



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 151

WASHINGTON, WEDNESDAY, SEPTEMBER 28, 2005

No. 123

## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty Father, the giver of gifts, help us to live in purity. Make all our thoughts so pure that they will bear Your scrutiny. Make all our desires so pure that they will be rooted in Your purposes. Make all our words so pure that You will find pleasure in hearing them. Make all our actions so pure that people will know that we are Your children.

Guide our lawmakers through the challenges of this day. Keep them from words that harm and do not help, from deeds that obstruct and do not build, from habits that shackle and do not liberate, and from ambitions that take and do not give.

Give to us all the blessings of asking and receiving, of seeking and finding, and of knocking and opening.

We pray in Your sovereign name.  
Amen.

### PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK 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.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, September 28, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,  
President pro tempore.

Mr. BROWNBACK thereupon assumed the Chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

### EXECUTIVE SESSION

NOMINATION OF JOHN G. ROBERTS, JR., TO BE CHIEF JUSTICE OF THE UNITED STATES—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 317, which the clerk will report.

The assistant legislative clerk read the nomination of John G. Roberts, Jr., of Maryland, to be Chief Justice of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 10 a.m. until 11 a.m. will be under the control of the majority leader, or his designee.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, today the Senate resumes consideration of the nomination of John Roberts to be Chief Justice of the United States. Tomorrow

at 11:30 we will vote on this nomination. Again, I remind all Senators to be at their desks for that vote. This is among the most significant votes that most of us will cast in our Senate careers, the approval of the nomination of Chief Justice of the United States. We ask Senators to come to the Chamber around 11:20 to be seated for the 11:30 vote.

Following the confirmation on Judge Roberts, the Senate will take up the Defense appropriations bill. Senators should expect votes on Thursday, and we will be voting on Friday on the appropriations bill or any other legislative or executive items that are cleared for action.

I was talking to the Democratic leader to make sure that we are voting on Friday of this week.

We also have a continuing resolution that we must act on this week before the end of the fiscal year. Therefore, I ask that Senators adjust whatever plans they have for the weekend or for Friday to recognize that we will be voting. We will not be voting on Monday or Tuesday in observance of the Jewish holiday. But the Senate will be in session to conduct business and discussing amendments. Those amendments will be stacked for votes on Wednesday. We will notify Senators as to what time that will be. I encourage Senators to come forward and offer their amendments as early as possible so we can vote on Wednesday.

### PANDEMIC PREPAREDNESS

Mr. President, on another issue, an important issue—we have so much going on in this body with the appropriations bills, and the nomination coming forward, and that is going very well in terms of the discussion on both sides of the aisle. But there are many other issues as well.

I want to focus for a few minutes on an issue I do not believe is receiving the attention it deserves given the risk that is before us.

Yesterday, I sent a letter to Health and Human Services Secretary Michael

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S10529

Leavitt regarding our Nation's pandemic preparedness. The H5-N1 avian influenza—the name of this particular strain of virus—has spread from Southeast Asia to Russia. It is spreading across the world.

If you look at a map and look at that spread, it gives you real pause—and it should. It threatens to land in Europe. Although you can't say with certainty as you look at that picture of the globe and you see that spread, it will next be in Europe and America, although we don't know what that order will be.

It has infected more people and more poultry than any previous strain. If you look at the animal population—it is called the avian or bird influenza—it has caused the death or destruction of not just a few million but 160 million birds. That includes what is called the "culling" that goes on. But 160 million birds have died as a result of this influenza.

It has jumped from animals, the birds and other animals, actually, with a genetic shift to humans. People ask, How many humans have been infected? We do not know exactly, but we have documented 115 confirmed human cases of this particular H5-N1 influenza.

How fatal is it? It is fatal. The mortality rate is very high. Fifty-nine people out of the 115 confirmed cases died from this particular virus. It has a very high mortality rate.

Just this week, Indonesian health officials reported that yet another person—a young woman age 30—has died from the virus. This follows last week's deaths of two young girls and a boy with very similar symptoms in Jakarta and Samarinda. Since last Monday, Indonesia has put itself on an "extraordinary incident" status.

Experts warn that a global cataclysmic pandemic is not a question of if but when. Like an earthquake, or like a hurricane, it can hit any time. When it does, it could take the lives of tens of millions of people.

People ask, Is that an overstatement? I don't believe it is. You only have to go back and look at the history. This August, I spent a great deal of time talking to experts around the country on the H5-N1 influenza virus. In Tennessee, over in Memphis, there is St. Jude's Children's Research Hospital. There is a group of researchers there who probably know more about this particular strain than anybody in the world, led by Dr. Robert Webster at the St. Jude's Children's Research Hospital. He is one of the leading experts of the H5-N1 strain.

He explained in very clear terms that there are 16 families of the avian influenza. Billions of mutations of the virus are occurring every day. It is constantly changing, constantly adapting. With each of these little mutations, the virus multiplies its odds of becoming transmissible from human to human. It is changing up, to be spread throughout the bird population to the human population. And with just one little, tiny change, it can be trans-

mitted person to person to person. It is a little bit like pulling the lever on a Vegas slot machine over and over again. If you pull it enough times, the reels will align and hit the jackpot. In this case the jackpot is a deadly virus to which humans have no natural immunity.

It is very important right now. Nobody listening to me has a natural immunity to this particular virus. Infected hosts are contagious before they are symptomatic. In other words, anyone walking around who is infectious can spread the disease. They may not have any symptoms. The virus would thus have ample opportunity to spread rapidly throughout the population before it could be detected or appropriately contained—but not symptomatic. You don't know whether it can be contained or know to stay away from people.

To make matters worse, we lack our best defense. People say, If it does happen, surely in America or in the world today we have a vaccine, and we have a robust antiviral stockpile. If you think you are disposed, or if you are a physician or health personnel and go into a community to treat it, do we have enough of the antiviral pill which you can take that will protect you? The answer is no.

This particular antiviral pill is Tamifly. I will mention that shortly.

We don't have enough today for first responders, or doctors and nurses who would be taking care of you. The United States of America—the richest country in the world, and the most advanced country in the world—is unprepared in terms of the number of vaccines to treat, as well as the initial antiviral pill or therapy to treat. We do not have enough doses of the antiviral Tamifly. It is a drug which is effective today in the treatment of this particular strain. We have enough to treat about 2 million people—a little over that, 2.3 million people. We have 295 million people in this country and we can treat about 2 million people—and then that is it.

There is only one company located in the United States that produces the influenza vaccine—not the Tamifly, but the vaccine itself. In contrast, Britain, France, and Canada have tens of millions of doses on order—that is the Tamifly, the antiviral agent. We have 2 million. They have tens of millions in Britain, France and Canada.

Where does the Tamifly come from? It comes from Switzerland. That is where the manufacturing facility is located.

With our weakened domestic manufacturing capacity in this country for both something like Tamifly but especially vaccines—we do not have manufacturing plants to do it—it makes us dangerously dependent on other countries and foreign sources.

If there is an outbreak in that country and the manufacturing plant is there, it is very unlikely they will send doses to the United States of America.

The vaccine testing today indicates that an H5-N1 vaccine is safe and able to generate a robust immune response in healthy adults. That is good. That shows real progress. This data is preliminary, but it represents a very positive step that progress is being made. That is an important first step, however, and this is the key: It would take 6 to 9 months to produce 180 million of what are called monovalent vaccines. If this virus did have that transmission ability, it would be traveling and ravaging our population with no vaccine available. Two doses are required. We could make 180 million. That is enough to treat 90 million people in 9 months. It would take at least a full year to produce enough vaccine for the entire country. By that time, because this virus can be transmitted or could be transmitted so easily, the risk is that tens of thousands could die.

Some ask, why do I use such high figures? We do have a historical precedent. Look back to 1917 and 1918 and the Spanish flu. That pandemic killed not just tens of thousands but 40 million people worldwide. The Spanish flu virus killed 40 million people worldwide, the majority of whom were kids, children, and young adults between the ages of 10 and 35.

Vaccines were available for the 1957 and 1968 flu pandemics, but they arrived too late and 104,000 people died in the United States alone.

Dr. Hitoshi Ashitani at the World Health Organization warns this time around the avian flu virus may be impossible to contain. The geographic spread is historically unprecedented.

So people ask: Well, why are you giving us, Senator FRIST, all this bad news? What can and should be done? In my letter sent to Secretary Leavitt—and I had the opportunity to discuss it with him a little bit last night—I did ask him to finalize the agency's Pandemic Influenza Response and Preparedness Plan. We need a coordinated, comprehensive, aggressive plan which draws on public health and homeland security, foreign policy and defense expertise.

