSTEIN said was not true. It needs to be answered. That is the opposite of what was asserted by Senator KENNEDY.

In another case, Caruso v. Blockbuster-Sony Music Entertainment Center at the Waterfront, writing for the unanimous panel, Judge Alito reversed in part the district court’s grant of summary judgment against the defendant. The District Court had dismissed the complaint for failure to exhaust administrative remedies. The panel concluded that the question could not be resolved on the record and remanded for further proceedings.

Another one is Zubi v. Phelan. In Zubi v. AT&T Corporation, in 2000, Alito dissented from a case foreclosing a plaintiff’s claim against AT&T. The judge holding that only the federal courts could entertain a claim for violations of Section 1981. The judge explained that even Judge Alito consistently ruled in favor of plaintiffs or defendants as the facts and the law demanded.

I will give some examples. In Zubi v. AT&T Corporation, in 2000, Alito dissented from a case foreclosing a plaintiff’s claim against AT&T. The judge held that only the federal courts could entertain a claim for violations of Section 1981. The judge explained that even Judge Alito consistently ruled in favor of plaintiffs or defendants as the facts and the law demanded.

Another one is Smith v. Davis, 2001, in which Alito voted to reverse a grant of summary judgment against an African-American man’s claim that he had been discriminated against in employment on the basis of race. Another one is Zubi v. Johnson & Johnson Medical, Inc. Alito voted to reverse a district court’s grant of summary judgment against the plaintiffs.

Judge Alito and his colleagues concluded that the American plaintiff had introduced sufficient evidence to question whether the employer had, in fact, given her lower quality assignments due to her “objective” scores on certain evaluations, as the employer maintained. There are many more cases.

I ask unanimous consent to print in the RECORD the other cases. There being no objection, the material was ordered to be printed in the RECORD, as follows:

In Collins v. Stoddard (2004), Alito joined a per curiam opinion reversing the District Court’s dismissal of a Pro Se Title VII complaint against an employer. The court concluded that the plaintiff had submitted significant evidence that AT&T had been involved in a pattern or practice of race discrimination and that the plaintiff had standing to bring suit. It remanded for further proceedings.

In Pope v. AT&T (2001), Alito joined a per curiam opinion reversing the District Court’s grant of summary judgment against an African American plaintiff alleging race discrimination under Section 1981. The panel concluded that the employer had submitted significant evidence that the plaintiff was pretextual, and remanded for trial.

Mr. INHOFE. The facts, as we have demonstrated, speak for themselves. Samuel Alito is not a racist, not a rightwing extremist who believes in an executive branch with sole authority and rules only in favor of the powerful but a thoughtful, mainstream, fair, experienced interpreter of the Constitution. He is a good guy. I have heard many people say they probably one of the most qualified persons ever to be nominated for this High Court.

Those liberal Senators who are desperately grasping at any straw to find justification to vote against Judge Alito, they have their litmus test. In order to be confirmed to the U.S. Supreme Court, a judge must embrace all of the leftwing’s extremist agenda, an agenda that is so unpopular in America that the American people reject it, and it must be legislated from the bench. That is the problem they have.

When my service in the Senate is over, one of the greatest honors I will have had, for the sake of America and
for the sake of my 20 kids and grandkids, is to vote to confirm Samuel Alito to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. THUNE. Mr. President, I rise to voice my strong support for the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court. Judge Alito has demonstrated and dedicated his life to public service, from serving in the Army Reserve to working as a prosecutor for the Federal Government.

For the past 15 years, Judge Alito has been a model jurist on the court of appeals, and his record reflects a deference to the political branches of our Government that is all too often lacking among some on the bench.

The guiding question for each of us in deterring, his parents, and the ones he has installed in him a love of learning and, through their example, the importance of persistence and hard work.

I had the opportunity to meet with Judge Alito, he was nominated last fall. During this meeting, we discussed the role of the judiciary and some of the broad principles set forth in our Constitution. I was impressed by Judge Alito’s quiet answers and thoughtful demeanor during that meeting.

Judge Alito is the kind of person who would fit in very well with my constituents in South Dakota. He is the kind of guy you would see at the local symposium of questions and questioners, all 650 questions. For over 18 hours he responded to all the full spectrum of questions and questioners, both those who were sincere and those who were sarcastic.

All of these things have convinced me that Judge Alito has the ability and temperament necessary to be an outstanding justice on the Supreme Court.

It is unfortunate that some on the other side have decided to make the nomination process about politics rather than about qualifications. Sadly, it seems the other side is engaging in an effort to ensure a large opposition vote to score political points, rather than giving a well-qualified nominee like Judge Alito the strong vote he deserves.

When Justice Ginsburg, a former general counsel for the American Civil Liberties Union, was nominated by President Clinton, she received nearly unanimous support—96 votes—despite the fact that many of the Senators strongly disagreed with her views. She replaced the much more conservative Justice White. Yet no one was complaining about her shifting the Court dramatically to the left.

Senators voted for her based on her qualifications. When Justice Breyer, a former member of the National Academy of Sciences, was nominated by President Clinton, he received 87 votes, and again many of those who voted for his favor strongly disagreed with his views.

Justice Ginsburg and Justice Breyer received strong support because of their qualifications and because Senators put aside politics in the interest of a dignified confirmation process.

Judge Alito is qualifiﬁed. He unanimously received the highest rating from the American Bar Association, the benchmark that used to be considered the gold standard for evaluating nominees to the Federal Courts. Judge Alito is a man of integrity and intellect. No one disputes that.

Judge Alito has a proven record of support from Democrats, liberals and conservatives, and a professional record and resume in both civil and criminal matters that are superb. He has been described as a little different from his colleagues, apparently, from some in the Senate. Senator THUNE made reference to it. Judge Alito and Judge Roberts believe it is
their duty to follow the law. It is their responsibility as judges to be neutral umpires, to not allow their personal, political, social, or religious views to impact their interpretation of the laws before them.

That is what a judge is all about in the American legal system, for heaven’s sake. What kind of threat is that when you have a judge who believes in that philosophy?

Judge Alito’s whole judicial approach to life and to his work is that a judge should put aside personal views and be a neutral, fair umpire, deciding the discrete case before the court, based on a fair and honest finding of the facts and an honest application of the law to those facts. That is what a judge is supposed to do.

We have Members on the other side insisting that a judge’s ideology ought to play a part in the judge’s decision-making process. That goes squarely in the face of what our American legal system is all about. Why do we give our judges, let me ask, a lifetime appointment to the Federal bench? Why? Because we wanted them to be free from pressure and do their duty day after day, knowing that as long as they properly find the facts truly in the case and applying the law to those facts—not as Judge Alito said, to engage in implementing “grand theories.” I thought that was a good phrase. That is the kind of judge President Bush is promised, and that is the kind of judge Senator THUNE promised to support when he ran. That is the kind of judge I have believed in, in my career. I practiced for 15 years, for a long time, before Federal judges. I respect them. We have had some magnificent Federal judges that I practiced before. I lost some cases and I won some cases, and every good lawyer does. But we all know one thing—that as long as that judge does his best, day after day, to honestly find the facts and apply the law, no matter what. Your client can live with that, too, even though they may be disappointed about the case. If we feel the judge is going to redefine marriage because he didn’t like the way the State of Massachusetts defined marriage, and he is just going to say the Constitution somehow made reference to marriage, and a marriage now is no longer between just a man and a woman, but between two men or two women—this is going to be somehow that he was never sure about some of those powers issues. He comes at it as a skilled scholar, a person with a demonstrable record of fairness, and great intellectual capacity. I think when these cases come before the court, he will decide them fairly. That is what everybody who knows him says.

Another deal they keep talking about is the unitary executive. Have you heard that phrase? They say: Oh, he is terrible; he believes in a unitary executive. It is almost amusing. Senator KENNEDY and others have used this phrase more than once: He believes in an all-powerful Executive. Now, you know no judge believes in an all-powerful Executive. He has to watch judges. They can strike down anything they want to. They are not going to give the President unlimited power. They are not going to give Congress unlimited power. But a good judge will follow the Constitution and will contain the executive if it goes too far and will contain the legislative branch if it goes too far. He or she will show personal restraint and not go too far as a member of the court. I think some need to remember that. Some have gone too far, in my way, I believe.

This has not been about Judge Alito. It has been about an opportunity to attack President Bush. That is what everything seems to come down to here. That is why it is so political.

They said he recommended, in defending a former Attorney General of the United States who had been sued personally for monetary damages, that they not defend the case on the basis that the Attorney General had absolute immunity from suit, but suggested he argue that he had a qualified immunity.

The former Attorney General of the United States believed he had absolute immunity, and Judge Alito then, as a young lawyer in the appellate section of the Department of Justice, was obliged to make the argument, if it was defensible in any way, for absolute immunity, and he made it.

That didn’t mean he believed the Attorney General can never be sued. But I am going to tell you, the Presiding Officer has been a Governor of Virginia. People will sue for anything. If
every Governor, if every Senator, if every attorney general can be hauled into court and be sued because they voted on some bill or did something and they have to pay out of pocket these judgments or lawyers to defend themselves, you can shut down the Government. We do have some cases where a Government official has absolute immunity and sometimes they have qualified immunity.

I was Attorney General of Alabama. I had to defend the Governor and other officials in various lawsuits, some of them as bogus as $3 bills, but you have to go down there and defend it. Are you going to try the case for 6 months or, if he has immunity, do you assert the immunity and get the case dismissed in the beginning? You get the case dismissed. That is what any good attorney for the Department of Justice would do.

He has never, in any way, supported an all-powerful Executive or an all-powerful branch that is “unchecked by the other two branches of Government.” Where did they come up with those kinds of ideas?

This is what he said in a speech at law school about the case of ex parte Milligan: It expressed that “...the Constitution applies even in extreme emergency.” The Constitution does apply in the case of extreme emergency. That is what Judge Alito wrote some time ago.

He also said at the hearings:

The Constitution is the law at all times, and it is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis.

That is what he told us under oath in committee. He also said:

No person in this court is above the law, and that includes the President and that includes the Supreme Court. Everybody has to follow the law, and that means the Constitution does. And it means the laws that are enacted under the Constitution of the United States.

He also said this:

Neither the President nor anyone else, I think, can authorize someone to . . . oversize a constitutional limitation the President has to follow the Constitution and the laws, and it is up to Congress to exercise its legislative power. . . . The President has to comply with the fourth amendment, and the President has to comply with the statutes that are passed.

So it is clear that Judge Alito and his opponents are not talking about the same thing when they talk about the unitary executive theory.

According to Judge Alito, the “unitary executive theory” is not a theory that supports “inherent authority to wiretap American citizens without a warrant to ignore congressional acts at will, or to take any other action he saw fit under his inherent powers.”

Those items have to do with the scope of Executive power, which is an entirely different matter from this theory of a unitary executive. They have tried to use this theory of a unitary executive, which has been around a long time, and twist it to say it has something to do with whether the President has the power to wiretap you.

Judge Alito clearly explained that the unitary executive theory has nothing to do with the scope of Executive power, the separation of powers doctrine, the President, or signing statements to the constitutionality of independent agencies. As he stated during the hearings:

The unitary executive doesn’t have to do with the scope of executive power . . . I don’t see any connection between a unitary Executive and the weight that should be given to signing statements in interpreting statutes.

That is so correct and so weird that it even has to be clarified. Do we have any lawyers in this body?

He goes on to say:

I don’t think I’ve ever challenged the constitutionality of independent agencies.

Instead, this is what Judge Alito said about the unitary executive theory—this is what he said:

[It] is the concept that the President is the head of the executive branch. The Constitution says that the President is given the Executive power. Does anybody dispute that? I am quoting him.

And the idea of the unitary Executive is that the President should be able to control the executive branch, however big it is or however small it is . . . . It has to do with control of whatever the executive is doing. It doesn’t have to do with the scope of Executive power. It does not have to do with what the Executive power that the President is given includes a lot of unnamed powers or what is often called inherent power.

Isn’t that a good statement? We have heard a lot of discussion for some time now about this problem of the President, and he is supposed to head the executive branch. We have all these agencies that act like independent nations. When the FBI and DEA get together and reach an agreement, they enter into memorandums of understanding, like a lot of powers are both under the executive branch, under the President’s authority, but they get so big for their britches that they think they have their own independence.

There is a concern that the President is put in charge of the entire executive branch and is supposed to supervise all kinds of different federal agencies—the Immigration and Customs Enforcement Bureau, the Corps of Engineers, the Drug Enforcement Agency, the FBI, all these agencies. As he stated during the hearings:

The Congress takes all the management of power and gives it to all the individual executive branch people so that the President can’t even run the agencies, and then they blame him when things go wrong. That is the way we do things around here.

I asked Charles Fried, who was a former Solicitor General of the United States—the person who argues cases on behalf of the United States before the U.S. Supreme Court—and had been a professor at Harvard Law School before that teaching judicial philosophy: Mr. Fried, you have been around a good while. You have heard this talk about the unitary executive. What is it? What does it mean to you?

Boy, he just hit it right on. I was surprised. He even rebuked the members of the committee for misinterpreting the theory, he said this:

I think what has been said about the unitary Executive in this hearing is very misleading. The unitary Executive says nothing about whether the President must obey the law. Of course he must obey the law. It talks about the President’s power to control the executive branch.

[It] is not an invention of the Reagan Justice Department. It was prompted in the first administration of Franklin Roosevelt who objected to the powers of the Comptroller General who tried to fire a Federal Trade Commissioner, and who referred to himself [this Comptroller] as the general manager of the executive branch. That is the origin of the notion, the FDR administration.

Some Comptroller General declared he was the general manager of the executive branch and Roosevelt didn’t like it and he talked about that and said the executive branch is headed by the President. Here, America, the Government, is one. It cannot sue itself.

Judge Edward Behr was aware of all these things. He is one of the most distinguished Federal appellate judges in America. He appeared at the committee with a group of his colleagues from the Third Circuit. They have served with Judge Alito, many of them for his full 15-year career—most of them at least 7 or more years—during his tenure on the Third Circuit Court of Appeals.

For those who may not fully understand it, an appellate judge on the court of appeals handles the appeals from the trial courts where juries and witnesses testify. Everything that is said in those trials is written down. If somebody is unhappy with the result and thinks they did not get fair treatment, they will appeal to the court of appeals and the court of appeals will review the record, listen to the arguments, consider the law, and determine what the facts are in the case and rule whether they got a fair trial.

If you are not happy with the court of appeals’ decision, then you appeal to the Supreme Court and the Supreme Court does basically the same thing, it reviews the transcript and the record and considers the decision of the court of appeals that decided it.

That is what Judge Alito has been doing for 15 years. That is what his life has been. He goes to work and reads transcripts. He is not listening to people’s phone calls. He is not approving search warrants, such as State county judges, and magistrate judges, and city judges can do. Judge Alito has been up here doing the very same kind of work he would be doing on the Supreme Court.

What do they say about how he performed in that role? This is what Judge Behr said about Judge Alito’s temperament. Sam Alito:

gentle, considerate, unfailingly polite, decent, kind, patient and generous. . . . I have
never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize... he expresses his views in measured and tempered tones.

Pretty good job description of what you would want in a Supreme Court Justice, wouldn't you think?

What about the question of integrity? What did Judge Becker, one of the great judges in the United States today, say about his integrity?

Sam Alito is the soul of honor. He has never had a chink in the armor of his integrity, which I view as total.

Judge Becker, on Sam Alito's intellect:

He is brilliant, he is highly analytical, and meticulous and careful in his comments and his written work. He is not doctrinaire, but rather open to differing views and will often change his mind in light of the views of a colleague.

Isn't that a fine statement of what you would want in a judge?

What about his approach to the law? They say he has views and he is going to let his views impact his decision-making process. What does Judge Becker, who served with him for 15 years and watched him and sat right beside him on that same court of appeals, say?

He scrupulously adheres to precedent. I have never seen him exhibit bias against any class of litigation or litigants... . His credo has always been fairness.

Judge Anthony Scirica, Chief Judge of that Third Circuit, has been on the bench for 20 years. This is what Judge Anthony Scirica said about him. Alito is a thoughtful, careful, principled judge who is guided by a deep and abiding respect for the rule of law.

He goes on to say Alito "is intellectually honest."

Let me insert here a parenthetical. I am telling you, those of us who tried a lot of cases before judges, want a judge who is honest intellectually and does not play games; does not twist facts, does not twist the law so he can justify a decision, and most people know which judges do that.

Judge Scirica said that Alito is intellectually honest, he is fair, he is ethical. He has the intellect, the integrity, the compassion and the judicial temperament that are the hallmarks of an outstanding judge.

He goes on to say:

His personal views, whatever they may be, do not jeopardize the independence of his legal reasoning or his capacity to approach each issue with an open mind.

All of us have some beliefs, unless we are a potted plant or already beneath the soil. But the question is, when you put a robe on somebody with a lifetime appointment, are they going to allow some personal belief they may have to not give the litigants before the Court a fair shake and allow their personal bias, their disagreement with the law, or their personal concern, to override what their duty is? Alito is absolutely not this kind of a judge.

So what else does he say about him? Judge Alito is modest and unassuming.

We had one of our Senators, remarkably, make this statement. It takes your breath away, really.

If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer.

Then he goes on to say if it is a prosecutor or defendant, "he will rule for the prosecutor."

That is not what these people who know him say. That is not what his record says and demonstrates. That is not the opinion of anybody who knows the man.

Judge Maryanne Trump Barry, who was appointed to the court in 1999 by President Clinton, had previously worked with Alito in the U.S. Attorney's Office in New Jersey in the 1970s. This is what Judge Maryanne Trump Barry said about him.

In the Attorney General's office, Samuel Alito set a standard of excellence that was contagious, his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on fair work, his fundamental docility [were clear].

She goes on to say: Judge Alito is a man of remarkable intellectual gifts. He is a man with impeccable legal credentials. He is a fair-minded man, a modest man, a humble man, and he reveres the rule of law.

This is not a man who is going to get on the Supreme Court and rule against every defendant. As a matter of fact, there is a large number of cases in which he ruled for the defendant, sometimes in dissent. He is certainly not going to rule for the employer if the employee has been wronged. Judge Ruggiero Aldisert, appointed by President Lyndon Johnson, a Senior Judge who has written a number of books, who campaigned for John F. Kennedy and ran for office as a Democrat, said this about Alito. He is a remarkable man, I must say.

