

the thought that the establishment clause does not apply to States in and of itself sends shivers, I am sure, down the spines of virtually every American, let alone to advocate it as Justice Thomas has, and my recollection is not once but I think twice.

Mainstream philosophy matters because some on the extreme would seek to abolish the right to privacy that the Court recognized 40 years ago in that famous case of *Griswold v. Connecticut*. There is an inherent right to privacy in the Constitution.

Mainstream philosophy matters because some on the extreme would argue that the Congress cannot pass laws such as the Endangered Species Act or the Clean Water Act pursuant to the Constitution's commerce clause. They say the commerce clause prevents the Clean Water Act; the commerce clause prevents Congress from passing the Endangered Species Act. Think for a moment what that means and how far that could go.

Many of us are concerned that this Court is a couple or three steps away from if not virtually eliminating the commerce clause and therefore Congress's ability to enact statutes, but going so far in that direction it is going to create havoc in this country. We will have more States doing separate sets of statutes because the commerce clause does not apply.

Now, come on. Stop and think a second. That is revolutionary. Yet there are many who advocate that in this country, I am sure hoping the President appoints a nominee with just that view. I will bet dollars to donuts there are many pushing that view upon the President right now.

These are extreme views. They are not mainstream. And the stakes are high. The Senate has a duty to ensure that the nominee will defend America's mainstream constitutional values. We have that duty. It is our responsibility as Senators.

It is only fitting that the Senate set a very high standard. It is only fitting that the Senate distinguish Supreme Court nominations from other nominations, especially those for administrative positions. Administrative positions, that is the President's team, in deference to the President having his own people. We are not talking about the judicial branch. There is no deference to have your own people because we have established we want independent people. We want one's own people. We do not want the President's own people. We do not want the Congress's own people. We want independent people who are in and of themselves their own people.

It is so important the Senate act with very high standards. Because of the importance of an independent Supreme Court, the President is not entitled to have the Senate confirm his nominee. There is no entitlement there.

With some sadness, I have noted over the last several years that that trend is

developing. It is becoming almost assumed that the Senate must confirm the President's nominee, that the President has that right. There is no right. The right is for the American people to stand up under the Constitution and do what is right for their people. And, yes, support a nominee who is truly independent, has personal integrity and is competent but, no, not support a nominee for the Supreme Court who does not have those requisite criteria. That is what is right. The Senate must set a very high standard.

The next Supreme Court Justice will affect all of us and our children. This Justice will exercise extraordinary power. We must ensure that Justice's independence.

The independence of the Supreme Court is a doctrine with deep roots in the history of our Nation. In 1765, the great British legal jurist, Sir William Blackstone, published his *Commentaries*, a book that was well read by our Founders. Every law student in America knows about Blackstone. Blackstone wrote:

In this distinct and separate existence of the judicial power, in a . . . body of men, nominated indeed, but not removable at pleasure, by the crown, consists one main preservative of public liberty; which cannot subsist long in any state, unless the administration of common justice be in some degree separated both from the legislative and also from the executive power.

In explaining our newly minted Constitution, Alexander Hamilton wrote in *Federalist No. 78*:

[T]he judiciary is beyond comparison the weakest of the three departments of power. . . . [T]hough individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."

That says we in Congress cannot have our people on the Court. It also says the President cannot have his person on the Court. Rather a process so that the judge is his person on the Court, his own person.

Hamilton continued:

[L]iberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments. . . .

That is pretty profound. And Hamilton warned:

[F]rom the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches. . . .

Marbury v. Madison years later helped establish the independence of the judiciary, saying the Constitution is what the Court says it says, and that has helped. But we all know Presidents have tried to change the Court in their own ways because they did not like what the Court was doing. FDR tried his court-packing plan. He did not like what the Supreme Court was deciding so he tried to influence the Court with

court packing, and that did not work. Presidents have all kinds of ways to influence the Court. As I mentioned earlier, President Eisenhower very much tried to influence Justice Warren in *Brown v. Board of Education*. Fortunately, Justice Warren, who was appointed by President Eisenhower, stood up and said, no, separate but equal is not the law of the land. Rather, we should integrate.