The plan should serve a dual purpose: First, to detect, identify, contain, and respond to threats abroad; and, No. 2, to bolster domestic preparedness and response capacity. I also urged the Secretary to purchase enough additional Tamifly to treat a large portion of the U.S. population.

These are critical first steps, but we have to do a lot more. We need to develop a bold vision of how to address this in future threats—whether they are biological weapons or infectious disease, whether they are natural, whether they are accidental, or whether they are deliberate.

That is why earlier this year I called for a Manhattan Project for the 21st Century to launch an unprecedented collaboration among the Federal Government and industry and academia. We must encourage and support advanced support and development into

prevention and treatment. We must enable the detection, the identification, and containment of any emerging or newly emerging threat. And we must ensure our domestic ability to manufacture, distribute, and administer the treatments needed to protect the American people. This should be a central focus of our national attention.

As I mentioned in opening, there is a lot going on in our response to natural disaster today. But we need to keep the focus, as well, on the potential for this pandemic. Failing to do so risks the public health and our national security.

In May 2004, the Senate passed Project BioShield and shortly thereafter President Bush signed it into law. Project Bioshield builds on the Bioterrorism Preparedness Act of 2002 and strengthens our Nation's defenses against the threat of anthrax, botulism, smallpox, Ebola, or plague, as well as a radiological fallout from a potential terrorist attack.

Building on the goals of Project BioShield, the leadership has introduced the Protecting America in the War on Terror Act of 2005 earlier this year. I applaud my colleague for the steps we have taken thus far, and I applaud them for their continued leadership. But we have much more to do. More work remains to be done. We are in a race against time, and unlike the flu pandemics of the 20th century, we have been warned.

I urge my colleagues to join me in this effort to protect the health, well-being, and security of the American people.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from the great State of Florida.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent I be allowed to speak as in morning business.

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

#### COAL ENERGY

Mr. NELSON of Florida. Mr. President, I have stated that each day we are in session I am going to try to rise in the Senate to speak about the dependent condition we find ourselves in on foreign oil. Some 58 to 60 percent of our daily consumption of oil comes from foreign shores. This is not a good position for the United States. No matter how much we sounded the alarm bells over the past several years, it is hard to shake the powers that be out of our collective lethargy, to break this stranglehold that oil has running through our economy. And it has led us to our dependence on oil for well over a majority of our daily consumption.

That is not a good position to be in for the defense of our country's interests where we have to protect the free flow of oil to all of the very oil-thirsty world. A lot of those sealanes coming out of the Persian Gulf region look to the United States for the military protection to keep those lanes open so oil can flow.

Clearly, we ought to, after the remainder of Hurricanes Katrina and Rita, be on the journey quickly to weaning ourselves from the dependence on this oil. That means the collective will of this Nation to come together in a major project, like a Manhattan Project or an Apollo Project. In other words, the moonshot of this decade ought to be weaning ourselves from dependence on foreign oil, as going to the Moon as a result of the Apollo Project was to the decade of the 1960s.

Each day I am going to try to chronicle a new technology so that we can do that. Today I will talk about coal gasification, specifically coal-based integrated gasification. It is otherwise called combined cycle technology.

Our Nation has an abundance of coal. The United States has the largest proven coal reserves of any Nation in the world. At the current production levels, U.S. coal reserves should last over the next 250 years. That is the good news; the bad news is coal's high carbon content relative to other fossil fuels so that in the burning of it, it releases significant quantities of carbon.

Right now, coal combustion, the burning of coal, accounts for more than one-third of the world's carbon emissions. Those emissions in the air is what we do not want.

I will never forget being in Beijing, China, in the year 1981 in the dead of winter, January of that year. The city of Beijing was shrouded in black smog that was a result of the coal dust settling over that city because the primary source of heat was the burning of coal, with no attention to the emissions that allowed all of those particulates to go into the air. The last time I visited Beijing, about 2 years ago, after the dead of winter, I must say they have cleaned up their environment quite a bit, but they still have a ways to go.

We know the negatives with regard to burning coal. Now let's look on the positives; that is, coal gasification or coal-based integrated gasification combined cycle technology has much lower pollutant emissions, and it holds great promise. Only two such plants exist in the United States today. One of them is in my State of Florida. It is run by Tampa Electric Company. I commend TECO for being one of the leaders in this country. My State of Florida is going to have another IGCC plant—that is coal gasification—by 2011, through the Orlando commission and the Southern Company. I thank those two companies for being leaders.

This is the technology: First, the coal is gasified using a chemical process rather than just the burning of coal to generate a synthetic gas—or what we call a syngas, synthetic fuels—that is mostly composed of hydrogen and carbon monoxide. Then that synthetic gas is used to fuel a combustion engine, a turbine, and the exhaust heat is employed to produce steam for power generation and for gasification. The process has the potential to be both cleaner

and more efficient than just the burning of coal in a steam boiler which is done to make electricity, and it generates considerable waste heat in the traditional burning of coal that then leads to the release of a myriad of undesirable emissions.

In contrast, coal gasification isolates and collects nearly all of the impurities, including mercury and a large portion of the carbon, before the combustion. So those things are not going to be emitted into the atmosphere. The coal is gasified with either oxygen or air, and the resulting synthetic gas or syngas is cooled, cleaned, and fired in a gas turbine, and the hot exhaust from the gas turbine passes through a heat recovery steam generator where it produces steam that drives a steam turbine.

Theoretically, the steam gasification process can be applied to any low-quality carbonaceous feedstock. The progress in developing this technology also raises interesting possibilities with respect to the future of biomass—either alone or in combination with coal—for electricity production. This has a lot of promise.

This whole process, called IGCC, could also be utilized for something called polygeneration. That is co-producing other high-valued products in addition to electricity using gasification.

Gasification could be used to produce ultraclean synthetic fuels from coal, and biomass. Carbon dioxide capture and storage would have to be developed to address the climate change issues coal-based synthetic fuels pose.

But the long and short of it is, these synthetic fuels are inherently superior to crude-oil-driven hydrocarbon fuels. This would help us in the transition to more energy-efficient technologies, such as compression-ignition-engine hybrid electric vehicles.

We could exploit our country's huge coal reserves in an environmentally responsible way. The economic and reliability challenges certainly still exist before these kinds of plants become more readily abundant. And the CO<sub>2</sub> carbon capture and storage must be perfected.

Those are all challenges we must meet. But it is a promising technology that would provide the United States with an alternative to electricity produced from natural gas and a way to set us on a course to wean ourselves from dependence on foreign oil.

Mr. President, I will continue to speak out on all of the alternatives in which we can try to sever our dependence on foreign oil.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I rise to speak on the nomination of John Roberts to be Chief Justice of the United States. I speak about this at an exciting time for this country. This will be the 17th person to occupy this position. It is a rarity for this position to become available. I love this Nation.

I love the institutions of this Nation. More, I love the people of this Nation.

I know, as well, that John Roberts does too. I know from the time I have spent talking with him and hearing his comments, that he too loves this Nation. He loves the people of this Nation and he looks forward to its greater greatness into the future. I am looking forward to his service.

When the Frenchman, Alexis de Tocqueville, whom many of us quote often, visited the United States in the 1830s, he wondered how Americans could maintain a genuine representative government when the liberty they enjoyed would suggest that the average citizen would be a purely self-interested individual. If we were to give them pure liberty, they would, he believed, just pursue self-interests. So how could you have a government that would govern when everybody is focused on their self-interest?

He was amazed to find what kept Americans joined together and with their government was what he called "habits of the heart." By this, he meant that citizens often were concerned about the greater public good, along with their own narrow self-interests. So, while they had their own self-interests, their hearts pulled them to a greater public good and these "habits of the heart." That led to their participation in political discourse, to be involved in their communities, and take care of their fellow citizens.

Throughout our history, our "habits of the heart" have informed and driven America's conscience. The people knew the colonial system stifled freedom, so they rejected the British monarchy and ultimately ratified the U.S. Constitution. The people knew in their hearts that slavery was wrong, and that terrible institution was rightly brought to an end. It was difficult, and it was at a terrible cost. And the people knew that the legal promise of equal protection was empty without racial justice.

Throughout the consideration of Judge Roberts' nomination, many of my colleagues have spoken about a particular issue that I want to discuss, and its impact and relationship to that habit of the heart. This particular issue, which is at the center of the debate for Judge Roberts, is the right to privacy. They also have demanded that Judge Roberts adhere in a few cherished cases to stare decisis, that is, the practice of letting a precedent stand for the sake of stability in the law, regardless of whether the precedent reflects the correct interpretation of the law.