Judicial independence is simply incompatible with personal loyalties and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Judge Leonard Garth has been on the bench since 1973. Judge Alito, right out of law school in 1976, clerked for Judge Garth. Judge Garth found him to be: fiercely intelligent, deeply motivated, and extremely capable.

While Alito was Judge Garth's law clerk, Judge Garth: developed... a deep respect for Sam's analytical ability, his legal acumen, his judgment, his institutional values, and, yes, even his sense of humor. . . .

He said Alito: is an intellectually gifted and morally principled jurist.

Some may not like it. They are going to think there is something wrong with that. Judge Garth said he was a "morally principled judge."

He is a sound jurist, always respectful of the institution and the precepts that led to decisions in cases under review.

He goes on to say: His fairness, his judicial demeanor and actions, and his commitment to the law, all of those qualities which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

Judge Garth did say he was very careful about the litigants. He knew some were suggesting that Judge Alito, who served for a time in the Reagan Department of Justice and had been unanimously confirmed by this Senate to the court of appeals, after being appointed by former President Bush—some were somehow saying that he might allow his views, whatever they are—and I have not seen any evidence that he has particularly strong political views—that he might allow them to influence him.

He said that:... his commitment to the law, which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

If you served on a bench a long time with a judge, you will know whether that is true. This is a Democratic individual.

Judge John Gibbons said this about it... He said that: He was not representing some prisoners in Guantanamo, his law firm was, and he was not happy with the way they had been treated. But he said:

I am confident, however, that as an able and legal scholar and a fair-minded Justice, he will give the arguments... careful and thoughtful consideration without any predisposition in favor of the position of the executive branch.

So this Judge Gibbons had been on the bench and is now retired from the bench. He is now in private practice. His law firm, for reasons of which I am not aware, was representing prisoners in Guantanamo. He thinks they are entitled to trials. I suppose. But he said absolutely he trusted Judge Alito to give him a fair trial.

He went on to add: Alito is a careful, thoughtful, intelligent, fair-minded jurist, whom to the Court's reputation as the necessary expositor of constitutional limits on the political branches of the government.

Judge Tim Lewis, African American, served on the Third Circuit Court of Appeals for 7 years before going into private practice focusing on civil rights and human rights law. Judge Tim Lewis joked about sitting on the leftwing of the panel. Judge Lewis claimed he is: extremely and unapologetically pro-choice and always has been.

He said that: Judge Alito never had an ideological bent or a result-oriented demeanor or approach.

He is: intellectually honest.

Then he went on to add this, he emphasized it: If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I can guarantee you that I would not be sitting here today. That is the first thing I want to make clear.

He said Alito "will not have any agenda-driven or result-oriented approach."
That was one of the more remarkable panels we have ever had. Judge Alito has served with Republicans and Democrats—experienced judges, extraordinarily wise, very interesting to listen to, and their respect for him was remarkable.

Indeed, the ABA panel member—an African American who represented the University of Michigan in the affirmative action admissions case which went before the Court—said that Judge Alito was “held in incredibly high regard” by the ABA.

I will share a few words from Judge Alito himself before I wrap up. In his testimony he was asked about cases that may come before him. I have to say nobody would dispute that in recent years he was more forthcoming than any nominee we have had in discussing openly how he would analyze a case, without going too far and pre-judging it in any way. He said these words, which I think reflect good judgment and wisdom of judgment.

By the way, we have a transcript, but all of these words. He spoke so beautifully. He looked right at us.

This is what he said:

Good judges develop certain habits in mind. One of those habits in mind is to have a deliberate reluctance until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read, or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague during the conference on the case when the judges privately discuss the case.

That is what we want in a judge. We want a judge who comes in with a philosophy and a demonstrated record of not rushing to judgment, not allowing any personal views he may have to influence him. He analyzes a case, but has a record that has won the respect of colleagues, liberals and conservatives, Republicans and Democrats, the bar, and his colleagues on the bench. He is an ordinary nor- man. I could not be more proud of him. He did a magnificent job in testifying. I never thought that anyone would testify to the level of John Roberts because he is such a skilled attorney and advocate. But this judge in his own way was every bit as good. He made us all proud, and President Bush should be very proud for submitting his nomination.

I am pleased to support him. I will be voting for him, and I hope my colleagues will do the same.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, 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.

RESOLUTION ON CAMBODIA

Mr. MCCONNELL. Mr. President, I commend the majority leader for offering an important resolution on Cambodia yesterday that expressed concern with the campaign by Prime Minister Hun Sen and the Government of Cambodia to undermine democracy and the rule of law in that country.

Scholars can argue where this campaign was initiated—after U.N.-sponsored elections in 1993 or before the coup d’etat in 1997—but no one disputes that it culminated early this year in the arrest of human rights leader Kem Sokha and other reformers in Phnom Penh on charges of defaming the Prime Minister.

As the resolution points out, no sector in Cambodia has been spared in this campaign.

Opposition leader Sam Rainsy was stripped of his parliamentary immunity last year and sentenced to 18 months in absentia for defaming the Prime Minister.

Radio journalist Mom Sonando was arrested for criminal defamation.

Even Rong Chhun, president of the Cambodian Independent Teachers Association, was similarly charged.

To be sure, other champions of freedom in Cambodia have suffered worse fates. Former parliamentarian Om Radsady and labor leader Chea Vichea were brutally murdered by unknown assailants. Justice remains similarly elusive for a grenade attack against a conference hosted by the Buddhist Liberal Democratic Party in 1995 and a more brutal attack against a peaceful rally organized by the Khmer National Party—headed by Sam Rainsy—in 1997.

The immediate and strong condemnation of the arrest of Sokha and his colleagues by international donors and multilateral organizations, including the United Nations and the World Bank, is certainly welcomed. U.S. Ambassador Joe Mussomeli and Deputy Chief of Mission Mark Storella deserve praise for standing by Sokha throughout the crisis. Assistant Secretary of State Christopher Hill’s trip to the region succeeded in freeing Sokha from prison, and I know he cringes at Hun Sen’s characterization of Sokha’s release as a “gift.” This may have been simply a poor choice of words, but it serves to affirm the world’s perception of Hun Sen as a Southeast Asian dictator.

The news that Hun Sen will drop charges against Sokha and other civil society reformers is not a cause for celebration. Historically, this is a direct offender, and we can expect continued harassment and intimidation against those championing freedom and the rule of law.

The international community must now turn its attention to the plight of Sam Rainsy, Cheam Channy and other political prisoners. It is time for His Majesty King Sihanom to derail Hun Sen’s campaign by immediately par- doning Rainsy, Channy, and all other political prisoners. Only with democracy does a chance to get back on track in Cambodia.

The challenge for Cambodia’s many donors is straightforward: hold Hun Sen and his government accountable for their actions. Congress may require some soul searching by U.S. allies, particularly France, Germany, and Japan, the status quo in Cambodia serves only the interests of Hun Sen and the ruling Cambodian People’s Party. With a donor’s conference approach- ing in March 2006, the international community must demand a return on the significant assistance provided to Cambodia.

As over $2 billion has been invested in the democratic and political development of that country since the 1991 Paris Peace Accords, it is not too much for the international community to demand that the Prime Minister and his government conduct themselves in a manner that respects the constitution’s rights and dignity of the people of Cambodia.

LISTENING TO TEENS ABOUT GUN VIOLENCE

Mr. LEVIN. Mr. President, the 2005 Teen Gun Survey conducted by the Ulrich Children’s Advantage Network, also known as UCAN, produced some very interesting and troubling results. UCAN conducts this survey each year as a way of measuring teens’ attitudes about gun violence. For 2005, the sample included nearly 1,000 teenagers from around the country who responded to a variety of questions about their exposure to gun violence and its impact on their lives.

The UCAN survey makes clear that far too many teens are exposed to gun violence. According to the survey, nearly half of the respondents personally know someone who has been shot, and more than a third know another teenager who has threatened to kill someone with a gun. Almost one out of every five teenagers who responded said they heard gunshots in their neighborhood at least once a month, and 38 percent believe they could get a handgun if they wanted to. Disturbingly, 39 percent of the respondents fear they will be shot someday.

The results of the survey also raise significant concerns about the perceived safety of our schools. More than a third of respondents said that they are afraid gun violence might take place in their school, and 21 percent feel that they are safer away from school than when they are in school. These concerns should be taken seriously. Many teens are already exposed to gun violence, which may turn to violence later in life. A study completed last year by a University of Michigan researcher
found that adolescents who were exposed to gun violence were more than twice as likely to carry out violent acts within the following 2 years. Fifty-six percent of the teens surveyed by UCAN said that they believe violent teenagers learn their behavior from their parents. We must do more to break this cycle.

Unfortunately, most of those who responded to the UCAN survey believe that the Government doesn’t understand the realities of gun violence for teenagers and would not care if they were a victim of gun violence. In addition, 41 percent of the teens surveyed said they would benefit from more violence prevention programs and resources.

We should listen to what teenagers around the country are saying about guns. Their responses to the UCAN survey show that Congress is not doing enough to protect young people from the threat of gun violence. I urge the Senate Armed Services Committee to help ensure that teenagers do not have to fear guns in their schools and communities by passing commonsense gun safety legislation and by supporting violence reduction programs.

HONORING OUR ARMED FORCES

MAJOR STUART ANDERSON

Mr. GRASSLEY. Mr. President, I speak today with deep sorrow, for we have lost a truly brave American and soldier. MAJ Stuart Anderson died on January 7, 2006, when the Blackhawk helicopter he was in crashed just outside Tal Afar in northern Iraq. His helicopter was part of a two helicopter team providing support for the 101st Airborne Division. Major Anderson was assigned to the 3rd Corps Support Command, Army National Guard. My condolences go out to his wife, Tori; his two daughters, Keely 15, and Kirsten 10; his parents, Claromonte and Nance Anderson; and many other family and friends.

Major Anderson grew up in Hoffman, MN, and then graduated from Benson High School in Benson, MN. He attended North Dakota State University. Maj. Anderson had been living in Dubuque, IA, for the past 5 years and was scheduled to return home this fall. He was a supply and service support representative for his Des Moines based unit; he lived in Europe in some of Iraq’s most dangerous areas had the proper supplies.

Major Anderson joined the Army Reserve in 1981, became an officer in 1989, and was serving in his second tour of duty in Iraq. Many of Major Anderson’s colleagues define him as a trusted and humble leader. LTC Thomas Nielsen wrote that “Major Anderson was one of the finest officers I have known in my 28-year career. Major Anderson’s father said that “It was very proud of being a military man. He loved it.” He was known to sprinkle humor with his training and with his annual Christmas cards. His humor will be missed by all who knew him. I ask my colleagues in the Senate and every American to remember the sacrifice that Major Anderson gave for our freedom.

UNI-CAPITOL WASHINGTON INTERNSHIP PROGRAM

Ms. STABENOW. Mr. President, each year congressional offices host American college students as interns, to help our future leaders learn about public service and see how their Government works firsthand.

Today, I would like to let you know about a program that gives Australian students the opportunity to experience our democratic and legislative process. It’s called the Uni-Capitol Washington Internship Program.

My office is taking part in it right now, along with others in Congress. Twelve of Australia’s brightest students are here, pursuing knowledge and understanding. In so doing, we are all finding new reasons to like an old friend.

The Uni-Capitol was born of the efforts of Eric Federing. Eric worked for more than a decade in the House and then Senate as an adviser. While doing this job, he lectured across Australia on American Government, politics, and news media. In an effort to forge ties across the Pacific and for the betterment of both societies, Eric put together this idea in Washington in 1999.

The selection process for the students is competitive and intellectually rigorous, ensuring the highest quality applicant. All participating students are comprehensively matched with a congressional office and corresponding position. They come from a wide range of academic disciplines and bring as much knowledge and understanding to our offices as they take away.

For the past 7 years, Mr. Federing’s students have approached this opportunity with vim and vigor. I am pleased to have Douglas Ferguson from the University of Canberra working in my office this year. I would also like to submit into the RECORD the names of other Australian interns participating in this year’s program:

Andrew Brookes, from Melbourne University, is in Senator CHRISTOPHER DODD’s office. Ryan Conroy, from Deakin University, is in Representative ALICE HASTINGS’s office. Jessica Gurevich, from Melbourne University, is in Representative MIKE CASTLE’s office. Scott Ivey, from the University of Western Australia, is in Representative LOUIS SLAUGHTER’s office. Sarah Dillon, from Deakin University, is in Representative ALCKE HASTINGS’s office. Jessica Gurevich, from Melbourne University, is in Representative MIKE CASTLE’s office. Scott Ivey, from the University of Western Australia, is in Representative LORET-TA SANCHEZ’s office. Saul Lazar, from Deakin University, is in Senator CHUCK HAGEL’s office. Albino Mico, from Macquarie University, is in Representative JERRY HOLLANDER’s office. Linda Nelson, from the University of Wollongong, is with the House Science Committee’s majority staff. Marianna O’Gorman, from the University of Queensland, is in Delegate ENI FALEOMAVAEGA’s office. Rachel Thompson, from the University of Western Australia, is with the Joint Economic Committee’s minority staff.

Australia continues to be one of America’s strongest allies. Our greatest gift is the friendship born of shared values. I thank the Uni-Capitol Program and these Australian interns for their hard work and I wish the program continued success.

ATTACK ON CHASIDIC SYNAGOGUE

IN MOSCOW

Mr. BROWNBACK. Mr. President, on January 11 of this year, at the Moscow Headquarters and Synagogue of Agudas Chasidie Chabad of the Former Soviet Union, a so-called “skinhead” attacked two Runners with a knife and wounded eight persons. I know that all Members of this body deplore this terrible crime and send our prayers and best wishes to all those injured during the assault.

The victims of this attack include Rabbi Isaac Kogan, who testified before an April 6 Helsinki Commission hearing I convened last year concerning Chabad’s ongoing efforts to retrieve the Schneerson Collection of sacred Jewish texts from Moscow. The Rabbi is a noted refusenik who was appointed by the Lubavitcher Rebbe, Rabbi Menachem M. Schneerson, to be part of Agudas Chasidie Chabad of the Former Soviet Union. In addition to nurturing Judaism throughout the former USSR, that organization has fought tirelessly to win the return of the Schneerson Collection to its rightful owners in the United States. The entire U.S. Senate has twice petitioned the Russian leadership to release those holy texts.

As chairman of the Helsinki Commission, I have followed closely the issue of anti-Semitism and extremism around the world. Unfortunately, the brutal attack at the Chasidic Chabad synagogue fits what appears to be a rising trend of attacks on ethical and religious minorities in Russia.

Let me present one disturbing statistic. According to an article in the Moscow News last year, the Moscow Human Rights Center reports that Russia has up to 50,000 skinheads with active groups in 85 cities. This, as opposed to an estimated 70,000 skinhead activists throughout the rest of the world.

To make matters worse, there are indications that the police themselves are sometimes involved in racist attacks. Earlier this month, a Russian newspaper carried a story about the Moscow police assault of a passerby who happened to be from the North Caucasus. According to persons from the North Caucasus, such beatings are a common occurrence.

What was uncommon was the fact that the gentleman in question is a colonel in the Russian Army and an internationally known cosmonaut.
Let me be clear. Anti-Semitism, bigotry, extremist attacks and police brutality are not found only in Russia. Our own country has not been immune to these challenges to rule of law and human dignity.

Nevertheless, as Russia accedes to the chairmanship of the G-8 and the Council of Europe, there will be increased scrutiny of its commitment to internationally recognized standards of human rights practices. I urge the authorities in Russia to do everything in their power to combat ethnic and religious intolerance and safeguard the religious freedom and physical safety of all its citizens.

TRIBUTE TO MATTHEW HOLT

Mr. LEAHY. Mr. President, I rise today to speak about Matt Holt, who has served the Senate with distinction for 25 years. A clerk, an aide and a retirement counselor and deputy for employee benefits and financial services in the Senate Disbursing Office, Matt Holt has committed his talents and energy to serving Senators and staff for over 25 years.

His career here in the Senate has been exemplary. He is not only hard-working and dedicated but also friendly, helpful, and patient. He always takes the time to fully answer our questions, and he has become a tremendous resource for the Senate Disbursing Office.

Matt is truly an asset to the Senate, and all of us here in the Senate community are grateful for his outstanding dedication and hard work. An avid outdoorsman, Matt is looking forward to spending time fishing, camping, and hiking with his wife Jeanne and his children Jessica and Ben. He leaves with our support and best wishes for a happy and relaxing retirement. He certainly has earned it.

BOY SCOUT TROOP 89

Mr. OBAMA. Mr. President, I rise today to say a few words about a special group of constituents. This April marks the 50th anniversary of Boy Scout Troop 89 of Downers Grove, IL. Teenagers move a mile a minute. Something that is “cool” in the morning may be forgotten by the afternoon. But Scouting is one institution that never becomes old-fashioned, and those who participate in Scouting gain strength, confidence, and best wishes.

Boy Scouts learn about and enjoy the outdoors, build friendships for life, and strengthen values such as teamwork, honesty, and respect for others. Downers Grove is a quiet residential village west of Chicago and a good place to instill these lessons. Some troops last longer than others, but Troop 89 has served the boys of Downers Grove since I was born. That is a singular achievement, and I am pleased to have this opportunity to recognize it. To the Boy Scouts, parents, and friends of Troop 89, my heartfelt congratulations on your 50th anniversary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-5335. A communication from the Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, a report of a rule entitled “Use of Diagnostic Code Numbers; Schedule of Ratings—Neurological Conditions and Convulsions” (RIN28900-AM11) received on January 16, 2006; to the Committee on Veterans’ Affairs.

EC-5336. A communication from the Director, Regulations Management, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, a report of a rule entitled “Elimination of Copayment for Smoking Cessation Counseling” (RIN29000-AM11) received on January 16, 2006; to the Committee on Veterans’ Affairs.

EC-5337. A communication from the Director, Regulations Management, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, a report of a rule entitled “Traumatic Injury Protection Rider to Servicemembers’ Group Life Insurance” (RIN28900-AM36) received on January 16, 2006; to the Committee on Veterans’ Affairs.

EC-5338. A communication from the Acting Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the Department’s FY 2005 Report of Violation of Administrative Control of Appropriation Regulations Case 04-01; to the Committee on Appropriations.

EC-5339. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a report of a violation of the Antideficiency Act by the Department of the Army, case number 02-56; to the Committee on Appropriations.