Hamilton then concluded:

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

So I call on the President, I call on my colleagues to defend that "main preservative of . . . liberty." I call on the President, I call on my colleagues to defend the independence of the courts. I call on my colleagues in this Senate to actively exercise their constitutional duties of advice and consent.

There are not many times in our lives as Senators when rising up and exercising our responsibilities is as important as this, not be a rubberstamp, but not vote no just because we have a different view of that person's judicial philosophy but, rather, doing the right thing, and the right thing is to make sure we have nominees of utmost personal integrity who are clearly professionally competent and who are in the mainstream and will not cater to extreme views of either the right or the left but stand above it all and decide cases in the right way.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

AMENDMENT NO. 1224, AS MODIFIED, TO H.R. 2360

Mr. MCCONNELL. Mr. President, I ask unanimous consent that notwithstanding passage of H.R. 2360, amendment No. 1224, which was previously agreed to, be modified with the change at the desk.

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

The amendment, as modified, is as follows:

On page 81, line 24, increase the first amount by \$50,000,000.

On page 82, line 4, after "tion" insert ": Provided further, That of the total amount provided, an additional \$50,000,000 shall be available to carry out section 33 (15 U.S.C. 2229)".

On page 77, line 18, strike "\$2,694,300,000" and insert "\$2,714,300,000".

On page 77, line 20, increase the amount by \$20,000,000.

On page 77, line 24, after "grants" insert ", and of which at least \$20,000,000 shall be available for interoperable communications grants".

On page 85, line 18, after "expended" insert ": Provided, That the aforementioned sum shall be reduced by \$70,000,000".

On page 82, line 21, strike "\$5,000,000" and insert "\$3,000,000".

(The remarks of Ms. LANDRIEU are printed in today's RECORD under "Morning Business.")

HONORING FOX MCKEITHEN

Ms. LANDRIEU. Mr. President, I rise today in sadness to pay tribute to a man who served the State of Louisiana well for over 22 years, our late Secretary of State Fox McKeithen, who passed away over the weekend at his home, lovingly surrounded by friends, family, and admirers.

Walter Fox McKeithen was born on September 8, 1946. He was a young man when he died this weekend. He was the second of six children in a small northern town of Louisiana called Columbia. He was the son of a very well-respected governor whom we fondly called "Big John" McKeithen. He served in the 1960s and is accredited with leading our State of Louisiana at a very tough and tumultuous time in a very progressive and positive direction. Fox McKeithen, the oldest child, took after his father's political skills from an early age. He demonstrated those leadership skills as senior class president at Caldwell Parish High School, and after graduating from Louisiana Tech, he worked as a high school civics teacher and coach.

With his desire to serve the people of Louisiana in a greater role, he was elected to the House of Representatives in 1983. I had the distinct pleasure of working with Fox as a State representative. He went on then to run statewide and was elected Secretary of State. I went on at that same time as State treasurer, and we continued our strong partnership and relationship.

As Secretary of State, however, Fox took his very colorful personality and spirited dedication to make great improvements to an office that was in need of improvement. He modernized the way the State archived its records. He made it easier for businesses to register and get assistance from the Secretary of State's office. Most importantly, he was a friend to local clerks who work diligently in our State to process elections, make sure they are run fairly and openly. He had a very

strong view, as Secretary of State and our chief election voters commission officer, that registered voters should have a chance to vote. Not a radical notion, but in this day and age not something that always happens. So he worked overtime to make sure the machines were there on time and people were well trained. If the clerks had problems, he himself would step in and give personal attention. So we all owe him a debt of gratitude for his dedication and commitment. In fact, once there was a problem—voting machines were arriving late. He jumped in his own pickup truck and went down to one of our parishes to bring them voting machines.