What is striking about this discussion is that it has not been illuminated by what Tocqueville saw in us long ago—those "habits of the heart" that make Americans aware of the greater good and of the justice due their fellow citizens.

To explain what I mean, consider Judge Roberts' confirmation hearing. During the hearing, Judiciary Committee members spent a lot of time dis-

cussing section 2 of the Voting Rights Act. It was often mentioned that it was critical for Congress to enact a so-called effects test in order to eradicate discrimination in voting practices. Under this test, a neutrally worded law was to be struck down if it diluted the political preferences of minority voters, even if that effect was intentional. If there was an effect where it had a negative impact on voting for minority groups, it was to be thrown out, it was to be declared unconstitutional, it was a bad effect.

It seems to me there is a broader lesson to be learned by discussion of an effects test. And I agree with that effects test in the Voting Rights Act; it is absolutely right. It seems to me there is a broader lesson to be learned about the effects test.

During the debate on Judge Roberts, some have argued about whether he will vote to affirm or reject abstract legal principles, without really considering what the real effects of these principles have been. And when it comes to the right to privacy and stare decisis, the discussion of effects has been obscured, if not ignored altogether.

The standard argument we have heard is that cases such as *Roe v. Wade* and *Planned Parenthood v. Casey* have established the right to privacy, and that such cases should be maintained for the sake of "stability" and "settled expectations." Yet both our heads and our hearts tell us that these decisions deserve much more searching scrutiny. This is in part because we rightly resist insulated courts short-circuiting political debates. But it is also because we rightly believe that these decisions and doctrines have all-too-real effects.

And so it is with the right to privacy. Some of my colleagues have argued that this right, which has been interpreted to guarantee a right to abortion, has been beneficial to women. They argue the right to abortion has "freed" them to pursue such goals as full participation in the workforce. But there are certain other effects of this right which should be identified, if we are to have an honest appraisal of what this right has accomplished, and what it has wrought.

I have pointed out repeatedly that in the wake of *Roe*, 40 million children have been aborted in America—40 million souls who could have brightened our existence and made their contribution to the habits of the American heart. But even this general result of abortion's cold reality masks the specific costs of the Supreme Court's constitutional misadventure in *Roe*. For it has become clear in recent years that it is the so-called least among us, the disabled, who have paid a disproportionate price as a result of the right established in *Roe* and other cases.

Let me give you some examples. According to recent numbers released in November of 2004 by the American College of Obstetricians and Gynecologists, over 80 percent of preg-

nancies involving a child with Down Syndrome were terminated "by choice" in the 1980s and 1990s—80 percent. Again, that is "by choice." According to the Centers for Disease Control and Prevention, out of over 55,000 pregnant women screened, 83 percent of unborn children are terminated after testing positive for cystic fibrosis. Finally, the CDC noted that for spina bifida and similar neural tube defects, at least 80 percent of pregnancies "were electively terminated."

These particular numbers are astonishing, and not just because they represent the wholesale destruction of generations of unborn disabled children. What makes them painfully ironic is that this trend persists even in a society that has extended significant protections to the disabled once they are born.

A prime example, of course, is the Americans with Disabilities Act of 1990, which was an historic achievement. I applaud my colleagues, Senators KENNEDY and HARKIN, and my predecessor, Senator Bob Dole, for their important role in passing this milestone legislation.

Deeming the protection of the disabled a "human rights issue," the first President Bush called the ADA "the world's first comprehensive declaration of equality for people with disabilities." His successor, President Clinton, stated on the ninth anniversary of the passage of the ADA that "For too long, we have encumbered disabled Americans with paternalistic policies that prevent them from reaching their potential. But now, we endeavor to empower individuals with the tools they need to achieve their dreams." I would note that to dream, they have to be alive.

In enacting the ADA, the Congress explicitly made the following finding, upon which one of the protections of the ADA was based:

People with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

In worthy fulfillment of the promise of the Declaration of Independence that "all Men are created equal," the Congress issued in the ADA a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." There were not qualifiers for it. They did not say at certain places or points of time in life. They said this is a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," period.

To enforce this mandate, Congress explicitly "invoke[d] the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."

The ADA establishes extensive protections for persons with disabilities. It

protects them when they seek employment; it protects them when they attempt to use government services; it protects them when they wish to use public transportation; it protects them even when they want to book a hotel room or seek access to a restaurant; it even protects the hearing-impaired and speech-impaired who want to share in the benefits of the revolution in telecommunications.

Similarly, 30 years ago, Congress passed the Individuals with Disabilities Education Act, IDEA. In the act, Congress found, among other things, that “[d]isability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society.”

These are worthy and grand statements of inclusion and support to people with disabilities.

The ADA and the IDEA demonstrate that the disabled need and deserve the protection of the law in order to fulfill their potential.

Yet ironically, it is when the disabled are most vulnerable—indeed, completely voiceless—that our society leaves them completely unprotected. The laws offer no shelter to them before they are born. In this dangerous legal vacuum has stepped the Supreme Court. In 1973, just 2 years before enactment of the IDEA, the Court invented a right to abortion—a right which has proven lethal to legions of disabled Americans. And in a cruel jurisprudential twist, it was none other than the 14th Amendment, which Congress invoked in enacting the ADA, upon which the Supreme Court based the right to abortion.

What does it say about our society that we refuse to acknowledge the damaging effects of Roe on the disabled? Where does the path lead when we ignore the habits of our hearts, which demand that we extend our compassion to these Americans? What have we become when we have jettisoned the unalienable right to life Thomas Jefferson found self-evident in favor of the moral and legal quicksand of Roe?

The sad experiences of other countries suggest a few unsettling answers to these questions. For example, China recently criminalized abortion for the purpose of sex selection. The reason for this is revealed by figures—an effects test, if you will—showing that 119 boys are born in China for every 100 girls—119 boys for every 100 girls. This gender gap can be attributed to the combination of the Communist government’s one-child policy with a culture that often values sons more than daughters. So millions of parents have aborted baby girls hoping to have a boy next time. If current trends continue, some experts say that China could have as many as 40 million men who can’t find spouses by the year 2020.

India faces a similar problem. Sex determination has been a serious problem there since the 1970s, when amniocentesis began to be widely used

to determine the sex of the unborn child. A 1985 survey revealed that 90 percent of amniocentesis centers were involved in sex determination, with nearly 96 percent of female fetuses aborted. In response, India outlawed fetal sex determination for sex selection 8 years ago, but prenatal sex determination through ultrasonography continues.

Indeed, the situation has become so dire that the Indian Medical Association has appealed to the conscience of that country—the habit of the heart of that nation—and the world to save baby girls from abortion. The association says that up to 2 million baby girls still are killed by abortion every year. A former President of the Indian Medical Association told the BBC that the situation has led to a demographic imbalance of up to 50 million fewer women in the country than would be expected.

This selective destruction of the unborn in other countries has a grim predecessor in American history: the eugenics movement. As Edwin Black has noted in a book called “War on the Weak”:

[T]he eugenics movement slowly constructed a national bureaucratic and juridical infrastructure to cleanse America of its “unfit.” Specious intelligence tests, colloquially known as IQ tests, were invented to justify incarceration of a group labeled “feeble-minded.” Often the so-called feeble-minded were just shy, too good-natured to be taken seriously, or simply spoke the wrong language or were the wrong color. Mandatory sterilization laws were enacted in some twenty-seven states to prevent targeted individuals from reproducing more of their kind. Marriage prohibition laws proliferated throughout the country to stop race mixing. Collusive litigation was taken to the U.S. Supreme Court, which sanctified eugenics and its tactics. The goal was to immediately sterilize fourteen million people in the United States and millions more worldwide—the “lower tenth”—and then continuously eradicate the remaining lowest tenth until only a pure Nordic super race remained. Ultimately, some 60,000 Americans were coercively sterilized and the total is probably much higher.

The source of the word “eugenics” is very interesting. The very word was coined by Francis Galton, the nephew of Charles Darwin. Galton believed that “what nature does blindly, slowly, and ruthlessly, man may do providently, quickly, and kindly.” In 1883, Galton created a new term for this manmade ordering of life. As Black describes it, Galton “scrawled Greek letters on a hand-sized scrap of paper, and next to them put two English fragments he would join into one. The Greek word for ‘well’ was abutted to the Greek word for ‘born’ . . . and the word he wrote on that small piece of paper was ‘eugenics.’” Well born.