EC-5340. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled “Health, United States, 2005”; to the Committee on Health, Education, Labor, and Pensions.


EC-5342. A communication from the Assistant Secretary for Administration and Management, transmitting, pursuant to law, the Department’s Fiscal Year 2005 Report on Competitive Sourcing; to the Committee on Health, Education, Labor, and Pensions.

EC-5343. A communication from the Assistant Secretary for Administration and Management, transmitting, pursuant to law, the Department’s Fiscal Year 2005 Competitive Sourcing Report; to the Committee on Health, Education, Labor, and Pensions.

EC-5344. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled “Annual Funding Notice for Multiemployer Defined Benefit Pension Plans” (RIN121000-AM21) received on January 16, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC-5345. A communication from the Director, Regulations Management, Office of Disbursement, Department of Justice, transmitting, pursuant to law, the report of a rule entitled “Implementation of the Anabolic Steroid Control Act of 2004” (RIN11173-AAA9) received on January 16, 2006; to the Committee on the Judiciary.

EC-5346. A communication from the Acting Deputy Assistant Secretary, Office of Diversion Control, Department of Justice, transmitting, pursuant to law, the report of a rule entitled “Use of Diagnostic Code Numbers; Schedule of Ratings—Neurological Conditions and Convulsions” (RIN29000-AM11) received on January 16, 2006; to the Committee on Veterans’ Affairs.

EC-5347. A communication from the Clerk of Court, United States Court of Federal Claims, transmitting, pursuant to law, the annual report of the United States Court of Federal Claims for the year ended September 30, 2005, and planned competitions for fiscal year 2006; to the Committee on Appropriations.

EC-5348. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled “Annual Energy Outlook 2006”; to the Committee on Energy and Natural Resources.

EC-5349. A communication from the Director, Strategic Human Resources Policy Office, Office of Personnel Management, transmitting, pursuant to law, a report of a rule entitled “Federal Employees Health Benefits” (RIN32900-AT78) received on January 16, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC-5350. A communication from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting, pursuant to law, a report of a rule entitled “Federal Employees Health Benefits” (RIN32900-AT78) received on January 16, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC-5351. A communication from the General Counsel, Office of Government Ethics, transmitting, pursuant to law, a report relative to conflict of interest laws relating to executive branch employment; to the Committee on Homeland Security and Governmental Affairs.

EC-5352. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Administration’s Performance and Accountability Report for 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-5353. A communication from the Assistant Secretary for Disability Management, Department of Homeland Security, transmitting, pursuant to law, a report entitled “Report on the Threat of Terrorism to U.S. Ports and Vessels”; to the Committee on Homeland Security and Governmental Affairs.

EC-5354. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department of Energy’s Fiscal Year 2006 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC-5355. A communication from the General Counsel, Government Accountability Office, transmitting, pursuant to law, a report relative to bid protest decided in fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-5356. A communication from the Director, National Gallery of Art, transmitting, pursuant to law, a report relative to competitive sourcing for fiscal years 2003, 2004, and 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-5357. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, a report relative to competitive sourcing for fiscal years 2003,
and second times by unanimous consent, and referred as indicated:

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. HARKIN, Mr. WARRIORS, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. GRAHAM, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Mr. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. ALLEN, Mr. AKAKA, Mr. TALENT, Mrs. COLLINS, Mr. CHAMBLISS, Ms. STABENOW, Mr. CORNYN, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. STEVENS, Mr. BURBANK, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2397. A bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Science Foundation and to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. GRAHAM, Ms. CANTWELL, Mr. HUTCHISON, Mr. MENENDEZ, Mr. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. AKAKA, Mr. TALENT, Mr. CHAMBLISS, Mr. CORNYN, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. INOUYE, Mr. STEVENS, Mr. BURBANK, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PYOR, Mr. ENZI, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2186. A bill to ensure the United States successfully competes in the 21st century global economy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. VICCI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. GRAHAM, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Mr. THOMAS, Mr. KOHL, Mr. SMITH, Mr. KERRY, Mr. VOINOVICH, Mr. NELSON of Florida, Mr. LEAHY, Mr. AKAKA, Mr. TALENT, Mr. CHAMBLISS, Mrs. COLLINS, Mr. CORNYN, Ms. STABENOW, Mr. COLEMAN, Mr. DAYTON, Mr. MARTINEZ, Mr. SALAZAR, Mr. INOUYE, Mr. STEVENS, Mr. CLINTON, Mr. KOHL, Mr. MIKULSKI, Mr. HAGEL, Ms. MURKOWSKI, Mr. PYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2186. A bill to ensure the United States successfully competes in the 21st century global economy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LUGAR:

S. 2200. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes; to the Committee on Foreign Relations.

By Mr. OBAMA (for himself, Mr. INOUYE, Mrs. MURRAY, and Mr. LAUGHLIN):

S. 2201. A bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY (for himself, Mr. KERRY, and Mr. FIEngold):

S. 2202. A bill to reform the ethics reform of the Federal judiciary and to instill greater public confidence in the Federal courts; to the Committee on the Judiciary.

By Mrs. LANDRIEU and Mr. NELSON of Florida:

S. 2203. A bill to amend title XVIII of the Social Security Act to eliminate cost-sharing under part D for certain full-benefit dual eligible individuals; to the Committee on Finance.

By Mr. ENSIGN (for himself and Mr. REID):

S. 2204. A bill to validate certain conveyances made by the Union Pacific Railroad Company of lands located in Reno, Nevada, that were originally conveyed by the United States to facilitate construction of transcontinental railroads, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THUNE:

S. 2205. A bill to direct the Secretary of the Interior to convey certain parcels of land acquired by the Army and Air Force in the vicinity of the former Fort Meade, Maryland, for the placement of certain military facilities; to the Committee on Commerce, Science, and Transportation.

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WYDEN:

S. Res. 354. A resolution honoring the valuable contributions of Catholic schools in the United States; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NELSON of Nebraska (for himself, Mr. GRAHAM, Mr. ALLEN, Mr. TALENT, Mrs. DOLE, Mr. DEWINE, Ms. MURKOWSKI, Mr. SNOWE, Mr. THUNE, Mr. ISAKSON, Ms. LANDRIEU, Mr. Nelson of Florida, Mr. HARKIN, Mr. DORGAN, Mr. LUTENBERGER, Mr. BINGAMAN, Mr. AKAKA, Mr. BAUCUS, Mrs. CLINTON, Mr. KOHL, Mr. MIKULSKI, Mr. BAYH, Ms. CANTWELL, Mr. PYOR, Mr. SALAZAR, Mr. LIEBERMAN, Mr. BIDEN, Mr. COCHRAN, Mr. FIEngold, Mr. MENENDEZ, Mr. JOHNSON, and Mr. DURbin):

S. Res. 355. A resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure; to the Committee on Armed Services.

ADDITIONAL COSPONSORS

S. 409

At the request of Mr. COLEMAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 409, a bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes.

S. 787

At the request of Mr. SCHUMER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 787, a bill to amend the Internal Revenue Code of 1986 to equalize the exclusion from gross income of parking and transportation fringe benefits and to provide for a common cost-of-living adjustment, and for other purposes.

S. 843

At the request of Mr. SANTORUM, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 843, a bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education.

S. 1085

At the request of Mr. INHOFE, the names of the Senator from Oregon (Mr. WREN) and the Senator from Utah (Mr. HARKIN) were added as cosponsors of S. 1085, a bill to authorize the presentation of commemorative medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th century in recognition of the service of those Native Americans to the United States.

S. 1604

At the request of Mr. CRAIG, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1604, a bill to restore to the judiciary the power to decide all trademark and trade name cases arising under the laws and treaties of the United States, and for other purposes.

S. 1811

At the request of Mr. CORNYN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1774, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension.

S. 1811

At the request of Mr. NELSON of Florida, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 1811, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enrolled for the Medicare prescription drug benefit during 2006.

S. 1923

At the request of Ms. SNOWE, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1923, a bill to address small business investment companies licensed to issue participating debentures, and for other purposes.
At the request of Mr. BAUCUS, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1963, a bill to make miscellaneous improvements to trade adjustment assistance.

At the request of Mr. COLEMAN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 2061, a bill to improve the safety of all-terrain vehicles in the United States, and for other purposes.

At the request of Mr. GRASSLEY, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2131, a bill to amend title 9, United States Code, to provide for greater fairness in the arbitration process relating to livestock and poultry contracts.

At the request of Mr. OBAMA, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

At the request of Ms. LANDRIEU, the name of the Senator from Louisiana (Mr. Vitter) was added as a cosponsor of S. 2172, a bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes.

At the request of Mr. OBAMA, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

At the request of Mr. HAGEL, the names of the Senator from Nevada (Mr. MENENDEZ) were added as cosponsors of S. 2185, a bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part.

At the request of Mrs. CLINTON, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2196, a bill to authorize the Secretary of Energy to establish the position of Assistant Secretary for Advanced Energy Research, Technology Development, and Deployment to implement an innovative energy research, technology development, and deployment program.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself, Mr. BINGMAN, Mr. ALExANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. HATCH, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. CRAIG, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Ms. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. ALLEN, Mr. AKAKA, Mr. TALENT, Mrs. CLINTON, Mr. CHAMBILSS, Ms. STABENOW, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2197. A bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. BINGMAN, Mr. ALExANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. CRAIG, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Ms. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. ALLEN, Mr. AKAKA, Mr. TALENT, Mr. CHAMBILSS, Mr. CORNYN, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Mr. ENZI, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2198. A bill to ensure the United States successfully competes in the 21st century global economy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DOMENICI (for himself, Mr. BINGMAN, Mr. ALExANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. HATCH, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. CRAIG, Mr. HATCH, Mrs. HUTCHISON, Ms. CANTWELL, Ms. DEWINE, Mr. MENENDEZ, Mr. THOMAS, Mr. KOHL, Mr. SMITH, Mr. KERRY, Mr. VOINOVICH, Mr. NELSON of Florida, Mr. ALLEN, Mr. LEAHY, Mr. TALENT, Mr. AKAKA, Mr. CHAMBILSS, Mrs. CLINTON, Mr. CORNYN, Mr. DAYTON, Ms. AKAKA, Mr. THOMAS, Mr. MARTINEZ, Mr. SALAZAR, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2199. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education; to the Committee on Finance.

Mr. DOMENICI. Mr. President, I rise today to introduce a legislative package which we refer to as the “PACE- Education Act of 2006” or the “PACE” Act. This legislation ensures that the United States continues to set the pace in science, and in the development of new technologies.

I know my colleagues Senator BINGMAN, Senator ALExANDER, and Senator MIKULSKI share my conviction that this legislation addresses one of the most pressing challenges before us today. There are troubling signs that the United States is less competitive in scientific and high-technology fields. Today, the United States is a net importer of high technology products. The U.S. share of global high-technology exports has fallen over the last two decades from 30 percent to only 17 percent.

The PACE legislation closely follows the recommendations made in a recent National Academy of Sciences report entitled “Rising Above the Gathering Storm.” The metaphorical storm is the challenge to our global competitiveness in science and technology. I want to congratulate Norm Augustine, who chaired the National Academy committee, and the members of his committee for producing such a comprehensive, ground-breaking report on this important issue.

The Augustine report makes 20 recommendations for U.S. schools, universities, research and economic policy. Our legislation doubles authorization of the recommendations. For example, our legislation doubles authorizations for basic research in the physical sciences by over the next 7 years. It also requires that at least 8 percent of Federal research budgets are allocated to high-risk, potentially high-payoff research. It will strengthen the skills of thousands of math and science teachers by establishing training and education programs at summer institutes hosted at the National Laboratories.

We need to take U.S. competitiveness seriously. We need to take action to support our standard of living, and ensure we continue to grow and prosper. If we do not, we can expect other nations to rival our global competitiveness—and one day to surpass us.

I ask unanimous consent that the text of all three bills in the following order, the PACE-Energy Act, the PACE-Education Act, and the PACE-Finance Act, be printed in the RECORD.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 2. MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION AT THE DEPARTMENT OF ENERGY.

(a) SCIENCE, ENGINEERING, AND EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended—

(1) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively;

(2) by inserting after subsection (a) the following:—

"(b) ORGANIZATION OF MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION PROGRAMS.—

"(1) DIRECTOR OF MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION.—The Secretary, acting through the Under Secretary for Science, shall appoint a Director of Mathematics, Science, and Engineering Education (referred to in this subsection as the 'Director') with the principal responsibility for administering mathematics, science, and engineering education programs of the Department.

"(2) QUALIFICATIONS.—The Director shall be an individual, who by reason of professional background and experience, is especially qualified to advise the Under Secretary on all matters pertaining to mathematics, science, and engineering education at the Department.

"(3) DUTIES.—The Director shall—

(A) oversee all mathematics, science, and engineering education programs of the Department;

(B) represent the Department as the principal interagency liaison for all mathematics, science, and engineering education programs, unless otherwise represented by the Secretary or the Under Secretary;

(C) prepare the annual budget and advise the Under Secretary on all budgetary issues for mathematics, science, and engineering education programs of the Department; and

(D) perform other such matters related to mathematics, science, and engineering education as required by the Secretary or the Under Secretary.

"(4) STAFF AND OTHER RESOURCES.—The Secretary shall assign to the Director such personal and other resources as the Secretary considers necessary to permit the Director to carry out the duties of the Director.

"(5) ASSESSMENT.—The Secretary shall offer to enter into a contract with the National Academy of Sciences under which the National Academy, not later than 5 years after, and not later than 10 years after, the date of enactment of this paragraph, shall assess the performance of the mathematics, science, and engineering education programs of the Department.

"(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(b) DEFINITION.—Section 3168 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381d) is amended by inserting at the end the following:

"(5) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801)."

(c) MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION PROGRAMS.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by inserting after section 3162 the following:

"Subpart A—Science Education Enhancement;"

(2) in section 3169, by striking "part" and inserting "subsection".

(3) by adding at the end the following:

"Subpart B—Mathematics, Science, and Engineering Education Programs"

(d) MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION FUND.

SEC. 2. MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION FUND.

The Secretary, acting through the Director, shall establish a Mathematics, Science, and Engineering Education Fund, using not less than 15 percent of the amount made available to National Laboratories, in which the staff of National Laboratories, during which the staff of each such laboratory shall perform such services related to education as the Secretary determines to be appropriate.

SEC. 2. MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION FUND.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

SEC. 2. MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION FUND.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.
SEC. 3. DEPARTMENT OF ENERGY EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the Department of Energy for early-career scientists and engineers for purposes of pursuing and supporting research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term ‘‘eligible early-career researcher’’ means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, engineering, mathematicians, or computer sciences at the Department of Energy, particularly the National Laboratories, or other federally-funded research and development centers, and institutions of higher education; and

(2) is employed by, or associated with, a Department, particularly the National Laboratories, or other federally-funded research and development centers, and institutions of higher education.

(c) FUNDING.—Funding of the appointment of the designated scientist for the second 3-year allotment shall be determined based on the review conducted under paragraph (1).

SEC. 4. ADVANCED RESEARCH PROJECTS AUTHORITY-ENERGY.

(a) DEFINITIONS.—In this section:

(1) ARPA-E.—The term ‘‘ARPA-E’’ means the Advanced Research Projects Authority-Energy established under subsection (b).

(2) FUND.—The term ‘‘Fund’’ means the Acceleration Fund for Research and Development of Energy Technologies established under subsection (c).

(3) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Energy.

(4) UNDER SECRETARY.—The term ‘‘Under Secretary’’ means the position of Under Secretary for Science established under section 202(b) of the Department of Energy Organization Act (42 U.S.C. 7132(b)).

(b) ARPA-E.

(1) ESTABLISHMENT.—There is established the Advanced Research Projects Authority-Energy.

(2) DIRECTOR.—ARPA-E shall be headed by a Director, who shall be appointed by the Secretary and report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall—

(A) develop and establish the goals and objectives for the Program;

(B) develop and establish the criteria for selecting grant proposals;

(C) develop and establish the criteria for selecting and awarding grants;

(D) develop and establish the criteria for evaluating and determining the effectiveness of the Program and the recipients of grants under the Program;

(E) develop and establish the criteria for assessing the impact of the Program and the recipients of grants under the Program;

(F) develop and establish the criteria for distributing funds for the Program; and

(G) perform such other duties as the Secretary deems necessary to carry out this section.

(c) FUND.

(1) ESTABLISHMENT.—There is established the ARPA-E Fund.

(2) FUNDING.—The Secretary shall transfer to the ARPA-E Fund such amounts as the Secretary determines are necessary to carry out the purposes of the program.

(3) ADMINISTRATIVE EXPENSES.—An amount not exceeding 5 percent of the amounts in the Fund shall be available for each fiscal year to pay the administrative expenses necessary to carry out this section.

(4) INVESTMENT OF AMOUNTS.—There are authorized to be appropriated to the Fund—

(A) $25,000,000 for fiscal year 2009; and

(B) $25,000,000 for fiscal year 2010.

(d) PEER REVIEW.—The Secretary shall give special consideration to eligible early-career researchers who have taken a significant career break or have been employed in non-academic settings, or allowed alternative career paths such as work in industry, teaching, other leave of absence.

(e) APPOINTMENT.—In general.—The Secretary shall appoint such early-career researchers to senior scientific positions as may be necessary to carry out this section.

(f) DURATION.—An appointment under this section shall be for 5 years, except that the Secretary may renew the appointment for an additional term of 5 years.

(g) PERSONNEL.—(1) IN GENERAL.—In hiring personnel for ARPA-E, the Secretary shall ensure that the activities of ARPA-E are coordinated with other appropriate research agencies and the work of other researchers in the Department, particularly the National Laboratories, or other federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Secretary of Energy an application at such time and in such manner as the Secretary shall by rule prescribe.

(h) FUNDING.—Funding of the appointment of the designated scientist for the second 3-year allotment shall be determined based on the review conducted under paragraph (1).
Subsection A—Education

Sec. 111. Definitions.

Subtitle B—National Science Foundation Early-Career Research Grants

Sec. 191. National Science Foundation early-career research grants.

TITLE II—SOWING THE SEEDS THROUGH SCIENCE AND ENGINEERING RESEARCH

Subtitle C—Communications Matters

Sec. 231. Sense of Congress on policies to accelerate deployment of access to broadband Internet.

Subtitle D—Science Parks

Sec. 241. Development of science parks.