Perhaps his greatest legacy was the renovation of our old State capitol, a building that sat on the banks of the Mississippi River in decay and abandonment for many years. But with his vision and his leadership, he restored that building to its former grandeur, and now it is a place that is used by many different organizations and appreciated and admired by all the people of our State. When he started this project, people said it could not be done, there was not enough money to do it. But because of his tenaciousness and his hard work and leadership ability, he led a group of leaders both in the public sector and in the private sector to restore our own State capitol and enhanced one of the great communities on the banks of the Mississippi River, right there in our capital city, reminding us of our rich and colorful past.

It was truly an honor for me and many people in Louisiana to serve in public office with Fox McKeithen. He loved Louisiana and he loved serving all of her people. He shared his father's famous campaign slogan, "Won't you h'ep me?" as if it were a question that the people of Louisiana were asking of him. It didn't matter if you were a Democrat or a Republican, rich or poor, from north or south of I-10 or north or south of I-20, he was always there to help you if he could.

A dedicated public servant who gave everything he had to serving our State, Fox McKeithen will be dearly missed. The people of our State owe a great debt of gratitude to Fox and the entire McKeithen family for a legacy of leadership, compassion, and vision for our State. His eldest daughter Marjorie follows in her father's and grandfather's footsteps through her practice of law and effective advocacy for many important programs and initiatives in our State. She is truly carrying on the great McKeithen legacy of service.

So I come to the floor today saddened by the fact but gladdened by the life this man led and certain of his legacy that he left with the people of our State and the many contributions he made over a long and dedicated career.

On behalf of the people of Louisiana, I say our thoughts and prayers are with him and his family at this time.

CHANGE OF VOTE

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, on roll-call vote 187, I voted "yea." It was my intention to vote "nay." Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

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

HONORING OUR ARMED FORCES

STAFF SERGEANT TRICIA L. JAMESON

Mr. HAGEL. Mr. President, I rise to express my sympathy over the loss of Tricia L. Jameson of Omaha, NE, a staff sergeant medic in the Nebraska Army National Guard. Staff Sergeant Jameson was killed by an explosion after stopping to treat wounded Marines on July 14 near Trebil in western Iraq. She was 34 years old.

Staff Sergeant Jameson grew up in St. Paul, NE, before moving to Omaha as a teenager. She graduated from Millard South High School in 1989 and attended Central Community College at Columbus, NE, from 1990-91. She spent the last 10 years in the military, working the last 5 years as a health care specialist at the Nebraska Air National Guard base clinic in Lincoln, NE. Staff Sergeant Jameson was a member of the 313th Medical Company of Lincoln and was mobilized to duty in Iraq less than a month ago. Staff Sergeant Jameson volunteered for the assignment. She was not a regular member of the group but a replacement for another soldier. Staff Sergeant Jameson will be remembered as a loyal soldier who had a strong sense of duty, honor, and love of country. Thousands of brave Americans like Staff Sergeant Jameson are currently serving in Iraq.

Staff Sergeant Jameson was preceded in death by her father, Robert Jameson. She is survived by her mother Patricia Marsh of Omaha; brother, Rob Jameson of Omaha; grandmothers Kathryn Jameson of Weeping Water, NE, and Annamae Donahue of Omaha; and fiancé Mike Coldewey of Omaha. Our thoughts and prayers are with them at this difficult time. America is proud of Staff Sergeant Jameson's heroic service and mourns her loss.

I ask my colleagues to join me and all Americans in honoring SSG Tricia L. Jameson.

DEPUTY JERRY ORTIZ: IN MEMORIAM

Mrs. BOXER. Mr. President, I rise to honor the memory of Deputy Jerry Ortiz, a 15-year veteran of the Los Angeles County Sheriff's Department, who was tragically killed in the line of duty on June 24, 2005.

As a young child growing up in Southern California, Jerry Ortiz knew that he wanted to dedicate his life to protecting his fellow citizens. So it came as no surprise when he enlisted in the U.S. Army shortly after his graduation from El Monte High School in