Among the strongest proponents of eugenics was Margaret Sanger. Sanger advocated for the mass sterilization of so-called “defectives” and the wholesale incarceration of the so-called “unfit.” She particularly supported the sterilization plan of those people she

deemed unfit; she believed this plan would lead to the “salvation of American civilization.” She also argued for sterilization of those who were “irresponsible and reckless,” including those “whose religious scruples prevent their exercising control over their numbers.” For these people, she contended that “there is no doubt in the minds of all thinking people that the procreation of this group should be stopped.” She repeatedly referred to the lower classes as human waste not worthy of assistance, proudly promoting the views that these “weeds” should be “exterminated.”

Sanger went on to found a group that came to be known as Planned Parenthood, the very same organization which successfully prevailed upon the Supreme Court to reaffirm *Roe v. Wade* in the 1992 case of *Planned Parenthood v. Casey*. Sanger’s legacy still resonates today.

Dr. John Harris of Manchester University in England has offered a slightly milder formulation than that of Sanger. He has stated that:

Eugenics is the attempt to create fine healthy children, and that’s everyone’s ambition. . . . We’re not trying to do this through killing people or eliminating individuals, we’re trying to do this by making choices about which people will exist in the future.

Given the experience of other countries with abortion; given our own experience with abortion of the disabled; and given the natural repugnance most people have with the eugenics movement, I would suggest to my colleagues that *Roe* and other related cases simply flunk the “effects test” we have long applied in the context of voting and other rights. These cases have carved millions of voices out of our civic core and cannot withstand moral scrutiny, much less an honest legal examination.

The right to privacy as it has been extended has not only weakened our legal culture; it has made us poorer as a people. It is impossible not to recognize the significant contributions made by those with disabilities who do survive; they help to bring out the humanity in each of us, and we are better for it. Every time I see one of these beautiful children, I am reminded of what joy they bring, and what joy their counterparts might have brought.

How can we, as a nation, stand for the principle of equality, that we are all blessed to be alive, that we are all capable of great success regardless of disability, and that we are a compassionate society, when our laws blithely allow the elective termination of more than 80 percent of a vulnerable population. It is incomprehensible.

Numerous men, women, and children with disabilities have overcome adversity and achieved great successes in their lives. I would like to take a few minutes to share a few of their stories.

Here is a picture of Abby Loy. I met her last week when she visited my office. She is a beautiful young girl and

she has Down Syndrome. She does modeling and was recently featured in a book called "Common Threads," which illustrates the numerous accomplishments achieved by people with Down Syndrome. Abby and her mother came to Capitol Hill from Michigan last week to promote awareness of disability issues and to illustrate Abby's wonderful life journey.

Look at this beautiful child. This note is from her parents:

When Abby was born, physicians and social workers informed our family of all of her potential limitations, developmentally and physically. When we asked what Abby's education path might look like, we were told that she would attend special classrooms. Abby has been successfully educated with support in all regular education classes and continues to grow. We felt Abby would prove herself to be much more capable than others believed . . . It continues today.

Again, that note is from her parents.

It is a tough choice when a mother or a spouse gets a diagnosis in utero that a child has Down Syndrome; it is agonizing. I know from my own thoughts when we were having our children. Yet I ask people to look at the beauty of the child and embrace her. If they can't, there are other groups and individuals that will. It is a tough choice, but it is a child, a beautiful child, a child that can accomplish much.

I want to show another example. This one is Samuel. I have had Samuel in to testify before a subcommittee I chaired last year. I am rather partial to the name Samuel myself. In this picture he is catching fish. It doesn't look like a very big fish and the fish doesn't look too happy, but Samuel is sure happy. He has spina bifida, which most medical professionals call a devastating birth defect. These are his parents' words:

Though we were devastated by learning that our unborn son had spina bifida, we wanted to do all we could to improve the quality of his life. Ending it was never an option. Let's see what we can do to improve it. At 21 weeks gestation, Samuel had fetal repair of his spina bifida lesion. Today he is a 5-year old kindergartner. He is imaginative, funny, and compassionate. He can read, swim, and catch even the fastest lizard. He has touched many lives. We are so thankful for him and are eager to see what great things he will accomplish.

Normally, about 80 percent of children diagnosed with spina bifida are terminated and killed in utero.

I have a final example. This is a lady who looks at her Down Syndrome as an "up syndrome" and has started "Up with Down Syndrome". She has served on President Clinton's Committee on Mental Retardation. She served three terms from 1994 to 2000, one of the first two members with a disability to be appointed to this committee. Her name is Ann M. Forts. She goes around the country and talks with individuals about what she can do. The second paragraph of a letter she sent to me is particularly striking:

As I think about my active and happy life on the upside of my Down Syndrome disability, I find it extremely frightening

to think of how vastly different my life would have been if my parents had taken that ill-conceived professional advice when I was born.

In other words, to put her in some form of an institution rather than bringing her home.

These are inspirations to all of us. And if you need further inspiration, just go talk to Jimmy, the elevator operator right outside the door of the Senate Chamber, who brightens all of our lives.

They will not be defeated by their disabilities, and we celebrate them for that. But think about the many more like them, think about the more than 80 percent of the beautiful capable children, similar to Abby, Ann, Jimmy, and Samuel, who are never given a chance because their lives are terminated before they are born.

We should not use bland phrases such as "right to privacy" or "stare decisis" to disguise the issue at stake with Judge Roberts' nomination to be Chief Justice of the United States. We must be truthful with the American people, as well as ourselves, and admit that this confirmation is, at its root, about the most fundamental and basic right of all: the right to life.

As Americans, it is our duty to protect and defend the weakest among us. The duty is not only mandated by our laws but nurtured by our conscience and our habits of the heart.

With the recent enactment of the bipartisan partial-birth abortion ban and bills like the Pre-Natally Diagnosed Awareness Act, which I sponsored with Senator KENNEDY, we have begun heading in the right direction. However there is still significant work to be done.

There is still a glaring inconsistency between the life that we deem to be worthy of protection under the Constitution, and the life which we do not. The value placed on certain persons and stages of life seems to be arbitrarily assigned. The Constitution clearly states in the 5th and 14th Amendments that "no person" shall be deprived of "life, liberty, or property without due process of law."

"No person." What does that mean? Does it extend to an unborn child? Is an unborn child a person or merely a piece of property? A person is entitled to inalienable rights established under the Constitution and laws of the United States. Property can be done with as its master chooses. I posed this question to Judge Roberts during his confirmation hearing. Because this issue may come before the Court at some point in the near future, he declined to answer directly. But the persistence of this issue simply underlines the importance of each Supreme Court vacancy.

I will support the nomination of John Roberts to be Chief Justice of the United States. I will do so based in part on his stellar credentials for the position, but also on my hope and my prayer that he understands what is at stake

when the Supreme Court interprets the people's Constitution—not a sterile debate over arcane legal principles and Latin doctrines but the very habits of our hearts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I pay tribute to my colleague and friend, Senator BROWNBACK, for his eloquent speech on behalf of those who are disadvantaged and deserve protection from the law. He made an outstanding speech.

I rise to express my support of Judge John Roberts in regard to his nomination as Chief Justice of the U.S. Supreme Court. I know what the committee has done, and I know what the majority of Senators will likely do, and that is to vote in favor of Judge Roberts. But I also believe that an open-minded individual, applying Kansas common sense, would reach the same conclusion that I have come to hold.

It is no small event for a Senator to have the opportunity to participate in the confirmation of a candidate for the position of Chief Justice of the Supreme Court. Over the course of our Nation's history, the Senate has come together 155 times to vote on a Supreme Court Justice. This occasion marks the 17th time to confirm a Chief Justice. So I am humbled and honored to be part of this moment of history.

The consultation efforts on behalf of the administration with my fellow Senate colleagues in regard to this nomination have been extensive. That is probably an understatement. The President has made great efforts to open dialog and to invite input and to reach out to Members of the Senate. His nomination of Judge John Roberts is a solid choice and not one made in isolation.

Kansans understand that the words inscribed on our Founding Fathers' documents are not as delicate and fragile as the paper on which they are written. They know that the power behind these ideas is what serves as the foundation of our Nation's democratic government.

My sense from Judge Roberts is that he, too, rigorously believes in the power of the ideals set forth in the Constitution. As illustrated by his record as a judge on the U.S. Court of Appeals for the DC Circuit, he adheres to the guidelines outlined in the Constitution. Simply put, he walks the talk.

After watching Judge Roberts endure—I guess that is the best word for it—over 20 hours of questioning during the nomination hearings, I find myself not only more familiar with his many qualifications, his impressive experiences, but deeply impressed with his character. Judge Roberts' respectful demeanor and his personal humility in the face of periodic abrasive questioning from some are exactly the type of qualities that a Chief Justice should

possess. During the question-and-answer portion of the nomination hearing, testimonies of his colleagues, former clients, and others who attested to his character, Judge Roberts has shown to be a man of high integrity, wisdom, and fairness. This assessment was echoed from those representing a broad range of ideologies.