Subsection E—Authorization of Appropriations for the National Science Foundation for Research and Related Activities

Sec. 251. Authorization of appropriations for the National Science Foundation for research and related activities.

TITLE III—ENSURING THE BEST AND BRIGHTEST REMAIN IN THE UNITED STATES

Subsection A—Visas for Doctorate Students in Mathematics, Engineering, Technology, or the Physical Sciences

Sec. 311. Findings.

Sec. 312. Senate the Senate.

Sec. 313. Visas for doctorate students in mathematics, engineering, technology, or the physical sciences.

Sec. 314. Aliens not subject to numerical limitations on employment-based immigrants.

Subsection B—Patent Reform


TITLE IV—REFORMING DEEMED EXPORTS

Sec. 401. Sense of Senate on exemption of certain uses of technology from treatment as exports.

TITLE V—STRENGTHENING BASIC RESEARCH AT THE DEPARTMENT OF DEFENSE

Sec. 501. Department of Defense early-career research grants.

Sec. 502. Authorization of appropriations for the Department of Defense for basic research.

TITLE I—10,000 TEACHERS, 10,000,000 MINDS—K-12 MATHEMATICS AND SCIENCE EDUCATION

Subtitle A—Education

Subsection B—National Science Foundation Early-Career Research Grants

Sec. 191. National Science Foundation early-career research grants.

TITLE II—SOWING THE SEEDS THROUGH SCIENCE AND ENGINEERING RESEARCH

Subtitle C—Communications Matters

Sec. 231. Sense of Congress on policies to accelerate deployment of access to broadband Internet.

Subtitle D—Science Parks

Sec. 241. Development of science parks.

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Subsection B—National Science Foundation Early-Career Research Grants

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TITLE II—SOWING THE SEEDS THROUGH SCIENCE AND ENGINEERING RESEARCH

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Sec. 231. Sense of Congress on policies to accelerate deployment of access to broadband Internet.

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Subsection B—National Science Foundation Early-Career Research Grants

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Subtitle C—Communications Matters

Sec. 231. Sense of Congress on policies to accelerate deployment of access to broadband Internet.

Subtitle D—Science Parks

Sec. 241. Development of science parks.
... educational agencies in the geographic areas served by the eligible recipient are provided information about the activities carried out with grant funds under this section; and
(10) describe how the eligible recipient will encourage applications to the program from underrepresented groups, including women and minority groups.

The Secretary may give priority consideration to applications that demonstrate that the eligible recipient shall—
(1) consult with local educational agencies in developing and implementing master’s degree programs;
(2) use online technology to allow for flexibility in the pace at which candidates complete the master’s degree programs; and
(3) develop innovative efforts aimed at reducing the shortage of master’s degree mathematics and science teachers in low-income urban or rural areas.

(Identified ACTIVITIES.—An eligible recipient shall use the grant funds received under this section to develop part-time, 3-year master’s degree programs in mathematics and science education for teachers in order to enhance the content knowledge and teaching skills of teachers.

(b) DEFINITION OF ELIGIBLE RECIPIENT.—In this section, the term “eligible recipient” means a mathematics, science, or engineering department of an institution of higher education.

(c) GRANTS AUTHORIZED.—(1) ANTS TO ELIGIBLE RECIPIENTS.—From the amounts authorized under subsection (b), the Secretary is authorized to award grants of not more than $1,000,000, on a competitive basis, to eligible recipients to enable the eligible recipients to carry out the authorized activities described in subsection (f).

(2) QUALIFICATION.—In order to qualify for a grant under this section, an eligible recipient shall—
(1) meet the requirements of this section;
(2) include a description of how the eligible recipient intends to use the grant funds provided for the eligible recipient to carry out the activities assisted under this section, including financial support, faculty participation, time commitments, and continuation of the activities throughout the program period;
(3) contain such information and assurances as the Secretary may require;
(4) describe how the eligible recipient will prepare teachers to become more effective mathematics or science teachers;
(5) describe how the eligible recipient will coordinate with a teacher preparation program, and how the activities of the eligible recipient will be consistent with State, local, and other education reform activities that promote student achievement;
(6) describe the resources available to the eligible recipient, the intended use of the grant funds, and the commitment of resources and personnel to the activities assisted under this section, including financial support, faculty participation, time commitments, and continuation of the activities throughout the program period;
(7) provide an evaluation plan pursuant to subsection (g);
(8) describe how the eligible recipient will align the master’s degree program with challenging student academic achievement standards, and challenging academic content standards, established by the State in which the recipient’s degree program is located;
(9) describe the activities the eligible recipient will undertake to ensure that local
cooperation with the Secretary to determine whether an individual who receives a scholarship award under this section is employed as a full-time...
mathematics, science, or elementary school teacher in accordance with paragraphs (1), (3), and (4). (3) FAILURE TO COMPLY.—If an individual who is selected for a fellowship award under this section fails to comply with the agreement entered into pursuant to paragraph (1), the Director shall take 1 or more of the following actions: (A) Require the individual to repay all or the applicable portion of the total scholarship amount awarded to the individual under this section; (B) Impose a fine or penalty in an amount to be determined by the Director. (4) REGULATIONS.—The Director shall promulgate regulations for purposes of determining the terms of repayment and the criteria to be considered in granting a waiver for the service requirements. Such criteria shall include whether compliance with the service requirements is inequitable and represents undue hardship. (c) COORDINATION WITH THE SECRETARY OF DEFENSE.—The Director shall coordinate with the Secretary of Defense to ensure members of the Armed Forces are aware of the eligibility in mathematics under this section, particularly members of the Armed Forces who have training in engineering. (d) FELLOWSHIPS.—An individual shall be eligible for a fellowship under section 141(b)(1) if the individual— (1) has received a baccalaureate degree in mathematics, science, or engineering, and concurred in teaching; and (2) has received a scholarship award under this section; and (3) meets the requirements of subsection (b)(1). (e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section— (1) $5,000,000 for fiscal year 2008; (2) $15,000,000 for fiscal year 2009; (3) $30,000,000 for fiscal year 2010; (4) $35,000,000 for fiscal year 2011; (5) $40,000,000 for fiscal year 2012; and (6) $45,000,000 for fiscal year 2013. Subchapter B—National Science Foundation Fellowships for Mathematics and Science Teachers SEC. 141. NATIONAL SCIENCE FOUNDATION FELLOWSHIPS FOR MATHEMATICS AND SCIENCE TEACHERS. (a) FELLOWSHIP AUTHORIZED.—The Director of the National Science Foundation (hereinafter in this subsection referred to in this section as the “Director”) is authorized to award fellowships to individuals, as described in subsection (b), a portion of which shall be used for continuing education and professional development activities. (b) FELLOWSHIP AWARDS.—The Director shall award the following fellowships: (1) The Director shall award $10,000 annually for 4 academic years to an individual who meets the following criteria: (A) The individual has received a baccalaureate degree in mathematics, science, or engineering, and concurred in teaching. (B) The individual received a scholarship award under section 132. (C) The individual is employed as a full-time mathematics, science, or elementary school teacher in a public elementary school or secondary school— (i) in which not less than 40 percent of the children enrolled in the school are from low-income families; or (ii) designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary; and (D) in which there is a high percentage of testing in the teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or (ii) in which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licenses. (2) The Director shall award $10,000 annually for 5 academic years to an individual who has received a master’s degree in mathematics or science education under a program or advanced degree in subject 126 and who undertakes increased responsibilities, such as teacher mentoring and other leadership activities. (c) APPLICATION.—An individual desiring a fellowship under this section shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director determines. Each application shall include assurances that the individual meets the requirements of the fellowship for which the individual is applying. (d) COORDINATION.—The Director shall coordinate with the Secretary to determine whether an individual who receives a fellowship under this section meets the requirements of this section. (e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated— (1) to carry out subsection (b)(1)— (A) $5,000,000 for fiscal year 2008; (B) $15,000,000 for fiscal year 2009; (C) $30,000,000 for fiscal year 2010; (D) $35,000,000 for fiscal year 2011; (E) $40,000,000 for fiscal year 2012; and (F) $45,000,000 for fiscal year 2013; and (2) to carry out subsection (b)(2)— (A) $10,000,000 for fiscal year 2010; (B) $15,000,000 for fiscal year 2011; (C) $20,000,000 for fiscal year 2012; and (D) $25,000,000 for fiscal year 2013. (f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated— (1) for fiscal year 2008— (A) $5,000,000; (B) $15,000,000 for fiscal year 2009; (C) $30,000,000 for fiscal year 2010; (D) $35,000,000 for fiscal year 2011; (E) $40,000,000 for fiscal year 2012; and (F) $45,000,000 for fiscal year 2013; and (2) for fiscal year 2014— (A) $10,000,000 for fiscal year 2014; (B) $15,000,000 for fiscal year 2015; (C) $20,000,000 for fiscal year 2016; and (D) $25,000,000 for fiscal year 2017. CHAPTER 3—ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS SEC. 151. ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS. (a) PURPOSE.—The purposes of this section are— (1) to educate an additional 70,000 Advanced Placement (AP) and International Baccalaureate (IB) and dual enrollment AP or IB teachers of mathematics and science over the 5 year period beginning with 2007; and (2) to triple to 1,500,000 the number of students who take AP and IB mathematics and science examinations. (b) GRANTS AUTHORIZED.— (1) IN GENERAL.—The amounts authorized under subsection (a), the Secretary shall award grants, on a competitive basis, to eligible recipients to enable the eligible recipients to carry out the activities authorized in subsection (f). (2) LIMITATION.—An eligible recipient may not receive more than 1 grant at a time under this section to undertake authorized activities within the same State. (c) DEFINITIONS.—In this section: (1) ELIGIBLE RECIPIENT.—The term “eligible recipient” means an educational institution or entity with expertise in Advanced Placement or International Baccalaureate services. (2) MASTER TEACHER.—The term “master teacher” means a teacher— (A) with an advanced degree or an advanced certification; (B) who uses the most effective teaching methods in the teacher’s disciplines; and (C) who has shown demonstrable results of higher student achievement in mathematics or science. (d) APPLICATION.— (1) IN GENERAL.—Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. (2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall— (A) describe the need for increased access to Advanced Placement or International Baccalaureate programs in mathematics and science; (B) provide for the involvement of business and community organizations in the activities authorized; and (C) describe the availability of matching funds from non-Federal sources to assist in the activities authorized; and (3) demonstrate an intent to carry out activities that target local educational agencies— (i) that serve fewer than 10,000 children from low-income families; or (ii) for which not less than 20 percent of the children served by the local educational agency are children from low-income families; or (iii) with a total of less than 600 students in average daily attendance at the schools that are served by the local educational agency and all of those schools are designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary. (e) PRIORITIZATION.—The Secretary shall give priority to eligible recipients that submit an application under subsection (d) that demonstrates a pervasive need or sizable numbers of Advanced Placement or International Baccalaureate programs in mathematics and science. (f) AUTHORIZED ACTIVITIES.—An eligible recipient shall use the grant funds provided under this section for the following activities: (1) To identify and work with local educational agencies to expand Advanced Placement or International Baccalaureate and pre-Advanced Placement or pre-International Baccalaureate programs in mathematics and science in schools served by the local educational agencies. (2) To work with the local educational agencies to establish Advanced Placement or International Baccalaureate coordinators in each secondary school served by the local educational agencies. (3) To ensure master teachers provide training to better prepare teachers to teach Advanced Placement or International Baccalaureate courses in mathematics and science, which shall include at a minimum— (A) 1-week-long summer institute; and (B) 2-day seminars in the teachers’ disciplines each year for 4 years. (4) To ensure master teachers provide training to prepare teachers to teach pre-Advanced Placement or pre-International Baccalaureate courses in mathematics and science, which shall include at a minimum— (A) A 4-day summer institute; and (B) 4 days on campus each year for 4 years. (5) To provide stipends to teachers who satisfactorily complete the Advanced Placement or International Baccalaureate or pre-Advanced Placement or pre-International Baccalaureate training. (6) To provide a bonus to a teacher who has satisfactorily completed the Advanced Placement or International Baccalaureate or pre-Advanced Placement or pre-International Baccalaureate training for each student who passes an Advanced Placement or International Baccalaureate examination in mathematics and science. (7) To provide test preparation sessions for students taking Advanced Placement or International Baccalaureate examinations in mathematics and science. (8) To reimburse students half of the cost of AP or International Baccalaureate mathematics and science examination fees.
(9) To provide scholarships to students who pass the Advanced Placement or International Baccalaureate mathematics and science examinations.

(g) EVALUATION AND ACCOUNTABILITY PLAN.—

(1) IN GENERAL.—Each eligible recipient receiving a grant under this section shall develop and implement an accountability plan for activities assisted under this section that includes rigorous objectives to measure the impact of activities assisted under this section.

(2) CONTENTS.—The plan developed pursuant to paragraph (1) shall include—

(A) the number of students served by the eligible recipient who have earned Advanced Placement or International Baccalaureate mathematics and science examinations; and

(B) the number of students served by the eligible recipient who have earned Advanced Placement or International Baccalaureate mathematics and science examinations; and

(2) ENGLISH PROFICIENCY.—

The Secretary shall disseminate information related to the clearinghouse to State educational agencies, and otherwise make accessible to local educational agencies and schools the teaching materials collected by the panel in the form of a searchable online database or Internet website.

(f) MATHEMATICS AND SCIENCE TEACHING MATERIALS.—

(1) RELIABILITY AND MEASUREMENT.—The kindergarten through grade 12 mathematics and science teaching materials collected under this section shall be—

(A) reliable and valid, and grounded in scientific theory and research in existence as of the date of the collection of materials; and

(B) developed in careful consideration of State educational assessments and student academic achievement standards.

(2) STRENGTHENING LEARNING NEEDS.—The teaching materials shall include relevant materials for students with diverse learning needs, particularly for students with disabilities and students with limited English proficiency.

(g) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to carry out this section—

(1) $241,000,000 for fiscal year 2007;

(2) $351,000,000 for fiscal year 2008;

(3) $453,000,000 for fiscal year 2009;

(4) $596,000,000 for fiscal year 2010; and

(5) $771,000,000 for fiscal year 2011.

CHAPTER 6—GRADUATE RESEARCH FELLOWSHIPS

SEC. 181. GRADUATE RESEARCH FELLOWSHIPS IN SCIENTIFIC AREAS OF NATIONAL NEED.

(a) FELLOWSHIPS AUTHORIZED.—From the amounts appropriated under subsection (e), the Secretary shall establish a fellowship program to provide tuition and financial support for eligible students pursuing master’s and doctoral degrees in mathematics or science (including engineering) or other areas of national need.

(b) AREAS OF NATIONAL NEED.—The Secretary may establish, on an annual basis, areas of national need important to the mission of the Department, and may use the areas of national need in determining the specific fields of study to be supported by fellowship awards under this section.

(c) USE AND AMOUNT OF AWARDS.—A fellowship award under this section shall be—

(1) in an amount that is commensurate with the amount of the graduate research fellowships awarded by the National Science Foundation; and

(2) FUTURE AMERICAN-SCIENTIST SCHOLARSHIPS.—A scholarship awarded under this section shall be called a “Future American-Scientist Scholarship.”

(c) AUTHORIZED ACTIVITIES OF NATIONAL PANEL.—

(1) AMOUNT.—A scholarship award under this section shall be in an amount of not more than $20,000 per year.

(b) EFFECTIVE DURATION.—In this section:

(1) ELIGIBLE STUDENT.—The term “eligible student” means a student who—

(A) is a citizen of the United States;

(B) is attending a 4-year institution of higher education;

(C) is enrolled, or will be enrolled at the start of the next academic year, in a course of study at an institution of higher education that leads to a baccalaureate degree in mathematics or science;

(D) demonstrates aptitude, as determined by the Secretary, in mathematics or science; or

(E) for each year of a scholarship under this section, demonstrates continued academic achievement and progress, as determined by the Secretary, toward completion of a baccalaureate degree in mathematics or science.

(2) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 101(a)).

(3) QUALIFIED EXPENSES.—The term “qualified expenses” means the tuition, books, fees, supplies, and equipment required for a degree program leading to a bachelor’s degree in mathematics or science; and

(4) SECRETARY.—The term “Secretary” means the Secretary of Education.
TITLE II—SOWING THE SEEDS THROUGH SCIENCE AND ENGINEERING RESEARCH
Subtitle A—Office of Science and Technology Policy Matters

SEC. 211. COORDINATION OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION PROGRAMS.

(a) NATIONAL GOALS.—

(1) BODY FOR ESTABLISHMENT OF GOALS.—The Director of the Office of Science and Technology Policy shall establish within the President’s Committee of Advisors on Science and Technology Policy such subcommittee on education in mathematics, science, and engineering in the Federal Government.

(2) RESPONSIBILITY.—The subcommittee established under this subsection shall—

(A) develop national goals for the support by the Federal Government of education in mathematics, science, and engineering; and

(B) periodically review and update any goals so developed.

(b) DEPUTY ASSISTANT DIRECTOR FOR SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION PROGRAMS.—

(1) IN GENERAL.—There shall be in the Office of Science and Technology Policy a Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs who shall be appointed by the Director of the Office of Science and Technology Policy, through the Associate Director for Science and Technology Policy, from among individuals having the qualifications specified in paragraph (2).

(2) QUALIFICATIONS FOR APPOINTMENT.—The qualifications of an individual for appointment as Deputy Assistant Director shall include such professional experience and expertise, and such other qualifications, as the Director of the Office of Science and Technology Policy considers appropriate to permit such individual to advise the Director on all matters relating to the education programs of the Executive Branch on mathematics, science, and technology.

(c) RESPONSIBILITY.—The Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs shall ensure effective coordination among the departments, agencies, and elements of the Federal Government in the discharge of the policy functions of the Deputy Assistant Director for Science and Technology Policy, from among individuals having the qualifications specified in paragraph (2).

(d) PLAN FOR COORDINATION OF PROGRAMS.—

(1) IN GENERAL.—In carrying out the responsibility described in subsection (c), the Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs shall develop each year a plan for the coordination of the education programs of the Executive Branch on mathematics, science, and technology during the five fiscal years beginning in the year of such plan.

(2) ELEMENTS.—Each plan developed under this subsection shall include—

(A) mechanisms for the coordination of the education programs of the Executive Branch on mathematics, science, and technology during the five fiscal years beginning in the year of such plan; and

(B) recommendations on funding, by agency, of such education programs during each such fiscal year.