Judge Roberts does possess a brilliant legal mind and a thorough understanding of the law. He performs his duties with a vigor and a meticulous attention to detail that has been noted by all who have spoken about him. As a judge, he approaches a case to understand the legal facts involved and the laws that are affected, while avoiding the temptation to fulfill a specific judicial philosophy. His decisions are based on the merits of the law. His record has earned him the highest rating from the American Bar Association, the ABA. It is worth mentioning that the ABA has often been referred to by my colleagues on the other side of the aisle and those on this side as well as the "gold standard" for evaluating judges.

Most notably, in his opening statement before the Senate committee, Judge Roberts stated:

Judges and Justices are servants of the law, not the other way around.

And concerning the rule of law, he went on to say:

It is what we mean when we say that we are a government of laws and not of men. It is that rule of law that protects the rights and the liberties of all Americans. It is the envy of the world. Because without the rule of law, any rights are really meaningless.

Clearly, Judge Roberts understands that the role of a judge is not to rule based on his personal judgments but to adhere to the laws as they are written.

The role of the third branch under our Constitution is paramount, as the Supreme Court is often referred to as the "gatekeeper of democracy." The duty to ensure that legislation passed and executed is in line with the Constitution is an important check within our Government. The lifetime appointment provided for in the Constitution is an important protection for our Justices to guard against any pressure in regard to politics. The forward thinking by the authors of our Constitution actually provided for the preservation of our democracy by including these checks and balances between these three branches.

Some have expressed concern about Judge Roberts' relatively young age to be nominated to such a powerful position. On the contrary, I believe that age will allow for a term of growth and stability for the Court. In my view, his age is of less importance when compared to his style of judging. In his response to my colleague, Senator HATCH, he explains that his style is that of a modest judge. He went on to explain that:

It means an appreciation that the role of the judge is limited, that a judge is to decide the cases before them, they're not to legislate, they're not to execute the laws.

However, at the same time, we have witnessed judges acting beyond the scope of their duties in making decisions that in a representative democracy are legislative in their jurisdiction. We have seen that all across the country. This what I consider to be abuse of power is a source of tremendous contention, not only with folks from the great State of Kansas but with Americans nationwide on too many issues. In too many cases, we have seen decisions that are contrary to the will of the people. Americans have questioned the rulings on cases ranging from the Boy Scouts of America to the most publicized recent attack on private property rights. In Kansas, land is gold. And if land is gold, farmland is platinum. We have a healthy respect for property rights in middle America. Based on his comments, I believe Judge Roberts holds a similar opinion.

Finally, let us not forget that Judge Roberts is currently a judge. He has already experienced the confirmation process for his judgeship on the U.S. Court of Appeals for the DC Circuit. Let us also remember that the same accolades that led to Senate approval of his nomination by unanimous consent—no disagreement, every Senator—are certainly applicable as of today.

I am hopeful that through the course of debate on this nomination and the next Supreme Court nomination—the next Supreme Court nomination—we can avoid the destructive partisanship that approached the brink of absolutism and ideology, a different criteria in regard to how we select judges. We have a duty to respectfully reflect the great traditions of this Chamber and rise above partisan bickering. We must raise the level of civility in our political discourse more so than ever in regard to considering the nomination of judges.

Our democracy is only as strong as our governmental institutions. Judge Roberts will provide a strong pillar of support in the third branch of our Government. That, and for the reasons I have just enumerated, is why I will vote in favor of Judge Roberts' nomination to be the 17th Chief Justice of the United States.

I yield back the remainder of my time. I thank the Chair.

THE PRESIDING OFFICER (Mr. ISAKSON). The Senator from South Carolina.

Mr. DEMINT. Mr. President, I rise today in support of the nomination of Judge John Roberts for Chief Justice of the Supreme Court of the United States. Just 1 year ago, I was in the middle of a heated Senate campaign, and one of the most important issues to the voters of South Carolina, an issue that came up again and again, was the topic of judges. At that time, I promised the people of South Carolina that I would fight for fair judges who would judge based on the facts and the law, not on their personal political opinions.

Americans simply cannot understand how certain judges arrive at decisions such as banning the Pledge of Allegiance or allowing local governments to take a person's home and give it to a business simply to generate more taxes.

Judge Roberts clearly understands and demonstrated in his hearings that he is the kind of Justice America needs. He is brilliant, fair, and independent. He has proven himself to be a person of integrity who is committed to equal justice for all Americans.

Judge Roberts is eminently qualified. He has earned the American Bar Association's highest rating of "well qualified." Before being unanimously confirmed by the Senate in 2003 to the DC Court of Appeals, Judge Roberts had already established an unmatched resume in the legal world. After graduating in the top of his class from Harvard Law School, he went on to clerk for Justice William Rehnquist and then worked as a top aide in President Reagan's Justice Department. In private and public practice, he argued an amazing 39 cases before the Supreme Court, establishing his reputation as one of the Nation's top litigators.

During his hearing, Judge Roberts displayed his humble expertise, and I believe Americans warmly welcome his approach to the law. Despite what some Democrats are saying, Judge Roberts was very forthcoming at his hearing in discussing his judicial philosophy, his legal thinking, and his views on a judge's proper role within our constitutional framework.

The Senate was also allowed to review an unprecedented number of documents from Judge Roberts' service in the Federal Government illustrating his judicial philosophy and legal ability. In question after question, Judge Roberts showed an extraordinary knowledge of the law and its history. Without the use of notes or staff, Judge Roberts easily recalled facts from hundreds of years of case law.

I was pleased to see during the hearings that Judge Roberts stuck strictly to the Ginsburg rule, choosing not to comment on cases or issues that are likely to appear before the Court. In her hearings, Justice Ginsburg emphatically declared that she could give "no hints, no forecasts, no previews" as to how she would decide on future cases. She was right to do so. Judges are expected to be impartial and fair, looking at each case without prejudice. Senators who expected Judge Roberts to answer questions that required him to prejudge cases were ignoring the Code of Judicial Ethics and, I suspect, playing politics with the confirmation process for partisan reasons.

Nominees should never compromise their judicial independence and ability to rule fairly by advocating positions on issues that could come before them. Judges are not politicians. In fact, Judge Roberts himself put it best during the hearings when he said:

Judges wear black robes because it doesn't matter who they are as individuals. That's

not going to shape their decision. It's their understanding of the law that will shape their decision.

Judge Roberts has earned praise for his conduct during the confirmation hearings, and he has solidified broad, bipartisan support.

I believe Judge Roberts deserves a fair up-or-down vote before the Supreme Court starts its next session in October. It is important to have a Chief Justice on the bench for the start of the session and to have the Court at full strength.

Based on my July meeting with Judge Roberts, based on his qualifications and his exemplary performance before the Judiciary Committee, I am confident he will strictly interpret the law and not legislate from the bench.

Judge Roberts has all the qualities Americans want in their Chief Justice. It is critical that the Chief Justice have the ability to listen to all sides of a debate and work well with each Associate Justice. Judge Roberts has clearly displayed his patience, fairness, and respect.

The votes tomorrow for Judge Roberts will show that an overwhelming majority of Senators agree. The votes tomorrow against Judge Roberts will reveal the Senators who would not support any of President Bush's nominees, no matter how qualified they are.

I fully support the nomination of Judge Roberts. I will cast my vote in his favor for confirmation, and I urge all of my colleagues to support Judge Roberts as the next Chief Justice of the Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I rise today, like my colleague who spoke just before me, to support the nomination of John Roberts to be the Chief Justice of the U.S. Supreme Court. To those who know me, to those who have heard me talk on this subject, this is no great surprise. But voting on a Supreme Court nomination is a very rare task. It is more historic now, as the Senate will consider a nominee for the top job of the Court.

The question I ask today is, Why should America care about this debate? This debate is more significant than a lifetime appointment of Chief Justice of the Supreme Court.

This debate is more significant than the influence that one single individual brings who is chosen. This debate is about future decisions that will affect the lives of every American, that will affect our children and our children's children. From our civil liberties, to property rights, to questions of life and death, to safety in communities, to the very basic freedoms, there is no area in our daily lives that is not somehow affected by the judicial decisions of the U.S. Supreme Court. The decisions made by the Court today will have a lasting effect long after we have gone from this institution. It is essential, absolutely essential, that we confirm

not only competent, impartial judges, but those who are the very brightest and those who are good citizens and understand the task for which they have been nominated and confirmed.