(3) CONSISTENCY WITH NATIONAL GOALS.—Each plan developed under this subsection shall be consistent with the most current national goals for the support by the Federal Government of education in mathematics, science, and engineering developed under subsection (a).

(4) AVAILABILITY TO PUBLIC.—The Director of the Office of Science and Technology Policy shall take appropriate actions to ensure that each plan developed under this subsection is available to the public.

(e) STAFFING AND OTHER RESOURCES.—The Director of the Office of Science and Technology Policy shall assign the Deputy Assistant Director of the Office of Science and Technology Policy, Science, Mathematics, and Engineering Education Programs such personnel and other resources as the Director considers appropriate in order to permit the Deputy Assistant Director to carry out the duties of the Deputy Assistant Director under this section.

(f) DEADLINES FOR CERTAIN ACTIONS.—

(1) ESTABLISHMENT OF SUBCOMMITTEE.—The Director of the Office of Science and Technology Policy shall establish the subcommittee required by subsection (a)(1) not later than 30 days after the date of the enactment of this Act.

(2) APPOINTMENT OF DEPUTY ASSISTANT DIRECTOR.—The Director of the Office of Science and Technology Policy, acting through the Associate Director for Science and Technology Policy, shall make the first appointment to the position of Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs under subsection (b)(1) not later than 60 days after the date of the enactment of this Act.

(g) NATIONAL COORDINATION OFFICE FOR ADVANCED RESEARCH INSTRUMENTATION AND FACILITIES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall establish within the Office of Science and Technology Policy an office to be known as the “National Coordination Office for Advanced Research Instrumentation and Facilities”.

(2) HEAD OF OFFICE.—The head of the National Coordination Office for Advanced Research Instrumentation and Facilities shall be the Director of the National Coordination Office for Advanced Research Instrumentation and Facilities.

(3) STAFF AND OTHER RESOURCES.—The Director of the National Coordination Office for Advanced Research Instrumentation and Facilities shall have such personnel and other resources as the Director of the Office of Science and Technology Policy considers appropriate in order to permit the National Coordination Office for Advanced Research Instrumentation and Facilities to carry out its duties under this section.

(4) DEADLINE FOR ESTABLISHMENT.—The National Coordination Office for Advanced Research Instrumentation and Facilities shall be established not later than 30 days after the date of the enactment of this Act.

(b) DUTIES.—

(1) IN GENERAL.—The National Coordination Office for Advanced Research Instrumentation and Facilities shall coordinate the award by the departments, agencies, and elements of the Federal Government of the award of grants for advanced research instrumentation and facilities.

(2) ADVANCED RESEARCH INSTRUMENTATION AND FACILITIES.—

(A) IN GENERAL.—For purposes of this section, advanced research instrumentation and
facilities are specially designed and developed instruments or tools (whether of a physical or nonphysical nature) that are available commercially but are overly expensive for design and development under a single research grant.

\( \text{(B) EXAMPLES} \). Examples of advanced research instrumentation and facilities for purposes of this section include the following:

(i) Single, stand-alone instruments or instrument suites.

(ii) Networks.

(iii) Computational modeling applications.

(iv) Computer databases.

(v) Minor synchrotrons.

(vi) Facilities that house ensembles of interconnected instruments.

(vii) Instruments assembled from components.

\( \text{(3) DISCHARGE OF DUTIES} . \) The Office shall coordinate the award of grants for advanced research instrumentation and facilities under this section in accordance with the strategic implementation plan developed under subsection (c).

\( \text{(c) STRATEGIC IMPLEMENTATION PLAN} . \)

\( \text{(1) PLAN REQUIRED} . \) Not later than one year after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall, in consultation with the Director of the Office of Management and Budget, develop a plan for the award of grants for advanced research instrumentation and facilities during the five-year period beginning on the date of the issuance of the plan.

\( \text{(2) ELEMENTS} . \) The plan required by paragraph (1) shall include the following:

(A) Criteria applicable to the award of grants for advanced research instrumentation and facilities, including criteria applicable to,

(i) scientific and technical merit;

(ii) the identification of the strategic requirements of the departments, agencies, and other elements of the Federal Government; and

(iii) national science and technology needs.

(B) An assessment of the current and anticipated needs of the departments, agencies, and other elements of the Federal Government for advanced research instrumentation and facilities.

(C) A report to Congress on the proposed allocation of funds, including amounts authorized to be appropriated by subsection (a), by the departments, agencies, and other elements of the Federal Government for grants for advanced research instrumentation and facilities.

\( \text{(3) PUBLIC COMMENT} . \) In developing the plan required by paragraph (1), the Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences, or similar entity, to solicit public comment, through a broad media solicitation, on the guidelines required by subsection (a) before the final issuance of such guidelines.

\( \text{(e) REVIEW} . \) The President’s Committee of Advisors on Science and Technology shall, not less often than every two years, conduct a review to determine whether or not Federal research agencies are allocating basic research funds in accordance with the guidelines required by subsection (a).

\( \text{(f) ANNUAL REPORTS TO CONGRESS} . \)

\( \text{(1) REPORTS REQUIRED} . \) The Director of the Office of Management and Budget shall, in consultation with the Director of the Office of Science and Technology Policy, submit to Congress each year a report on the use by Federal research agencies of basic research funds for high-risk, high-payoff research during the preceding fiscal year.

\( \text{(2) TIME FOR SUBMITAL} . \) The Director of the Office of Management and Budget shall submit the report required by paragraph (1) for a year together with the budget of the President for the fiscal year beginning in such year (as submitted to Congress under section 1105 of title 31, United States Code).

\( \text{(g) DEFINITIONS} . \) In this section:

(1) \( \text{FEDERAL RESEARCH AGENCY} . \) The term ‘‘Federal research agency’’ means a major organizational component of a Federal department or agency of the Federal Government, or other establishment of the Federal Government operating with appropriated funds, that has as its primary purpose the performance of research.

\( \text{(2) MAJOR ORGANIZATIONAL COMPONENT} . \)

The term ‘‘major organizational component’’ means a component of a department or agency, or other establishment of the Federal Government, means a component of the department, agency, or other establishment that is administered by an individual whose rate of basic pay is not less than the rate of basic pay payable under level V of the Executive Schedule under section 5316 of title 5, United States Code.

\( \text{SEC. 214. PRESIDENT’S INNOVATION AWARD} . \)

\( \text{(a) AUTHORITY TO AWARD} . \)

(1) \( \text{In general} . \) The Director of the Office of Science and Technology Policy shall award to one or more individuals an award that recognizes recent innovations in science and engineering in the United States.

\( \text{(b) SELECTION OF RECIPIENTS} . \) The award made under this section shall be made by the President.

\( \text{(c) GUIDELINE ELEMENTS} . \) The guidelines required by subsection (a) shall include provisions on the following:

(1) Expedited procedures for the approval of the use of funds for high-risk, high-payoff research projects.

(2) Annual reports by Federal research agencies on activities related to high-risk, high-payoff research.

(3) Criteria to establish the duration of funding for high-risk, high-payoff research projects.

(4) Objectives for high-risk, high-payoff research projects.

(5) Such other criteria, objectives, or other matters as the Director of the Office of Science and Technology Policy considers appropriate.

\( \text{(d) PUBLIC COMMENT} . \) The Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences, or similar entity, to solicit public comment, through a broad media solicitation, on the guidelines required by this subsection before the final issuance of such guidelines.
(2) A certificate of recognition.
(3) A cash prize, in such amount as the Di-
rector considers appropriate.
(d) AUTHORIZATION OF APPROPRIATIONS.—
There is hereby authorized to be appro-
priated to the Office of Science and Tech-
ology Policy each fiscal year $1,000,000 for
the making of awards under this section.

Subtitle B—National Aeronautics and Space
Administration Matters
SEC. 221. NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION EARLY-CAREER
RESEARCH GRANTS
(a) PURPOSE.—It is the purpose of this sec-
tion to authorize research grants in the Na-
tional Aeronautics and Space Administra-
tion for early-career scientists and engineers
for purposes of pursuing independent re-
search.
(b) DEFINITION OF ELIGIBLE EARLY-CAREER
RESEARCHER.—In this section, the term “el-
igible early-career researcher” means an indi-
vidual who
(1) completed a doctorate or other ter-
minal degree not more than 10 years before
the date of enactment of this Act and has
demonstrated promise in the field of science,
technology, engineering, or mathematics; or
(2) has an equivalent professional qualifi-
cation in the field of science, technology,
engineering, or mathematics.
(c) GRANT PROGRAM AUTHORIZED.—
(1) IN GENERAL.—The Administrator of the Na-
tional Aeronautics and Space Administra-
tion shall award not less than 45 grants per
year to outstanding eligible early-career re-
searchers to support the work of such re-
searchers in universities, private industry,
or federally-funded research and develop-
ment centers.
(2) APPLICATION.—An eligible early-career
researcher who desires to receive a grant
under this section shall submit to the Ad-
ministrator of the National Aeronautics and
Space Administration an application at such
time, in such manner, and accompanied by
such information as the Administrator may
require.
(d) Special Consideration.—In awarding
grants under this section, the Administrator
of the National Aeronautics and Space Ad-
ministration shall give special consideration
to eligible early-career researchers who have
followed non-traditional career paths such as
working part-time or in non-academic set-
tings, or who have taken a significant career
break or other leave of absence.
(e) USE OF FUNDS.—An eligible early-career
researcher who receives a grant under this
section shall use the grant funds for basic
research in fields such as sciences, engineering,
mathematics, or computer sciences at a uni-
versity, private industry, or federally-funded
research and development center.
(f) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated to
carry out this section—
(A) $1,200,000 for fiscal year 2007;
(B) $9,000,000 for fiscal year 2008;
(C) $13,500,000 for fiscal year 2009;
(D) $18,000,000 for fiscal year 2010; and
(E) $22,500,000 for fiscal year 2011.

SEC. 222. AUTHORIZATION OF APPROPRIATIONS
FOR THE NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION FOR SCIENCE
(a) IN GENERAL.—There is hereby author-
ized to be appropriated for the National Aer-
onautics and Space Administration for basic
sciences for research specified in subsection
(b), amounts as follows:
(1) $2,768,000,000 for fiscal year 2007.
(2) $3,044,000,000 for fiscal year 2008.
(3) $3,349,000,000 for fiscal year 2009.
(4) $3,684,000,000 for fiscal year 2010.
(5) $4,052,000,000 for fiscal year 2011.
(6) $4,475,000,000 for fiscal year 2012.
(7) $4,903,000,000 for fiscal year 2013.
(b) COVERED RESEARCH.—The research
specified in this subsection is research under
programs as follows:
(1) The Solar System Exploration Research
Program.
(2) The Mars Exploration Research Pro-
gram.
(3) The Astronomical Search for Origins
Research Program.
(4) The Structure and Evolution of the Uni-
verse Research Program.
(5) The Earth-Sun Connection Research
Program.
(6) The Earth Systems Science Research
Program.
(7) The Earth Science Applications Re-
search Program.
(8) The Biological Sciences Research Pro-
gram.
(9) The Physical Sciences Research Pro-
gram.
(10) The Aeronautics Program.
(11) Such other basic research programs as
the Administrator of the National Aero-
naunts and Space Administration may de-
termined by the Secretary to meet the de-
termination.
Subtitle C—Communications Matters
SEC. 241. DEVELOPMENT OF SCIENCE PARKS.
(a) FINDING.—Section 2 of the Stevenson-
Wyder Technology Innovation Act of 1980 (15
U.S.C. 3701) is amended by adding at the end
the following new paragraph:
“(14) Science park means a group of inter-
related companies, institutions, including
suppliers, service providers, institutions of
higher education, start-up incubators, and
trade associations that cooperate and com-
pete and are located in a specific area whose
administration promotes real estate develop-
ment, technology transfer, and partnerships
between such companies and institutions,
and does not mean a business or industrial
park.”
(b) AUTHORIZATION OF APPROPRIATIONS.—
There is authorized to be appropriated for
each of fiscal years 2007 through 2012
$7,500,000 to carry out this subsection.
(c) AWARD.—The Secretary shall make
grants for the development of science parks
infrastructure through the operation of revolving
loan funds by such centers.
(d) SELECTION CRITERIA.—The Secretary
shall use, in selecting science parks, criteria as
the Secretary shall prescribe.
(e) USE OF FUNDS.—Grants awarded
under this subsection may be used to carry out
the following:
(1) construction or expansion of the
science park;
(2) the regional centers to be awarded
grants under this subsection pursuant to a
full and open competition;
(3) AWARD.—The Secretary shall ad-
vertise any competition under this para-
graph in the Commerce Business Daily.
(4) SELECTION CRITERIA.—The Secretary
shall establish and publish the criteria to be
used in any competition under this paragraph
for the selection of recipients of grants under
this subsection. Such criteria shall include
requirements relating to—
(i) the number of jobs to be created at
the science park each year for a period of
5 years;
(ii) the amount and type of cost match-
ing by the applicant;
(iii) the types of businesses and research
entities expected in the science park and sur-
rounding community;
(iv) letters of intent by businesses and re-
search entities to locate in the science park;
(v) the capacity of the science park for
expansion over a period of 25 years;
(vi) the quality of life at the science park
for employees at the science park;
(vii) the capability to attract a well
trained workforce to the science park;
(viii) the management of the science park;
(ix) expected risks in the construction and
operation of the science park;
(x) risk mitigation;
(xi) transportation and logistics;
(xii) physical infrastructure, including
telecommunications; and
(xiii) ability to collaborate with other
science parks throughout the world.
(5) AUTHORIZATION OF APPROPRIATIONS.—
There is authorized to be appropriated for
each of fiscal years 2007 through 2012
$7,500,000 to carry out this subsection.
(6) REVOLVING LOAN PROGRAM FOR DEVEL-
OPMENT OF SCIENCE PARK INFRASTRUCTURE.—
(1) IN GENERAL.—The Secretary shall
make grants to six regional centers for the
development of existing science park infra-
structure through the operation of revolving
loan funds by such centers.
(2) SELECTION OF CENTERS.—
(A) IN GENERAL.—The Secretary shall
select the regional centers to be awarded
grants under this subsection utilizing such
criteria as the Secretary shall prescribe.
(B) CRITERIA.—The criteria prescribed
by the Secretary under this paragraph shall in-
clude criteria relating to revolving
loan funds and revolving loan fund operators
under paragraph (4), including—
(i) the qualifications of principal
officers; and
(ii) non-Federal cost matching
requirements; and
(3) LIMITATION ON LOAN AMOUNT.—The
amount of any loan for the development of
existing science park infrastructure that is funded under this subsection may not exceed $3,000,000.

‘‘(4) REVOLVING LOAN FUNDS.—

(A) REVOLVING LOAN FUNDS. — The Secretary shall establish a revolving loan fund at each regional center to enable revolving loan fund operators to provide revolving loan funds, pursuant to subsection (a)(4), to any for-profit entity, nonprofit entity, or public or private governmental entity to provide the services specified in subsection (a)(4) (other than the services specified in paragraph (2)(B)).

(B) OPERATION AND INTEGRITY.—The Secretary shall prescribe regulations to maintain the proper operation and financial integrity of revolving loan funds under this paragraph.

(C) EFFICIENT ADMINISTRATION.—The Secretary may:

(i) assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation; and

(ii) take such actions as are appropriate to enable revolving loan funds operators to sell or securitize loans (except that the actions shall not include the issuance of a Federal guaranty by the Secretary).

(D) TREATMENT OF ACTIONS.—An action taken by the Secretary under this paragraph with respect to purposes of the revolving loan fund shall not constitute a new obligation if all guaranties associated with the original guaranty award have been disbursed to the recipient.

(E) PRESERVATION OF SECURITIES LAW.—

(i) NOT TREATED AS EXEMPTED SECURI TIES.—No securities issued pursuant to subparagraph (C)(i)(II) shall be treated as exempted securities under the Securities Exchange Act of 1934 or the Securities Act of 1933.

(ii) ASSIGN OR TRANSFER ASSETS OF A REVOLVING LOAN FUND.—The Sec-

(1) TREATMENT OF ACTIONS.—The Secretary may:

(i) at the request of a grantee, amend and prescribe terms and conditions as the Secretary may prescribe, except that

(ii) assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation; and

(iii) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions shall not include the issuance of a Federal guaranty by the Secretary).

(2) TREATMENT OF ACTIONS.—An action taken by the Secretary under this paragraph with respect to purposes of the revolving loan fund shall not constitute a new obligation if all guaranties associated with the original guaranty award have been disbursed to the recipient.

(3) SELECTION OF GUARANTEE RECIPIENTS.—

(A) $50,000,000 with respect to any single project; and

(B) $50,000,000 with respect to all projects.

(4) SELECTION OF GUARANTEE RECIPIENTS.— The Secretary shall select recipients of loan guarantees under this subsection based upon the ability of the recipient to collateralize the loan amount through bonds, equity, pro prietary bank, or other such criteria as the Secretary shall prescribe.

(5) TERMS AND CONDITIONS FOR LOAN GUARAN TIES.—For purposes of this section, the loan amount to be guaranteed under this subsection shall bear interest not to exceed 80 percent of the loan amount, from the date of the loan to the date of payment. Notwithstanding any other provision of law, the Secretary shall have the right in the Secretary’s discretion to complete, reconstruc tion, renovate, repair, maintain, operate, sell any property acquired by the Sec-

(6) REVIEWS.—The Comptroller General of the United States shall, within 2 years of the date of enactment of this section, conduct a review of the subsidy estimates for the loan guarantees under this subsection, and shall submit to Congress a report on the review conducted under this paragraph.

(7) TERMINATION.—No loan may be guaran teed under this subsection after September 30, 2012.

(8) AUTHORIZATION OF APPROPRIATIONS.— There is authorized to be appropriated—

(A) $5,600,000 for administrative expenses for fiscal year 2007 and such sums as may be necessary thereafter for administrative expenses in subsequent years.

(B) National Academy of Sciences Evaluation.—

(1) IN GENERAL.—The Secretary shall enter into an agreement with the National Academy of Sciences under which the Acad emy shall evaluate, on a tri-annual basis, the activities under this section.

(2) DEADLINE.—The Secretary shall pro vide a tri-annual report not later than March 31 of each third year, to Congress that provides an assessment of the activities under this section during the preceding 3 years, including any recommenda tions made by the National Academy of Sciences under subsection (d)(2) during each period. Each report may include such recom mendations for legislative or administrational action as the Secretary considers appropriate to further promote and facilitate the development of science parks in the United States.

(f) REGULATIONS.—

(1) REGULATIONS.—Consistent with Office of Management and Budget Circular A-129, ‘‘Policies for Federal Credit Programs and the Receivables Thereof,’’ the Secretary shall prescribe regulations to carry out this sec tion.

(2) DEADLINE.—The Secretary shall pre pare such regulations not later than one year after the date of enactment of this sec tion.

Subtitle E—Authorization of Appropriations for the National Science Foundation for Research and Related Activities

SEC. 251. AUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL SCIENCE FOUNDATION FOR RESEARCH AND RELATED ACTIVITIES.

(a) IN GENERAL.—There is hereby authorized to be appropriated for each of fiscal years 2007 through 2012, $60,000,000 for programs described in this subsection.

(c) LOAN GUARANTEES FOR SCIENCE PARK INFRASTRUCTURE.—

(1) IN GENERAL.—The Secretary shall guarantee up to 80 percent of the loan amount for loans exceeding $10,000,000 for projects for the construction of science park infrastructure.

(2) LIMITATIONS ON GUARANTEE AMOUNTS.—

The maximum amount of loan principal guaranteed under this subsection may not exceed—

(A) $30,000,000 with respect to any single project; and

(B) $50,000,000 with respect to all projects.

(3) SELECTION OF GUARANTEE RECIPIENTS.—The Secretary shall select recipients of loan guarantees under this subsection based upon the ability of the recipient to collateralize the loan amount through bonds, equity, proprietary bank, or other such criteria as the Secretary shall prescribe.

(4) TERMS AND CONDITIONS FOR LOAN GUARAN TIES.—For purposes of this section, the loan amount to be guaranteed under this subsection shall bear interest not to exceed 80 percent of the loan amount, from the date of the loan to the date of payment. Notwithstanding any other provision of law, the Secretary shall have the right in the Secretary’s discretion to complete, reconstructor, renovate, repair, maintain, operate, sell any property acquired by the Secretary pursuant to the provisions of this section.

(6) REVIEWS.—The Comptroller General of the United States shall, within 2 years of the date of enactment of this section, conduct a review of the subsidy estimates for the loan guarantees under this subsection, and shall submit to Congress a report on the review conducted under this paragraph.

(7) TERMINATION.—No loan may be guaran teed under this subsection after September 30, 2012.

(8) AUTHORIZATION OF APPROPRIATIONS.— There is authorized to be appropriated—

(A) $35,000,000 for the cost, as defined in section 402 of the Federal Credit Reform Act of 1990, of guaranteeing $500,000,000 of loans under this subsection; and

(B) $6,000,000 for administrative expenses for fiscal year 2007 and such sums as may be necessary thereafter for administrative expenses in subsequent years.

(D) NATIONAL ACADEMY OF SCIENCES EVALUATION.—

(1) IN GENERAL.—The Secretary shall enter into an agreement with the National Academy of Sciences under which the Acad emy shall evaluate, on a tri-annual basis, the activities under this section.

(2) DEADLINE.—The Secretary shall pre pare such regulations not later than one year after the date of enactment of this sec tion.

Subtitle A—Visitors for Doctorate Students in Mathematical Engineering, Technology, or Physical Sciences

SEC. 311. FINDINGS.

Congress finds the following:
January 26, 2006

CONGRESSIONAL RECORD — SENATE

S223

(1) The National Academies, in their con-
gressionally requested report entitled ‘‘Ris-
ing Above the Gathering Storm: Energizing and Employing America for a Brighter Eco-
omic Future’’, recommended that Congres-
s—

(A) continue to improve visa processing for
international students and scholars by pro-
viding less complex procedures and con-
tinuing to make improvements on issues
such as visa categories and duration, travel
for scientific meetings, the technology-alert
list, reciprocity agreements, and changes in
status;

(B) provide a 1-year automatic visa exten-
sion in international students who receive
doctorates or the equivalent in science, tech-
nology, engineering, mathematics, or other
fields of national need at qualified United
States institutions to remain in the United
States to seek employment;

(C) provide such students with automatic
work permits and expedited residence status
if they are offered jobs by employers based
in the United States and pass a security screen-
ing test;

(D) institute a new skills-based, pref-
erential immigration option that gives appli-
cants with doctorate degrees in science, or
math and have been working in a related
field in the United States under a non-
immigrant visa during the 3-year period pre-
ceding their application for an immigrant
visa under section 203(b).

(2) Since the publication of the report by
the National Academies, the Senate has
passed the Deficit Reduction Act of 2005,
which authorizes an additional 30,000 H-1B
visas per year.

SEC. 312. SENSE OF THE SENATE

It is the sense of the Senate that—

(1) the Department of State and the De-
partment of Homeland Security have made
significant improvements since 2002 in the
efficiency with which visas are processed for

(A) students at colleges and universities in
the United States; and

(B) foreign researchers to engage in appro-
priate scientific research in the United
States;

(2) particular improvements have been
made to the MANTIS clearance process, which

(A) reduce wait times from more than 70
days to less than 15 days; and

(B) shorten the duration of the MANTIS
clearance process up to 4 years, as appro-
priate, to cover the duration of study for for-
gin students in the United States;

(3) both departments and related sup-
porting agencies should further improve ef-
ciency and convenience in the granting of
visas to foreign students and researchers while
protecting national security;

(4) the departments should extend MANTIS
clearance for foreign researchers for the du-
ration of a speciﬁed scientiﬁc research pro-
gram, including the balancing security concerns; and

(5) such improvements should in-
clude—

(A) review of the technology-alert list; and

(B) efforts to facilitate travel for
scientiﬁc conferences.

SEC. 313. VISAS FOR DOCTORATE STUDENTS IN
MATHEMATICS, ENGINEERING, TECHNOLOGY,
OR THE PHYSICAL SCIENCES.

(a) CREATION OF NEW VISA CATEGORY.—
Section 101(a)(15)(F) of the Immigration and Na-
tionality Act (8 U.S.C. 1101(a)(15)(F)) is
amended—

(1) in clause (i)—

(A) by striking ‘‘214(i)’’ and inserting
‘‘214(m)’’; and

(B) by striking the comma at the end and
inserting a semicolon;

(2) in clause (ii)—(A) by inserting ‘‘or clause (iv)’’ after
‘‘clause (i);’’ and

(B) by striking ‘‘and’’ and inserting a
semicolon;

(3) in clause (iii), by inserting ‘‘and’’ at the end;

and

(d) USE OF FEES.—

(1) JOB TRAINING; SCHOLARSHIPS.—Section
286(e)(1) of the Immigration and Nationality
Act (8 U.S.C. 1356(e)(1)) is amended by insert-
ing ‘‘and 10 percent of the fees collected
under section 245(i)(4)’’ before the period at
the end.

(2) FRAUD PREVENTION AND DETECTION.—
Section 243(b)(1) of the Immigration and Na-
tionality Act (8 U.S.C. 1355(b)(1)) is amended by
inserting ‘‘and 20 percent of the fees col-
lected under section 245(i)(4)’’ before the pe-
riod at the end.

SEC. 314. ALIENS NOT SUBJECT TO NUMERICAL
LIMITATIONS ON EMPLOYMENT-
BASED IMMIGRANTS.

(a) In clause (B) of section 201(b)(1) of the
Immigration and Nationality Act (8 U.S.C.
1151(b)(1)) is amended by adding at the end the
following:

“(P) Aliens who have earned an advanced
degree in science, technology, engineering,
and math and have been working in a related
field in the United States under a non-
immigrant visa during the 3-year period pre-
ceding their application for an immigrant
visa under section 203(b).

(b) Aliens described in subparagraph (a)
of section 203(b) who have received a national
interest waiver under section 203(b)(2)(B).

(H) The immediate relatives of an alien
who is admitted as an employment-based im-
migrant under section 203(b).”.

SEC. 321. PATENT REFORM.

It is the sense of the Senate that—

(1) the United States Patent and Trade-
mark Ofﬁce should be provided with sufﬁ-
cient resources to make intellectual prop-
erty protection more timely, predictable,
and effective;

(2) the resources described under paragraph
1 should include a 20 percent increase in
overall funding to hire and train additional
examiners and implement more capable elec-
tronic processing; and

(3) Congress should implement comprehen-
sive patent reform that—

(A) establishes a ﬁrst-inventor-to-ﬁle sys-
tem;

(B) institutes an open review process fol-
lowing the grant of a patent;

(C) encourages research uses of patented
inventions by shielding researchers from in-
fringement liability; and

(D) reduces barriers to innovation in spe-
ciﬁc industries with specialized patent
needs.

TITLE IV—REFORMING DEFENDED EXPORTS

SEC. 401. SENSE OF SENATE ON EXEMPTION OF
CERTAIN USES OF TECHNOLOGY
FROM EXPORT RESTRICTIONS.

(a) SENSE OF SENATE.—It is the sense of
the Senate that the use of technology by an
institute of higher education in the United
States should not be treated as an export of
such technology for purposes of section 5 of
the Export Administration Act of 1979 (50 U.S.C.
App. 2404) and any regulations pre-
scribed thereunder, as currently in effect
pursuant to the provisions of the Inter-
national Emergency Economic Powers Act
(50 U.S.C. 1701 et seq.), or any other provision
of law, if such technology is so used by such
institution for fundamental research.

(b) DEFINITIONS.—In this section—

(1) FUNDAMENTAL RESEARCH.—The term
‘‘fundamental research’’ means the research
given that term in National Security Deci-
directive 198, entitled ‘‘National Policy
An eligible early-career researcher who desires to receive a grant under this section shall submit to the Secretary of Defense an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(c) Grant Program Authorized.—

(1) In general.—The Secretary of Defense shall award not less than 25 grants per year to outstanding eligible early-career researchers to support the work of such researchers in universities, private industry, or federally-funded research and development centers.

(2) Application.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Secretary of Defense an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(3) Special Consideration.—In awarding grants under this section, the Secretary of Defense shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break for absence.

(d) Duration and Amount.—A grant under this section shall be five years in duration. An eligible early-career researcher who receives a grant under this section shall receive $100,000 per year for each of the grant period.

(e) Use of Funds.—An eligible early-career researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at a university, private industry, or federally-funded research and development center.

(f) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—

(A) $3,500,000 for fiscal year 2007;
(B) $5,000,000 for fiscal year 2008;
(C) $7,500,000 for fiscal year 2009;
(D) $10,000,000 for fiscal year 2010; and
(E) $12,000,000 for fiscal year 2011.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE FOR BASIC RESEARCH.

There is hereby authorized to be appropriated for the Department of Defense for basic (6.1) research, amounts for the research, development, test, and evaluation accounts, and for other accounts of the Department providing funding for such research, in the aggregate as follows—

(A) $1,816,000,000 for fiscal year 2007;
(B) $1,778,000,000 for fiscal year 2008;
(C) $1,905,000,000 for fiscal year 2009.

SEC. 503. EXPANSION OF CREDIT FOR RESEARCH AND DEVELOPMENT.

(a) Credit Made Permanent.—

(1) In general.—The Internal Revenue Code of 1986 relating to credit for increasing research activities is amended by striking subsection (h).

(2) Conforming Amendment.—Paragraph (1) of section 45C(b) of such Code is amended by striking subparagraph (D).

(b) Effective Date.—The amendments made by this subsection apply to amounts paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 45N. EMPLOYEE CONTINUING EDUCATION CREDIT.

(a) In General.—Subpart D of part IV of chapter I of the Internal Revenue Code of 1986 relating to business related credits is amended by adding at the end the following new section:

"SEC. 45N. EMPLOYEE CONTINUING EDUCATION CREDIT.

(a) Amount of Credit.—

(1) In general.—For purposes of section 38, the employee continuing education credit determined under this section with respect to any employer for any taxable year is the applicable percentage of qualified continuing education costs paid or incurred by the employer during the calendar year ending with or within such taxable year.

(2) Applicable Percentage.—For purposes of this section, the applicable percentage is the percentage determined by the Secretary such that the amount of the credit allowable under this section for any calendar year does not exceed $5,000.

(b) Qualified Continuing Education Costs.—For purposes of this section, the term "qualified continuing education costs" means costs paid or incurred by an employer for education to maintain or improve knowledge or skills in science or engineering of an employee whose employment requires knowledge or skills in science or engineering.

(c) Regulations.—The Secretary may prescribe regulations to carry out the purposes of this section, including regulations establishing standards for educational courses and programs to which the purposes of this section apply.

(b) Credit Made Part of General Business Credit.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking "and" at the end of paragraph (25), by striking the period at the end of paragraph (25) and inserting ", and", and by adding at the end the following new paragraph:

"(27) the employee continuing education credit determined under section 45N(a)."

(d) Denial of Double Benefit.—Section 280C of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:
Mr. BINGAMAN. Mr. President, I rise today to introduce the Protecting America’s Competitive Edge (PACE) Act that will enable us to build on our existing strengths to help secure America’s continued economic prosperity in the twenty-first century.

I want to gratefully acknowledge at the outset that I am introducing this legislation with Senator DOMENICI, Senator ALEXANDER, Senator MIKULSKI, and others. This measure is the product of our combined best efforts from both sides of the aisle, and our sole focus has been on what is in the best interests of the Nation as a whole.

For the last 200 years, our investments in science and technology, both public and private, have driven our economic growth and improved the quality of life. They have generated new knowledge and new industries, created new jobs, ensured economic and national security, reduced pollution and increased energy efficiency, provided better and safer transportation, improved medical care, and increased living standards for the American people.

America’s scientists and engineers through their unmatched vitality, creativity, and curiosity have helped us not only imagine but invent the future. In large part, their contributions have made this new century before us so full of promise—molded by science, shaped by technology, and powered by knowledge.

One of the bedrock policies of our Nation’s economic security must be to sustain our investments in science and technology. Today there is no dispute that science, and the technology that flows from it, is duly recognized as the piston that drives the economic engine that enriches the quality of our lives.

Yet today our preeminence is precarious.

Numerous thoughtful leaders in government, industry, and academia who are concerned about sustaining U.S. leadership across the frontiers of scientific knowledge are expressing growing uneasiness over troubling trends regarding the Nation’s future prosperity. They warn we are slipping in our world leadership role in science and engineering, and losing sight of the importance of STEM investments in creating the conditions of prosperity.

Other nations are coming up fast behind us on the scientific track and are pouring resources into their scientific and technological infrastructure. There is the distinct possibility that U.S. competitiveness in key high-tech areas will fall behind the major Pacific Rim countries of India, China, Taiwan, and South Korea.

Moreover, the focus of our fundamental R&D has shifted away from the physical sciences, mathematics, and engineering—the critical areas of R&D most closely correlated with innovation and economic growth. Many of our foremost research programs that have been curtailed or cut back in recent years have been the cornerstone for much of our economic progress and spurred the creation of high-paying jobs. Budget increases have been disproportionately concentrated primarily in two departments—Defense and Homeland Security—leaving other vital R&D agencies with very modest increases, or with an increase for some agencies offset by flat funding elsewhere.

In the name of national security, we have been building a swaying tower of insecurity.

We are on the brink of a new industrial and commercial world order. The reality of the twenty-first century global economy is that China, India, and other nations once considered economic backwaters have discovered how to build strong economies around very sophisticated technology.

On the Pacific Rim, China has increased spending on colleges and universities almost tenfold in the last decade, and is doubling the proportion of GDP invested in that same period on R&D to promote competitiveness and growth. India is raising its funding of science agencies by 27 percent, and Japan is increasing its investments in life science by 32 percent, while South Korea is upgrading research spending by 8.5 percent.

As our share of the world’s technical graduate workforce slips, European and Asian universities are churning out ever greater numbers of workers in scientific fields. And while young Americans may shy away from technical careers because they perceive better opportunities in other high-level occupations, there are still sufficient rewards to attract ever-increasing numbers of foreign graduate students eager to pursue science and engineering degrees.

Yet none of them, however, is a cause for concern. Yet one of them, is a cause for panic. To state the facts frankly is not to despair about the future, nor is it to indict the past. Our task today is not to fix the blame for yesterday, but to set the proper and prudent course for tomorrow.

These revolutionary changes in the global marketplace for highly skilled technical workers are dislodging the long-standing dominance of the U.S. scientific enterprise.

That is causing our comparative advantage in high tech production to suffer, and despite the extraordinary power and resilience of our economy, signals a lengthy and difficult period of adjustment for American industry, its workforce, and ultimately our strong middle class standard of living which makes this country great.

It also flags a pivotal moment in America’s core competence. We do it far better than anyone else—we have done it before, and we can continue to do it better.

Last May, Senator LAMAR ALEXANDER and I asked the National Academy of Sciences to conduct a study to identify “specific steps our government should take to ensure the preeminence of America’s scientific and technological enterprise to enable us to successfully compete, prosper, and be secure in the global community of the 21st century.”

The Academy assembled an extraordinarily distinguished panel of American best scientific minds, including three Nobel Prize winners, business executives, and university leaders and reported their findings back to us in October in a sobering report entitled, Rising Above the Gathering Storm.

The National Academy’s report proposes four broad recommendations:

1. Increase America’s talent pool by vastly improving K–12 science and mathematics education;

2. Sustain and strengthen the Nation’s traditional research infrastructure;

3. Make the United States the premier place in the world to innovate, and foremost and foremost prop to our math and science education system from kindergarten through high school. We should establish a merit-based, 4 year undergraduate scholarship program to annually recruit 10,000 students per year to careers teaching math and science who then commit to working for at least 4 years in K–12 public schools.

Using incentives and scholarships, our aim should be to quadruple the number of America students enrolled in advanced math and science courses to four and a half million by 2010.

A U.S. high school student has about a 75 percent chance of being taught English by a teacher with an English degree, but only a 40 percent chance of being taught chemistry by a teacher with a degree in chemistry. And the situation is worse for middle school students: 70 percent of them are taught math and science by a teacher lacking a certificate or major in math.

It takes many years to educate a citizen. There are no short term solutions...
to this problem, and workforce issues rarely respond to quick fixes and often span generations.

That is why there is such a sense of urgency to recruit thousands of new math and science teachers in the years ahead to ensure the teaching of basic physical sciences, mathematicians, and engineers to help provide that training.

This legislation will also provide greater opportunities for students to take advanced math and science classes by increasing the number of students who enroll in Advanced Placement and International Baccalaureate science and math courses.