Over the course of the last several weeks we have all had the opportunity to hear from legal experts, from political analysts, about Judge Roberts and the chances of the success of his nomination and his confirmation. We have had a process of very detailed hearings where our colleagues, many of whom are lawyers, have asked the most appropriate questions, with a lot of thought, a lot of time to deliver the questions, and we have seen the response of a brilliant lawyer, with no notes, quote case law from years past that appropriately answered the questions that did not affect future cases the Court might hear.

Now, I am not a lawyer and perhaps I do not judge Judge Roberts' legal background the same way lawyers might judge it, but I do understand people. I understand when I meet somebody who is a good person. I have met Judge Roberts. This is a good person. This is an individual in whom America can be proud when they refer to him as Chief Justice.

A couple weeks ago I had the opportunity to have Judge Roberts in my office. We talked about his background, his life experiences, we talked about our families. I did not quiz him about legal precedent or court rulings. I did not present him with hypothetical cases or his position on hot topics of the day. That, quite frankly, was not the ground I was focused to go on. Personally, as a husband and a father, I wanted to know where Judge Roberts truly stood and if he understood the job he has been asked to do. I wanted to know if he understood the responsibilities not just as a lawyer, not just as a Justice, but as a husband and as a father, and the implications of the decisions he would rule on and how they would affect not just his family but in a real way the people of North Carolina.

As Senators, we are all responsible for constituencies. I am responsible for more than 8½ million individuals in North Carolina, and I wanted to know, quite frankly, if Judge Roberts intends to preserve our Nation's constitutional principles by interpreting law, not by making law. I am proud today to tell you, based upon the answers he gave to me in his testimony in front of the Judiciary Committee, I am confident he will do just that—interpret the law, not write the law. Judge Roberts, as every person has heard, has the academic and the professional credentials to serve not only as a Supreme Court Justice but as Chief Justice.

There is something that concerns me today. It concerns me, and it should concern the American people: This vote will not be unanimous. This vote will be far from unanimous based upon the reports from Senators. Why? Politics. I am not sure it has ever permeated the

process to the degree it has in this. As we stand here today, with one of the brightest nominees, ready to confirm, some in this institution are already suggesting the next nominee has no chance. There is not a person who has been nominated. There is a group of names that has been talked about. I might remind Senators that Judge Roberts was never talked about in the group that was purported to come up in the President's first nomination. Yet some suggest we are going to move the bar even farther for the next nominee who comes through.

The divisiveness has to stop in this institution. We choose the best and the brightest to serve this country. If we consistently move that bar, if we consistently dig to find things that no other Congress has looked for, if we are not careful, no one will want that job. If we are not careful, the best and the brightest legal minds in this country who would serve on the bench and serve with distinction, regardless of the party they are from, when they get that call, will say, Mr. President, I want to pass. I can't put my family through it. I can't put myself through it. The risk of doing it is too great to everything around me, to make a commitment to serve my country.

I ask all of us, what message are we sending to our children when the best and the brightest pass, when they elect not to go through the process we in this body have control of?

This is a defining time for the Senate. This will determine who is willing in the future to actually serve their country and to serve in one of the single most important areas, the U.S. Supreme Court.

I am confident Judge Roberts holds the academic credentials, he holds the professional credentials but, more importantly, I am confident today that Judge Roberts is a good man. He deserves the support of every Member of the Senate to become the Chief Justice of the U.S. Supreme Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina yields. The Senator from Oregon.

Mr. SMITH. Mr. President, I thank you for the time. It is for me a privilege to speak on behalf of Judge Roberts, but especially because while I have voted on hundreds of nominations for President Clinton and now at the present time President Bush, this is the first time I will cast a vote, an affirmative vote, for a member of the U.S. Supreme Court, and, perhaps, if Judge Roberts lives long enough, the only time I will cast one on behalf of the Chief Justice of the U.S. Supreme Court.

It is for that reason that I asked Judge Roberts to come see me. I enjoyed a delightful visit with him prior to announcing my affirmative decision to vote for him without qualification, without reservation, or any reluctance. He is, in short, a brilliant nominee and I believe he will be a brilliant judge

who will make us proud for years and years to come.

When I ran for the Senate, I ran as someone with a hat in the political arena. It is an experience where you state your position, you ask for votes. That is a fundamentally different exercise than being a judge. A judge is not someone who comes as a candidate asking for a vote, posturing in any fashion, and playing politics. The nature of the judicial branch, even the executive branch, is fundamentally different from the judicial branch. Ours is to make law. The president is to execute the law. The judge is to interpret that law.

When I was running for an election certificate, I was asked repeatedly about how I would judge nominees to the Court. The underlying question was always, what is your litmus test? Do you have a single issue litmus test? I promised Oregonians that I would have no litmus test and would vote for qualified Democrats and Republicans from the administration that put them forward because I truly believe we have to remember the characteristic distinctions between the roles of these different branches of Government. What I did tell them is that I would judge them by their intelligence, their integrity, and their temperament. By that standard, I am not sure we will ever have the privilege of voting for a nominee who is more intelligent than Judge John Roberts. His academic credentials are without equal. He is clearly qualified by his schooling and by his service in the legal community. His integrity is beyond reproach as well. He has conducted himself honorably. There has been no hint of any kind of scandal that would disqualify him from holding high public office. I like especially the fact that he and his wife late in life decided to adopt two beautiful children. Every parent in America, I think, squirmed when they watched the concerns the Robertses had when President Bush announced his nomination—the little boy Jack was fidgeting on a public occasion, and all chuckled and recognized the humanity of Judge and Mrs. Roberts, and also related to that experience.

When it comes to temperament, I think there are many qualifications Judge Roberts has that are evident in his entire life. He is overwhelmingly qualified. He has promised fidelity to the law. He has said:

My obligation is to the Constitution, that's the oath.

The quality in his temperament, I think, that was particularly meaningful was the humility he demonstrated in the give and take with our colleagues on the Judiciary Committee. The Judiciary Committee is composed of many very bright men and women, and the back and forth was thrilling to watch for someone who loves constitutional law. He went into a heavyweight ring and he came out the champ. I was impressed and expressed that to him.

The quality of humility is one that I think bears mentioning. Judge Roberts said, in fact, to that committee:

A certain humility should characterize the judicial role. Judges and justices are servants of the law, not the other way around.

What he is saying is that judges and justices are bound by the law, as we are as individual citizens, and as Members of the Senate we are bound by the law, and so are judges. That humility is important in the life of a judge.

I remember a great public servant once said:

Pride is concerned with who is right, humility is concerned with what is right.

I believe Judge Roberts will be focused on what is right, not who is right. The greatest threat Judge Roberts identified to the law is that of a judicial branch beginning to act more like a political branch.

That is something many of my colleagues have spoken to. It is something I learned about in law school in a constitutional law class. It is called the political question doctrine. What that doctrine refers to is the wisdom that judges need to have, the humility they have to not intersect questions that are in the political arena, part of the discussion, the debate between we the people about where we want to go. So, instead of reaching over the people and deciding it when the issue is ripe for settlement at the ballot box, judges should be restrained in overreaching and doing things from on high that, frankly, disturb the body politic here in our country. I believe Judge Roberts will have that kind of restraint, that kind of humility.

Judge Roberts made a quote in his opening statement, again without notes; something he feels obviously in his bones and knows in his heart and mind. He said:

The one threat to the rule of law is the tendency on behalf of some judges to take that legitimacy—the legitimacy of the law, and that authority—the authority of the law, and to extend it into areas where they are going beyond the interpretation of the Constitution into where they are making the law. Judges have to recognize that their role is a limited one.

An aside, Mr. President, I like his metaphor to an umpire.

Judges have to recognize that their role is a limited one. That is the basis of their legitimacy. Judges have to have the courage to make the unpopular decisions when they have to. That sometimes involves striking down acts of Congress. That sometimes involves ruling that acts of the executive are unconstitutional. That is a requirement of the judicial oath. You have to have that courage.

What I find in that statement is an understanding of the political question doctrine. He is saying we have to be humble in most all instances; to respect the rights of the people. But he is also saying you have to have courage to interpret the Constitution in a way that is faithful to it.

As Cicero once said:

We are in bondage to the law so that we might be free.

I know my time is up, so I yield the floor and urge my colleagues to vote in support of Judge Roberts. If you can't vote for him, it is hard to know for whom one could vote.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

Under the previous order, the time from 11 a.m. to 12 p.m. shall be under the control of the Democratic leader or his designee. The Chair recognizes the Senator from Iowa.

Mr. HARKIN. Mr. President, tomorrow the Senate will vote on the nomination of John Roberts to be the 17th individual to serve as Chief Justice of the United States. I have put an enormous amount of contemplation and consideration into my vote on this nomination. Some may wonder why this has been such a difficult decision for me. Clearly Judge Roberts is an individual of great accomplishment. He has an outstanding educational background and keen legal skills. He is a thoughtful, decent, modest person, impressively knowledgeable about constitutional law and the Court.

I watched much of the judiciary hearings. I have reviewed briefs and court decisions written by Judge Roberts. And, thanks to his generosity, I met with Judge Roberts for more than an hour in my office last week, talking one on one.

What I did not find in the hearings or in Judge Roberts' writings or in our meeting was a clear indication that Judge Roberts understands the critical role the courts play in protecting the civil rights of Americans and in allowing those who have suffered discrimination to be able to seek recourse and affirm their rights in Federal court. I was seeking some indication that Judge Roberts understands that the issues that come before the high Court cannot always be viewed with a cool, legal dispassion and detachment, but that the Court and its members play a critical role in protecting the powerless in our country.

This is of grave concern to me because the individual who fills this Supreme Court vacancy will have the ability to enhance and strengthen or undermine and weaken the Americans With Disabilities Act.

Judge Roberts' nomination comes at a time when there is a very significant clash occurring between the Supreme Court and Congress over whether Congress has the authority to require the States to comply with antidiscrimination laws. Unfortunately, the law caught at the center of this clash is the Americans With Disabilities Act.

As I have deliberated on this nomination, the first and foremost question in my mind has been this: What kind of Court would the Roberts Court be? Would it be a Court that serves as a refuge of last resort for the powerless in our society? Or, would it be a Court that will continue down a disturbing path seen in the later years of the Rehnquist Court, a path that limits the

ability of Congress to pass legislation that provides meaningful protections to individuals, including the 54 million Americans with disabilities?

Unfortunately, after carefully reviewing the record and talking with Judge Roberts, I am unable to conclude that a Roberts Court would guarantee the rights of the powerless and those with disabilities.

Earlier this year we celebrated the 15th anniversary of passage of the Americans With Disabilities Act. The ADA, as it is known, prohibits discrimination in employment against people with disabilities. It requires that the services and programs of local and State governments be accessible and usable by individuals with disabilities. Since its enactment, the ADA has provided opportunity and access for 54 million Americans with disabilities who, prior to the law's enactment, routinely faced prejudice, discrimination, and exclusion in their everyday lives.

As Members of this body know very well, I was the lead sponsor of the ADA. I championed it because I had seen discrimination against the disabled firsthand, growing up with my brother Frank, who was deaf. During his childhood, my brother was sent halfway across the State to a school for the "deaf and dumb." He was told his career path would be limited because surely someone who is deaf cannot contribute to society. Throughout his life, Frank experienced active discrimination at the hands of both private individuals and government, and this served to limit the choices before him. Frank's experience was by no means unusual, as Congress documented extensively prior to enactment of the ADA. 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, 14 congressional hearings, and 63 field hearings by a special congressional task force that 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 from people whose lives had been damaged or destroyed by discrimination. We had markups in 5 different committees, had over 300 examples of discrimination by States. I know; I was there. I was the chairman of the Disability Policy Subcommittee.

Yet since enactment of the ADA the Court has repeatedly questioned whether Congress had the constitutional authority to require States to comply with the ADA. Amazingly, it questioned whether Congress adequately documented discrimination. In 2000, the Supreme Court held in a 5-to-4 decision that an experienced nurse at a university hospital—who was demoted after being diagnosed with breast cancer because her supervisor did not like being around sick people—

was not covered by the ADA. Why? Because she had the misfortune to work for a State hospital.

In contrast, last year, by a 5-to-4 decision, the Court held that Congress did have the authority to require States to make courthouses accessible.

This year, the Court will look at whether a State is required to make a prison accessible. There is no guarantee that the Court will come to the same result. Instead, we could end up with a crazy patchwork where courthouses are accessible, but maybe libraries are not, perhaps prisons are accessible, but employment offices are not.

When we passed the ADA, we in Congress did not forbid employment discrimination against the disabled unless they worked 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.

I would point out here, in those years when we were developing the Americans With Disabilities Act, my friend Senator HATCH was ranking member on the Judiciary Committee. They had their staffs look to make sure we passed the constitutional tests. Attorney General Dick Thornburgh, a great supporter of the Americans With Disabilities Act, had the Department of Justice look and make sure we were passing constitutional muster. Boyden Gray, in the White House Counsel's Office, looked at it to make sure we passed constitutional muster. Fifteen Ronald Reagan appointees to the National Council on Disability, working with constitutional law experts, looked at the bill to make sure it passed constitutional muster. Yet the Court, by 5-to-4 decisions, is undermining all we did.

As a result, 15 years after passage of the ADA, the rights of those with disabilities still hang in the balance. Those rights will be determined in a very significant way by a potential Roberts Court. As Chief Justice, Mr. Roberts personally will have a major role in determining whether the balance swings for or against people with disabilities. If Judge Roberts lends his voice to those on the Court who believe in the rights of States over the rights of people, individuals with disabilities in this country will face enormous setbacks.

Judge Roberts was asked many questions at his hearing about congressional power, the ADA, and the rights of the disabled. I posed similar questions in our meeting. Judge Roberts chose not to answer those questions in any significant or revealing detail. Without some greater assurance that he would give deference to the policies passed by Congress, without solid assurance that he would be a defender of the ability of the less powerful to go to court and have their rights vindicated, without those assurances, I am left guessing and speculating, and that is not good enough.

Without clear assurances from him personally, I am left only with Judge

Roberts' paper record and, quite frankly, it is a record that does not bode well for people seeking to vindicate their rights. In the interests of brevity, let me cite one example from Judge Roberts' tenure with the Department of Justice, the 1982 case of Board of Education v. Rowley. In the Rowley case, a trial court ruled that Federal law required the State to provide a sign language interpreter for an 8-year-old student who was deaf. The Second Circuit Court of Appeals affirmed that decision. The case then went to the Supreme Court and the Department of Justice had to decide whether to support the student and argue in favor of an interpreter, or support the local school board and the State and argue against an interpreter.

In a memo to the Attorney General, Judge Roberts said the lower court decisions amounted to an exercise of judicial activism and the lower courts had inappropriately "substituted their own judgment of appropriate educational policy."

This was not the language of a lawyer merely representing the views of a client. This was the language of an attorney in a policymaking position at the Department of Justice, suggesting that the Government should have weighed in against the right of a deaf student to have access to an interpreter under the Education of the Handicapped Act, a predecessor of today's Individuals With Disabilities Education Act. In other words, Judge Roberts thought that this law, the primary Federal law to ensure that students with disabilities have access to the same educational opportunities as all other students, should be interpreted narrowly rather than broadly.

That is not the quality I am looking for in a Chief Justice. I want a Chief Justice who brings a passion for justice to the law; who does not lose sight of the real people whose lives and livelihoods are at stake in the Court's decisions. Some supporters of Judge Roberts have argued that the Rowley case was more than two decades ago and Judge Roberts' views on statutory interpretation and on the ability of individuals to protect their rights through the courts may have evolved since then. But how are we in this body to know that, particularly when the White House has failed to provide us with all requested and directly relevant documents?

Of greatest interest to me are the decisionmaking memoranda written by Judge Roberts during his tenure as Principal Deputy Solicitor General. Again, in his role as Principal Deputy Solicitor General—a position sometimes referred to as a "political deputy" because it is a political appointment—Judge Roberts was not merely representing a client but was involved in crafting the Department's legal positions in some of the most important cases in recent years.

During his tenure as Principal Deputy, Judge Roberts argued before the

court that individuals shouldn't be allowed to go to court to enforce their rights under the Medicaid statute, that children shouldn't have access to courts to enforce their rights under the Adoption Assistance and Child Welfare Act, and that courts should take a restrictive view of remedies available under title IX and other civil rights laws.

Given the decision of the White House to withhold these documents from the Senate, I am forced to draw my conclusions on what I do know.

Before I conclude my remarks, I would like to describe an example of one of the "real people" I referred to earlier, a woman by the name of Beverly Jones. Ms. Jones, who testified before the Senate Judiciary Committee on Judge Roberts' nomination, has been using a wheelchair since a 1984 traffic accident in 1990, the year we passed ADA. She completed court reporting school and set out to work as a courtroom stenographer in order to support her family. But what she found as she traveled throughout the State of Tennessee was she couldn't get the jobs in a great majority of Tennessee's courthouses. She was forced to choose between asking complete strangers to carry her into the courthouse or into inaccessible rest rooms or simply turn down employment opportunities. That is an unacceptable choice for a single mother supporting two kids.