Second, we must steadily increase our investment in science and technology each year for the next 7 years in long-term basic research, with special attention devoted to the physical sciences, engineering, mathematics, and information sciences.

The Federal Government supports a majority of the Nation’s basic research and nearly 60 percent of the R&D is performed in U.S. universities. At the same time, this investment at universities and colleges plays a key role in educating the next generation of scientists and engineers and a technically skilled workforce.

We ought to provide 200 new research grants annually—worth $500,000 each payable over 5 years—when Congress’s most outstanding early-career researchers.

Additionally, we should consider creating a revolutionary agency in the Energy Department modeled on the highly successful Defense Advanced Research Projects Agency (DARPA) to sponsor research to meet the Nation’s most pressing national security needs.

To spur U.S.-based research and experimentation to meet global competition, we need to modernize the patent system, realign our tax policies to encourage our universities’ inventions and innovation, and ensure the Nation meets the goal of affordable broadband Internet access by 2007.

Our patent laws must also be reformed by moving to a first-to-file instead of a first-to-invent, thus bringing us into line with the rest of the world while reducing expensive litigation. Infrastructure planning grants and loan guarantees could also ensure that U.S. science parks are competitive with those throughout the world.

Additionally, we should eliminate uncertainty by doubling the R&D tax credit and making it permanent. Studies document that this tax credit encourages as much R&D spending as it costs in foregone revenue—and perhaps even twice that amount over the long haul.

We face a competitive challenge of historic proportions today due to several new factors: The growing number of countries with skilled multinational corporations placing their R&D centers, fueled by high education and low labor costs, wherever the profits are the greatest, and virtually every service being electronically communicable.

It will be difficult to ever match our populous economic competitors in the quantity of their scientists and engineers. Ours is an even tougher task: to stay far ahead in the quality of our research and to keep pioneering scientific fields ahead of the pack. The best, for the most part, cannot duplicate them.

We can readily meet this challenge and enjoy a prosperous future, even though these investments in education and research require incurring costs now for benefits later.

The PACE Act will sustain our vibrant science and technology sector and with it our well-being, health, environment, and security.

It will encourage education at home and attract talented scientists and engineers from abroad, as well as nurture a business environment that transforms new knowledge into new opportunities for creating high quality jobs and reaching shared goals.

The passage of this farsighted public investment program will ensure that the United States is stronger, smarter, and leads the world in economic and technological innovation in the twenty-first century.

Mr. ALEXANDER. Mr. President, today I join with Senators DOMENICI, BINGAMAN, MUKULSKI, and other senators, in introducing the Protecting America’s Competitive Edge (PACE) Act—a package of three bills to enhance American brainpower.

America is now playing in a tougher league as China and India are competing for our jobs. The best way to keep those jobs in America is to maintain our brainpower edge in science and technology.

The story of this bill really began last May when Senator JEFF BINGAMAN and I, with the encouragement of Senate Energy Committee Chairman PETE DOMENICI, asked the National Academies this question: “What are the top actions, in priority order, that Federal policy makers could take over the next decade to help the United States keep our advantage in science and technology?”

To answer the question, the Academies assembled a distinguished panel of business, government, and university leaders headed by Norm Augustine, former CEO of Lockheed Martin, that included three Nobel Prize winners. They took our question seriously. We met with them for several sessions; they gave us 20 when they released their report in October.

In October, the Energy Committee held a hearing to learn more about those recommendations from Mr. Augustine and the Academies. It was the first opportunity Congress had to hear the Academies’ answer to our question.

Following those hearings, Chairman DOMENICI, Senator BINGAMAN, and I convened a series of “home run” sessions with members of the Academies, outside experts, and some officials in the Administration. These off-the-record sessions allowed Senators and Administration officials to grapple with the Academies’ recommendations and consider how best to implement them.

Last November, Norm Augustine led a dinner discussion hosted by Senator FRIST with about 30 Senators on the recommendation of recommendations. As we had in the Capitol. And then, in December, Senators DOMENICI, BINGAMAN, and I met with President Bush where he graciously listened to our ideas. The President was very engaged and knew the issues well.

Now, as the Senate begins its session for the year, we are introducing this legislation to implement the recommendations of the Auguste Report. Next week when the President

January 26, 2006
This bill is all about brainpower and the relationship of brainpower to good American jobs.

The United States produces more than 25 percent of all the wealth in the world (in terms of GDP)—but has only 5 percent of the world’s population. We are the most productive country on earth. The Academies explain this phenomenon in this way: “...as much as 86 percent of measured growth in U.S. income per capita is due to technological change.

The technological change is the result, in the report’s words, of pouring “of well trained people and the steady stream of scientific and technological innovations they produce.”

Most of this good fortune comes from the American advantage in brainpower: an educated workforce, and our technological innovation. The United States has the finest system of colleges and universities on earth, attracting more than 500,000 of the brightest foreign students. No country has national research universities matching ours. Americans have won the most Nobel prizes in science and registered the most patents. We have invented electricity, the computer chip, and the internet.

As the scientist noted, we don’t have science and technology because we’re rich. We’re rich because we have science and technology.

Yet we worry that America may be losing its brainpower advantage. American engineers who travel to China, India, Finland, Singapore, Ireland, and elsewhere come home saying, “Watch out.”

The Augustine Report found that we are right to be worried: Only 6 percent of American college-age students earn degrees in the natural sciences or engineering, trailing students in China and India and a dozen other countries, many of which have doubled or tripled their degree output over the last decade. For the cost of one chemist or engineer in the United States, a company can hire five chemists in China or 11 engineers in India. China is spending billions to recruit the best Chinese scientists from American universities to return home to build up Chinese universities.

The report also found signs that we are not keeping up: U.S. 12th graders performed below the average of 21 countries on tests of general knowledge in math. In 2003 only three American companies placed among the top 10 recipients of new U.S. patents. Of 120 new chemical plants being built around the world with price tags of $1 billion or more, one is in the United States and 50 are in China.

To maintain America’s global leadership in research and development, the Augustine Report made twenty wide-ranging and urgent recommendations for U.S. schools, universities, research, and economic policy that include: Recruit 20,000 science and math teachers with 4-year scholarships and train 250,000 current teachers in summer institutes. Create a new coordinating office to manage a centralized research infrastructure fund of at least $500 million per year. Provide 30,000 scholarships and graduate fellowships for scientists. Increase federal funding for basic research in the physical sciences by 10 percent a year for 7 years. Give American companies a bigger government R&D tax credit so they will keep their good jobs here instead of moving them offshore. Create a new agency in the Department of Energy modeled on the Defense Advanced Research Projects Agency to fund breakthroughs that will lessen our dependence on foreign sources of energy.

Some may wince at the price tag—$9 billion in the first year, and then it edges upward over the full seven year period. I believe the cost is low, relative to the benefits. Maintaining America’s brainpower advantage will not come on the cheap.

This year, one third of State and local budgets go to fund education. More than 50 percent of American students have a Federal grant or loan to help pay for college. The Federal Government spends nearly $30 billion per year on research at universities and another $31 billion to fund 36 national research labs.

Just last year, Congress spent $85 billion to fight the war in Iraq, $71 billion for hurricane recovery, and $352 billion to finance the national debt. If we fail to invest the funds necessary to keep America competitive, our country will not have an economy capable of producing enough money to pay the bills for war, social security, hurricanes, Medicaid, and debt.

The legislation we are introducing today has strong bipartisan support. It is our hope President Bush will make it a focus of his State of the Union Address and of his remaining 3 years in office—and that future candidates for president will make it the center of their campaign. Our advantage in national security, there is no greater challenge than maintaining our brainpower advantage so we can keep our good paying jobs and strengthen our economy. That is the surest way to keep America on top.

I hope my colleagues will join us in this critical effort to protect America’s competitive edge.

Ms. MIKULSKI. Mr. President, I’d like to thank my colleagues: Senator Peter Perata, Senator Sam Brownback, Senator Lamar Alexander for their effort in moving this issue. I am so proud of our great bipartisan team. I can’t say enough about the appreciation that many of us in the Senate feel about their initiation of the report, “Rising Above the Gathering Storm,” which is the basis for our legislation, the PACE Act.

America must remain an innovation economy. This legislation creates the building blocks that we need for a brainpower advantage. Our Nation is in an amazing race—the race for discovery and new knowledge. The race to remain competitive and to foster an innovation society, to create new ideas that lead to new breakthroughs, new products and new jobs. The innovations that have the power to save lives, create prosperity and protect the homeland. The innovation to make America safer, stronger and smarter.

The legislation is called “Protecting America’s Competitive Edge” Act or PACE. It is divided into 3 sections: Energy, Education and Tax. It calls for: getting new ideas by doubling Federal funding for basic research in the Department of Energy with special attention going to physical sciences, engineering, math and information sciences; getting the best minds with scholarships for future math and science teachers including $20,000 scholarships from the National Science Foundation (NSF) for undergraduate students majoring in math or science along with teacher certification; visa reform for foreign science and math students so the best and brightest can come here and stay; and a visa for doctoral students studying math and science so they can stay in the U.S. longer; and an extension of the R & D tax credit, doubling the current R & D credit, from 20 percent to 40 percent, expanding the credit to cover all research—since current law only allows credit for energy research.

Why is this so important? Because a country that doesn’t innovate, stagnates. The whole foundation of American culture and economy is based on the concept of discovery and innovation. That’s a part of our culture. When you look at what has made America a superpower, it’s our innovation and our technology. We have to look at where the new ideas are going to come from that are going to generate the new products for the 21st century.

I want America to win the Nobel prizes and the markets. This legislation will help to set the framework. It will make sure that we’re helping our young people with scholarships and new visas, and helping our science teachers and those working in science with funding and research opportunities. We also are forming partnerships with the private sector, and building an innovation-friendly government.

This is so important to me and I’m going to use my committee responsibility and my work and expertise in the United States Senate to make it happen. Whether it’s my position on the HELP Committee, or my position to pass the education piece, or in my seat as an appropriator and Vice Chair on the subcommittee that funds Science. I will work to make sure that there is money in the federal checkbook to support these important proposals.

By Mr. LUGAR:

S. 2200. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes. Introduced in the Senate and referred to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise today to offer legislation urging the
Administration to develop a United States—Poland Parliamentary Youth Exchange Program.

The purpose of this exchange program is to demonstrate to the youth of the United States and Poland the benefits of cooperation between the U.S. and Poland based on common political and cultural values. I have long been an active supporter of the Congress-Bundestag Exchange program and am hopeful that this new endeavor will make similarly important lasting contributions to the U.S.-Polish relationship.

As a Rhodes Scholar, I had the opportunity to discover international education at Pembroke College—my first trip outside of the United States. The parameters of my imagination expanded enormously during this time, as I gained a sense of how large the world was, how many talented people there were, and how many opportunities one could embrace. Student exchange programs benefit international scholars and advance human knowledge. Such programs expand ties between nations, improve international commerce, encourage cooperative solutions to global problems, prevent war, and develop citizens who can develop a sense of global service and responsibility.

Funding a great foreign exchange program is a sign of both national pride and national humility. Implicit in such a program is the view that people from other nations view one’s country and educational system as a beacon of knowledge—as a place where international scholars would want to study and live. But it is also an admission that a nation does not have all the answers—that our national understanding of the world is incomplete. It is an admission that we are just a part of a much larger world that has intellectual, scientific, and moral wisdom that we need to learn.

The United States and Poland have enjoyed close bilateral relations since the end of the Cold War. Most recently, Poland has been a strong supporter of efforts led by the United States to combat global terrorism, and has contributed troops to and led coalitions in both Afghanistan and Iraq. Poland also cooperates closely with the United States on such issues as democratization, human rights, regional cooperation, enlargement, and trade reform of the United Nations. As a member of the North Atlantic Treaty Organization (NATO), and the European Union, Poland has demonstrated its commitment to democratic values and is a role model in its own right.

I believe that it is important to invest in the youth of the United States and Poland in order to strengthen long-lasting ties between both societies. After receiving for many years international and U.S. financial assistance, Poland is now determined to invest its own resources toward funding a U.S.-Poland exchange program. To this end, the Polish Foreign Minister unambiguously stated that Poland welcomed the opportunity to be an equal partner in funding important efforts.

I ask my colleagues to support this legislation.

By Mr. OBAMA (for himself, Mr. INOUYE, Mrs. MURRAY, and Mr. LAUTENBERG):

S. 2201. A bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. OBAMA. Mr. President, in the hours after the terrorist attacks on 9/11, America’s air traffic controllers rose to meet the tremendous challenges of that day.

After halting all takeoffs, controllers began clearing the skies over America. Under unprecedented conditions, controllers guided 4,500 planes carrying 350,000 passengers to safe landings. They also rerouted more than 1,100 of the 4,500 flights within the first 15 minutes of the order—about one every second—and cleared the skies over America within 2½ hours. That kind of performance was wholly dependent on the caliber and training of the world’s finest air traffic controllers. And as we look at the Senate today, there are hundreds of pilots flying commercial airplanes under an air traffic controller’s guidance. Each and every day, the lives of thousands of people are in the hands of each and every air traffic controller.

Because what they do is vital to our safety, I became very concerned by a letter I received from Illinois air traffic controller Michael Hannigan last December. He wrote that “the air traffic controllers, who work aircraft every day, often six days a week, are not being allowed to negotiate in good faith with the Federal Aviation Administration.” And he asked for my help to “the hard working Federal employees that want the protections as a labor union that they should have a right to bargain for.”

What was clear in Michael’s plea was the sense that he and his colleagues felt that they were being treated unfairly. I looked into it and came to the conclusion that the agency was not restoring a fair negotiation procedure, it would threaten agency morale and effectiveness.

The problem is this: lower courts have determined that the FAA Administrator has the authority to impose wages and working conditions on her workers without arbitration. In order to do that, she merely has to declare an impasse in negotiations and if Congress does not do everything else aside and stop from the agreement but that at conditions within 60 days, the Administrator can go ahead and act unilaterally. That authority denies air traffic controllers and all other FAA employees the opportunity to engage in and conclude negotiations in good faith.

To diffuse the management-labor tension at the agency and bring the FAA together, I am introducing “The FAA Fair Labor Management Dispute Resolution Act of 2006.” I am also proud to say that Senator INOUYE, the co-chair of the Senate Commerce, Science and Transportation Committees; Senator MURRAY, the ranking member of the Transportation Appropriations Subcommittee; and Senator LAUTENBERG, a member on the Commerce Committee Subcommittee on Transportation, are joining me in this effort.

The FAA Fair Labor Management Dispute Resolution Act replaces the FAA Administrator’s arbitrary authority with neutral binding arbitration in the case of an impasse in labor-management negotiations. In arbitration, both labor and management would present their cases, and both would be able to accept the outcome as fair.

We need this legislation now because the FAA Administrator is engaged in contract negotiations with the agency’s largest group—the National Air Traffic Controllers Association (NATCA) and Professional Airways Systems Specialists (PASS). In both cases, negotiations have been contentious. And the FAA’s workers fear that the FAA Administrator is not intent on reaching fair, voluntary agreements given her previous negotiations. Indeed, the Administrator has already used her authority to impose wages and working conditions without arbitration or agreement on NATCA’s 11 non-air traffic controller bargaining units, and she stands at impasse with four of PASS’s five bargaining units.

The Administrator has made three arguments in defense of her actions: 1. the FAA needs the authority “to operate more like a business”; 2. air traffic controller pay is “inappropriate given the financial circumstances of the airline industry the system serves”; and 3. changing the law to send an impasse to binding arbitration would essentially “change the rules of the game during halftime.”

But the agency’s employees point out that the agency is not a business driven to cut costs in pursuit of profit, it is a public agency with no margin for error. They also argue that the nation’s air safety should not depend on how well or poorly the airlines are doing financially. And, if the rules are unfair, the employees argue they should be changed before negotiations conclude.

Regardless of the merits of each side’s positions, if the Administrator is able to impose her chosen conditions on air traffic controllers, it will have two negative effects on the agency: 1. it will lead to an erosion of talent at the agency with vital, retirement-eligible air traffic controllers interpreting such agency action as an invitation to...
retire; and 2. it will make recruiting needed replacement employees that much more difficult.

I recognize that negotiations between the Administrator and the air traffic controllers are difficult. However, it is in the best interest of the agency and public safety that management and labor cooperate in contract negotiations and if that is impossible, then no one side should be able to impose its views on the other. Only neutral arbitration can produce a fair outcome that the entire organization can accept.

More than 2,900 air traffic controllers will be eligible to retire this year, and 7,100 controllers could leave the agency within the next nine years. Meeting this management challenge will require cooperation between labor and management. Moreover, rising tension between the FAA Administrator and FAA employees threatens this vital agency’s effectiveness at every level and, as a result, threatens the safety of passengers.

Again, the legislation we are introducing today would encourage both sides in all FAA labor-management negotiations to reach a voluntary agreement. The FAA’s employee trust is at stake, and it would allow the FAA to move forward after binding arbitration, bring its workers together, and focus on other challenges because no one side will have had arbitrary authority.

The time is now—dedicated, hard-working public servants responsible for helping ensure the safety of the flying public. It is stressful, important work. We must value that work and treat them fairly.

By Mr. LEAHY (for himself, Mr. KERRY, and Mr. FEINGOLD):
S. 2202. A bill to provide for ethics reform of the Federal judiciary and to still greater public confidence in the Federal courts; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased to introduce the Fair and Independent Judiciary Act of 2006 because ensuring a fair and independent judiciary is critical to the system of checks and balances established in our Constitution. This legislation seeks to preserve the public confidence that our Federal courts enjoy, and that our courts need to adequately fulfill their constitutional role in our system. Revelations that judges and justices are receiving gifts from parties that may appear before them or have a financial interest in a litigation party undermine the public’s trust.

For the past 4 years, editorial boards across the country have called our attention to the appearance of impropriety that occurs when Federal judges accept gifts and attend lavish private seminars sponsored by well-heeled corporations. I have proposed similar legislation in the Congresses to address the problem of private judicial seminars. Last year, despite my ongoing concerns about reports of judicial

...
These are beneficiaries with serious mental illnesses who have been stabilized on medications, and people with developmental and physical disabilities who have little or no incomes and no way to afford the medications that they depend on.

I am introducing legislation to fix this problem by waiving copayments for this group of vulnerable beneficiaries and reimbursing them for any copayments they have already been forced to shoulder.

This is just one of so many problems we have seen plaguing this program. The first 26 days of this program have been a disaster for far too many seniors and disabled across New York and across the country.

We have heard reports from our poorest seniors, who were being charged hundreds of dollars for drugs. We have heard reports of disabled individuals asked to provide doctor’s notes certifying a need for their medications and of beneficiaries leaving pharmacies without the drugs they depend on to keep them healthy.

As a result of problems with computer systems, phone lines, and the inability of Medicare and private plans to properly reimburse those on the front lines of care, millions of people around the country have faced problems receiving this new benefit.

I am working on all fronts to help Medicare beneficiaries weather this transition. The program went into effect, it was clear that those dually eligible for Medicare and Medicaid, our poorest and most vulnerable seniors and disabled, would have a particular challenge navigating this transition. I was very concerned that many of these Medicare recipients would walk up to their pharmacy counters on January 1 and be unable to get their prescriptions filled.

In anticipation of these problems, I introduced legislation in December to keep these Medicare recipients from falling through the cracks by stepping up outreach and education to pharmacists and providing reimbursement to pharmacists who are charged a transaction fee to access beneficiary information through Medicare. I also cosponsored legislation to give Medicare beneficiaries more time to enroll in the new program.

And I issued a resource guide, now available in both English and Spanish, to help New Yorkers navigate this new program. To date more than 75,000 copies of the guide have been distributed.

Since the new program went into effect, I have repeatedly urged the Bush administration to address the problems plaguing this program. And last week, I introduced comprehensive legislation along with several of my Senate colleagues, that includes my bill to help pharmacists help their customers, and makes the other fixes I have been calling for to implement this program, including outreach and education, fix problems with drug plans transition programs, protect the benefits of seniors who also have coverage from a retiree drug plan, and make sure that States and low income beneficiaries are reimbursed for excess costs they have been forced to shoulder by the inept implementation of the new benefit.

I owe it to our seniors and disabled Americans to get this right. And I will keep fighting to ensure that we do.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 354—HONORING THE VALUABLE CONTRIBUTIONS OF CATHOLIC SCHOOLS IN THE UNITED STATES

Mr. VITTER submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

Whereas Catholic schools in the United States today educate 2,420,590 students and maintain a student-to-teacher ratio of 15 to 1;

Whereas the faculty members of Catholic schools teach a highly diverse body of students;

Whereas more than 27.1 percent of school children enrolled in Catholic schools are minorities, and more than 13.6 percent are non-Catholics;

Whereas Catholic schools saved the United States $19,000,000,000 in educational funding during fiscal year 2005;

Whereas Catholic schools produce students strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development; and

Whereas in the 1972 pastoral message concerning Catholic education, the National Conference of Catholic Bishops stated, “Education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person and building of community. Community is central to education ministry, both as a necessary condition and an arduously desired goal. The educational efforts of the Church, therefore, must be directed to forming persons-in-community; for the education of the individual Christian is important, not just to his solitary destiny, but also the destinies of the many communities in which he lives.”; Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of Catholic Schools Week, an event cosponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops that recognizes the vital contributions of thousands of Catholic elementary and secondary schools in the United States; and

(2) congratulates Catholic schools, students, parents, and teachers across the United States for their ongoing contributions to education, and for the role they play in promoting and ensuring a brighter, stronger future for this Nation.
SENATE RESOLUTION 355—HONORING THE SERVICE OF THE NATIONAL GUARD AND REQUESTING CONSULTATION BY THE DEPARTMENT OF DEFENSE WITH CONGRESS AND THE CHIEF EXECUTIVE OFFICERS OF THE STATES PRIOR TO OFFERING PROPOSALS TO CHANGE THE NATIONAL GUARD FORCE STRUCTURE

Mr. NELSON of Nebraska (for himself, Mr. GRAHAM, Mr. ALLEN, Mr. TALBOTT, Mrs. DOLE, Mr. DEWINE, Ms. MURKOWSKI, Ms. SNOWE, Mr. THUNE, Mr. ISAKSON, Mr. NELSON of Florida, Mr. HARKIN, Mr. DORGAN, Mr. LUTENBERG, Mr. BINGAMAN, Mr. AKAKA, Mr. BAUCUS, Mrs. CLINTON, Mr. KOHL, Ms. MIKULSKY, Mr. BAYH, Ms. CANTWELL, Mr. FRORIO, Mr. SALAZAR, Mr. LIEBERMAN, Mr. BIDEN, Mr. CONRAD, Mr. KENNEDY, Mr. FEINGOLD, Mr. MENENDEZ, Mr. JOHNSON, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 355

WHEREAS the Army National Guard and Air National Guard of the United States, representing all 50 States, Guam, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia, have played an indispensable role in the defense of our country:

WHEREAS during one phase of the Global War on Terrorism, Army National Guard soldiers comprised nearly half of the United States combat forces in Iraq:

WHEREAS National Guard personnel are currently deployed in Afghanistan, Bosnia, Kosovo, and more than 40 other countries around the world:

WHEREAS 90 percent of the troops on the ground in Louisiana and Mississippi responding to Hurricane Katrina were members of the National Guard:

WHEREAS while performing these critical missions, the National Guard continues to experience significant equipment shortages, especially vehicle and radio shortages:

WHEREAS members of the National Guard are not “weekend warriors”, but citizen-soldiers who serve full-time when their country needs them to do so:

WHEREAS the National Guard is a resource shared by the chief executive officers of the States and the President:

WHEREAS the National Guard is America’s militia:

WHEREAS deployment to fight terrorism on two fronts overseas, while protecting our homeland, has stretched the National Guard thin:

WHEREAS the future of the National Guard could be determined by the Quadrennial Defense Review (QDR) currently underway:

WHEREAS the Army and Air Force could recommend changes in the force structure of the National Guard:

WHEREAS reductions in force structure could impact numerous Army National Guard armories and Air National Guard wings:

WHEREAS reductions in force structure combined with the lack of adequate equipment for the National Guard threaten its capacity to discharge its missions and its ability to respond in emergencies:

WHEREAS homeland defense is the most important mission of the Department of Defense:

WHEREAS the National Guard is the force best suited to defend the homeland and therefore the element from which resources should not be cut: Now, therefore, be it

Resolved, That the Senate—

(1) supports the vital Federal and State missions of the National Guard of the United States and the Air National Guard of the United States, including support of ongoing missions in Iraq and Afghanistan and homeland defense and disaster assistance and relief efforts;

(2) recommends that the Department of Defense propose fully funding the equipment needs of the National Guard;

(3) believes that the Department of Defense should, as soon as possible, consult with the chief executive officers of the States, as well as Congress, before changes to the National Guard force structure;

(4) requests that any plan of the Department of Defense regarding the National Guard force structure take into account the role of the National Guard role in homeland defense and other State missions as defined by the chief executive officers of the States;

(5) requests that the Department of Defense prepare budget projections that detail cost savings from any changes in National Guard force structure, as well as projected costs in the event large personnel increases are necessary to respond to a national emergency; and

(6) requests that the Department of Defense assure Congress and the chief executive officers of the States that potential changes in the National Guard force structure will not impact the safety and security of the United States people.

Mr. NELSON of Nebraska, Mr. President, I rise today to speak on behalf of a resolution I am submitting with Senator GRAHAM and 31 other senators, many of whom are members of the National Guard Caucus like me and Senator NELSON of Nebraska. This resolution honors the service of the National Guard. In my opinion, it could pass the very last drill of the week.

The Guard is unique in that it is a shared resource between the Governors and the President. The National Guard is the first to respond to domestic emergencies which range from natural disasters to homeland defense. Ninety percent of the troops on the ground in Louisiana and Mississippi responding to Hurricane Katrina were members of the National Guard.

Most Nebraskans will recall the blizzard that roared out of Colorado in October 1997 and slammed into Nebraska causing extensive damage that would take weeks to clean up. It was fall and most trees still had their leaves. Branches snapped under the weight of more than 20 inches of snow and ice. The resulting power outages left 125,000 Nebraskans without electricity for days and even weeks.

As governor of Nebraska then, it was the responsibility of my office to declare a state of emergency and activate the National Guard to help in clean up and rescue operations. The Guard responded with troops and equipment that made the effort proceed smoothly and efficiently.

The Guard handles missions like this every year and every season while experiencing critical equipment shortages, especially vehicle and radio shortages. Congress added $1 billion dollars for new equipment for the Guard last December, but that’s only a small portion of what is needed to fully fund the equipment needs of the Guard. And deployments, especially to Iraq and Afghanistan, have stretched the Guard thin.

In this environment that the Department of Defense will release the Quadrennial Defense Review next month. The QDR review could impact the future of the Guard. The Army and the Air Force may recommend changes in the force structure which will impact Army National Guard armories and Air National Guard wings throughout the country.

Reductions in the force structure combined with a lack of adequate equipment for the National Guard threaten its missions and ability to respond in an emergency. Homeland defense is the most important mission of the Department of Defense and the National Guard is the force best suited to defend the homeland. It’s the very last pit resource should be cut from.

Unfortunately, media reports indicate that to pay for modernization programs, the Department of Defense will propose changing the Guard’s force structure. In an effort to begin a dialogue with DOD we are offering this resolution which honors the National Guard and recommends that DOD: Fully funding the equipment needs of
the National Guard; requests that the Department of Defense should, as soon as possible, consult with Governors, as well as Congress, on any proposed changes to the National Guard force structure; requests that any plan of the Department of Defense regarding the National Guard force structure take into account the role of the National Guard in homeland defense and other state mission defined by Governors; requests the Department of Defense provide budget projections that detail cost savings from any changes in National Guard force structure, as well as projected costs in the event large personnel increases are necessary to respond to a national emergency; and requests the Department of Defense as-sure Congress, and Governors, that potential force structure changes will not impact the safety and security of the American people.

Every debate about the defense budget should be held in the context of long-term national security goals. I look forward to engaging with the Department on their QDR proposals for the future of America’s militia, the National Guard, and I urge adoption of this resolution by the full Senate.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources to consider the President’s Proposed Budget for Fiscal Year 2007 for the Department of Energy. The hearing will be held on Thursday, February 9 at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150. For further information, please contact Elizabeth Abrams.

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce for the information of the Senate that the Committee on Indian Affairs will meet on Wednesday, January 18, 2006, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct an Oversight Hearing on Off-Reservation Gaming: The Process for Considering Gaming Applications lands eligible for gaming pursuant to the Indian Gaming Regulatory Act.

Those wishing additional information may contact the Indian Affairs Committee.

AUTHORITIES FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. TALENT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on January 20, 2006 at 2:30 p.m. to hold a closed briefing.

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

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Yoni Cohen of my staff be granted floor privileges for the duration of today’s session.

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

UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that on Tuesday, January 31, at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session and the consideration en bloc of calendar Nos. 440 and 411, the nomination of Ben Bernanke to be a member and Chair of the Federal Reserve System. Further, that there be 30 minutes under the control of Senator BUNNING and 60 minutes equally divided between the chairman and ranking member of the Banking Committee.

I further ask unanimous consent that following the use or yielding back of time, the Senate proceed to consecutive votes on the confirmation of calendar Nos. 440 and 411, and that following the votes the President be immediately notified of the Senate’s action, and then the Senate resume legislative session.

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

ALITO NOMINATION

Mr. FRIST. Mr. President, earlier today I filed a cloture motion on Judge Alito’s nomination in order to bring to close in the not too distant future this outstanding nominee’s confirmation process.

The cloture vote is scheduled, as my colleagues know, for 4:30 in the afternoon on Monday. If cloture is invoked—which I believe we will—we will have a final up-or-down vote on confirmation on Tuesday at 11 o’clock in the morning.

While I believe the Senate has a responsibility to have a thorough debate, a robust debate on every judicial nomination, I am disappointed and it is time to end the delay tactics which we have seen play out over the last several weeks, delay tactics my colleagues on the other side of the aisle are using to obstruct this nominee. Thus, that is why I filed cloture to say enough is enough.

It has been 87 days since the President announced Judge Alito’s nomination. I should say, by the way, that it took an average of 63 days from announcement to confirmation of both of President Clinton’s nominees.

When Judge Alito was nominated on October 31, or shortly after that—maybe even that day—Chairman SPEER and I worked in good faith with Senator Reid and Senate Majority for a timeline on confirmation projecting out where we would be. We agreed to give Judge Alito a fair up-or-down vote after plenty of time for hearings and preparations for the hearings on January 20. We agreed to consider the nomination—it wasn’t our preference—after the holidays. We also agreed—again it wasn’t our preference—to the Democratic schedules not to begin hearings the week we preferred, January 2.

All of these accommodations were made with the expectation that Democrats on the Judiciary Committee, once they had plenty of time for their hearings themselves, would not delay
the vote coming out of the committee, which would set back the schedule yet a week later, which indeed is what happened. Judge Alito was responsive. He was forthcoming. He answered more than 650 questions. Again, when people hear these numbers, what is the perspective? That is more than double the number of questions that Justice Ginsburg or Justice Breyer answered during their entire confirmation hearings.

But still, the Democrats delayed Judge Alito’s vote coming out of committee. Yes, it is within the rules. All of this is within the rules. But we have seen this steady delay, postponement, obstruction. Luckily, the process continues forward. That is where we are today.

We are now scheduled to have a vote on January 31. That is the agreement the Democrat leader and I agreed to in representing our caucuses earlier today. That means we will have had a total of 5 days of floor activity. It is 8 o’clock tonight. We have had speech and debate over the course of the day, and we will have debate tomorrow. As everyone is well aware, we are given plenty of time in the Senate. We could stay here later tonight, tomorrow, tomorrow night. I said we will plow through Saturday until we get this done. It will end up being 5 days in terms of floor action.

Just to put that in perspective, for all of the sitting members on the Supreme Court today, only one other had 5 days of floor debate on a nominee. Again, we are pushing the limits once again. That is why we came forward to file cloture, to bring closure to this process.

Throughout the entire process I have been very consistent: These judicial nominees deserve, in terms of just dignity, but also it is our responsibility, they deserve a fair up-or-down vote. I should add, also, a recent poll shows that a majority of Americans believe Judge Alito should be confirmed. So, tonight, I can say not with absolute certainty but with as much certainty you can get around this place that on Tuesday Judge Alito will get that fair up-or-down vote.

I mentioned the recent poll. That is the general sense people get as we go back to our communities talking about the hearing process and the confirmation process. They broadly support this highly qualified individual. The list goes on and on in terms of his qualifications, his 15 years on the Federal courts, his highest rating with the ABA, the testimony from some of his colleagues in the hearing, now 2 weeks ago, all of which underline his modest judicial temperament, his integrity, his character. The polls show that the American people have spoken in a fairly dramatic way to us as we go back to our States.

I agree with the American people. Next Tuesday, a bipartisan majority will vote to confirm Judge Alito as Justice Alito.

ORDERS FOR FRIDAY, JANUARY 27, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon on Friday, January 27; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to executive session and resume consideration of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States.

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

PROGRAM

Mr. FRIST. To reiterate, today we filed a cloture motion on the nomination of Judge Alito. The cloture vote will be 4:30 on Monday. We will have some more debate time on Monday. I believe we have provided plenty of time for debate on the nomination. I hope and expect cloture will be invoked and that we will proceed to a vote on the confirmation of Samuel Alito on Tuesday at 11 a.m.

ADJOURNMENT UNTIL TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:05 p.m., adjourned until Friday, January 27, 2006, at 12 noon.
Tuesday, January 26, 2006

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S145–S233

Measures Introduced: Nine bills and two resolutions were introduced, as follows: S. 2197–2205, and S. Res. 354–355. Pages S210–11

Measures Reported:

S. 1708, to modify requirements relating to the authority of the Administrator of General Services to enter into emergency leases during major disasters and other emergencies. (S. Rept. No. 109–214) Page S210

Supreme Court Nomination: Senate continued consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States. Pages S145–S207

A motion was entered to close further debate on the nomination and, notwithstanding the provisions of Rule XXII of the Standing Rules of the Senate, and pursuant to the unanimous-consent agreement of January 26, 2006, a vote on cloture will occur at 4:30 p.m., on Monday, January 30, 2006. Page S197

A unanimous-consent agreement was reached providing that if cloture is invoked, notwithstanding the provisions of Rule XXII, the Senate vote on confirmation of the nomination at 11 a.m. on Tuesday, January 31, 2006; that all time prior to 11 a.m., be equally divided between the Majority and Democratic Leaders, or their designees; further, that the cloture vote may be vitiated by agreement of the Majority and Democratic Leaders. Page S1197

A unanimous-consent-time agreement was reached providing for further consideration of the nomination at 12 noon, on Friday, January 27, 2006. Page S233

Bernanke Nomination—Agreement: A unanimous-consent agreement was reached providing that on Tuesday, January 31, 2006, at a time determined by the Majority Leader, after consultation with the Democratic Leader, Senate begin consideration of the nominations of Ben S. Bernanke, of New Jersey, to be a Member of the Board of Governors of the Federal Reserve System, and to be Chairman of the Board of Governors of the Federal Reserve System; that there be 30 minutes under the control of Senator Bunning, and 60 minutes equally divided between the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs; and that following the use, or yielding back, of time, that the Senate vote on confirmation of the nominations. Page S232

Executive Communications: Pages S209–10

Additional Cosponsors: Pages S211–12

Statements on Introduced Bills/Resolutions: Pages S212–32

Notices of Hearings/Meetings: Page S232

Privileges of the Floor: Page S232

Adjournment: Senate convened at 9:45 a.m., and adjourned at 8:05 p.m., until 12 noon, on Friday, January 27, 2006. (For Senate’s program, see the remarks of the Majority Leader in today’s Record on page S233.)

Committee Meetings

No committee meetings were held.
House of Representatives

Chamber Action
The House was not in session today. The House is scheduled to meet at 12 noon on Tuesday, January 31, 2006.

Committee Meetings
No committee meetings were held.

COMMITTEE MEETINGS FOR FRIDAY, JANUARY 27, 2006
(Committee meetings are open unless otherwise indicated)

Senate
No meetings/hearings scheduled.

House
No committee meetings are scheduled.
Next Meeting of the SENATE
12 noon, Friday, January 27

Senate Chamber

Program for Friday: Senate will continue consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

Next Meeting of the HOUSE OF REPRESENTATIVES
12 noon, Tuesday, January 31

House Chamber

Program for Tuesday: To be announced.