Ms. Jones testified to the committee that she spoke to Federal, State, and local officials about the problem of inaccessible courtrooms, but her entreaties were met with indifference, until she filed suit. I would like to quote from Ms. Jones' testimony about her experience because I think it vividly illustrates what is at stake.

She said:

The door that I thought had been opened [with passage of the ADA] was still closed and my freedom to live my dream was still a dream, and turning into a nightmare. Nobody took either me or the law seriously until I and others brought a lawsuit.

That is what is at stake today—the right of 64 million Americans with disabilities to live their dreams, the right of the powerless in our society, the disenfranchised, to turn to the courts to take them seriously.

Unfortunately, I am not yet persuaded that a Roberts Court would protect these rights.

For this reason, I will be voting no on this nomination.

Certainly, I bear no personal animosity whatsoever toward Judge Roberts. Within this body, there are many people on the other side of the aisle whom I respect, admire, and value as friends. But I don't often vote with them because I have a different viewpoint on many issues. As I said, in our personal meeting, I found Judge Roberts to be a very decent, modest individual.

I hope the future will prove me wrong about Judge Roberts. I hope he proves to be a Justice who recognizes that discrimination in this country occurs in

many areas and that Congress has both the authority and the duty to remedy it.

Judge Roberts will have an immediate opportunity to do just that. In this upcoming term, the Supreme Court will hear arguments in a case that will once again examine the question of whether Congress had the authority to order States to make public facilities accessible to people with disabilities. Knowing this, during our meeting I tried to convey to Judge Roberts how discrimination against people with disabilities was deeply ingrained across the decades and across the centuries prior to passage of the Americans with Disabilities Act. I talked with him in detail about how prior to passage of ADA people were institutionalized, segregated, taken from their families, taken from their communities, excluded from schools, excluded from educational opportunities, excluded from employment opportunities, excluded from all aspects of daily life, shopping, going to the movies, playing golf, on and on, simply because of a disability. I explained how people with disabilities were excluded in the same way African Americans were excluded prior to the passage of the Civil Rights Act.

In closing, let me quote from Thurgood Marshall in the *Cleburne* case, *City of Cleburne v. Texas*. Here is what Justice Thurgood Marshall had to say. Here is a sense of real injustice and that something needs to be done about it. This is what Justice Marshall said:

The mentally retarded have been subject to a "lengthy and tragic history," of segregation and discrimination that can only be called grotesque. . . . A regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worse excesses of Jim Crow. Massive custodial institutions were built to warehouse the retarded for life; the aim was to halt reproduction of the retarded and "nearly extinguish their race." Retarded children were categorically excluded from public schools, based on the false stereotype that all were ineducable and on the purposed need to protect non-retarded children from them. State laws deemed the retarded "unfit for citizenship."

That has been the experience for the last 200 years or more in this country. We stepped in to remedy that with the Americans with Disabilities Act.

I hope Judge Roberts keeps these things uppermost in his mind and in his heart. Only time will tell.

I yield the floor.

THE PRESIDING OFFICER (Mr. GRAHAM). The Senator from New York.

Mr. SCHUMER. Mr. President, I rise to speak on the nomination of Judge John Roberts to be Chief Justice of the United States.

I thank my colleague from Iowa for his heartfelt and outstanding words.

Votes like this come about so rarely that many Senators have spent their entire careers in this body without ever having had the opportunity to vote on a Chief Justice.

And most of us in the Senate today will likely never again vote on a nominee to that incalculably important position.

That is why I have been troubled about how some have characterized the votes of conscientious Senators in this case—Senators from my party who have struggled with, and deliberated over, Judge Roberts's record in arriving at their decisions.

As will be borne out tomorrow, Democratic Senators have given this vote the profound and serious consideration that it deserves.

We are not voting monolithically, but rather each according to his or her own conscience.

And that is what this vote is.

It is a question of principle—not of politics, partisanship, or positioning, as some have cynically suggested.

Democrats have truly struggled with this vote. I know I have. Like some others, I did not make up my mind until late on the night before the committee vote.

We are not marching in lockstep, with nary a dissent like my colleagues across the aisle.

But while this vote was a close call for many, (Like myself) the next one may not be.

While this nomination did not warrant an attempt to block the nominee on the floor of the Senate, the next one might.

If the President sends us a nominee who, like Janice Rogers Brown, believes that the New Deal was the triumph of a "socialist revolution," there will be a fight.

If the President sends us a nominee who, like Priscilla Owen, was criticized by her conservative colleague—Alberto Gonzalez—for an "unconscionable act of judicial activism," there will be a fight.

If the President sends us a nominee who, like Miguel Estrada, refuses to answer any real questions and whose record is not made fully available, there will be a fight.

If the President sends us a nominee who is committed to an agenda of turning the clock back on civil rights, workers' rights, individual autonomy, or other vital Constitutional protections, there will likely be a fight.

And it will be a fight without any winners.

So, Mr. President, on the eve not only of the confirmation vote on John Roberts, but also the President's nomination of a replacement for the seat of Justice O'Connor—for more than two decades a pivotal swing vote on the High Court—I hope and pray that the President chooses to unite rather than divide; that he chooses consensus over confrontation.

Now let me return to the vote at hand.

This vote should be viewed against a unique—and troubling—historical backdrop.

Many are saying the Senate should not bring "politics" into this. Their

quarrel should be with the President of the United States if they feel that “politics” means figuring out a judge’s ideological, judicial philosophy. Politics, if you define it as that, was introduced by a President who vowed that, if given the opportunity, he would name to the Supreme Court Justices in the “mold” of Clarence Thomas and Anthony Scalia.

Given the President’s campaign promise and repeated declarations, there is a presumption that any nominee the President sends to the Senate is in that “mold.”

The presumption is especially strong—and is particularly hard to overcome—with a nominee who was carefully vetted, researched, and interviewed at sufficient length by a President who professed a desire to nominate people in the mold of Thomas and Scalia; and, with a nominee who is eagerly embraced by those groups who support the views of Thomas and Scalia and who want to change America through the Courts;

The presumption can be rebutted, of course. And the way it can be rebutted is through the answering of questions and through the production of relevant documents. And here, regrettably, there was much lacking.

To be fair, Judge Roberts did partially rebut the presumption. He made some inroads.

Judge Roberts has a keen and impressive intellect. We all know that. His encyclopedic knowledge of the law and eloquent presentation certainly confirmed what his colleagues have said about him—that he is one of the best advocates, if not the best advocate in the Nation.

But being brilliant and accomplished is not the number one criterion for elevation to the Supreme Court—there are many who would use their considerable talents and legal acumen to set America back. So, while legal brilliance is to be considered, it is never dispositive.

In addition, very good lawyers know how to avoid tough questions. People have said that one of the reasons the nominee was so effective arguing in the Supreme Court is that he mastered the trick of making the point he wanted to make, rather than answer the question asked.

When I reviewed the transcript in the week after the hearings concluded but before we were called on to vote, there was often less than met the ear.

There is an obligation of nominees to answer questions fully and forthrightly, because they are essential to figuring out a nominee’s judicial philosophy and ideology—to me, the most important criteria in choosing a Justice.

Many of us were disappointed in his failure to answer so many questions and is one of the contributing factors to the no votes that will be cast against Judge Roberts.

Add to that the refusal of the administration to allow the Senate to exam-

ine important and relevant documents, and we are voting on a hunch. Senators voting on the position of Chief Justice should not be relegated to voting on a “hunch.”

We should not be left to guesswork, impressions, and hunches.

There was a bit of a game of hide and seek going on—as much as Senators tried to seek out his views, many remained hidden away.

That is why that I so badly hope that the next nominee will be more forthcoming and will answer more questions about his or her legal views, and that all relevant documents will be provided.

But, the answering of questions is only a means to an end—it is a means of finding out what kind of judge, or Justice, a nominee will make.

In this case, because there were not enough questions answered or documents provided, we are still unsure of the answer to the central question: Who is Judge Roberts?

Particularly troubling to me are the eerie parallels between Judge Roberts’s testimony and then-Judge Thomas’s, especially given President Bush’s declaration that he would nominate Justices in the mold of Justice Thomas.

The echoes of then-Judge Thomas’s empty reassurances that he was a mainstream jurist are ringing in the ears of every Senator who listened to many nearly identical statements from Judge Roberts last week.

I was particularly troubled by his answers in two areas—the constitutional right to privacy and the Congress Commerce Clause power to protect the rights and improve the lives of the American people.

At his hearing, for example, Judge Roberts said that he believes “there is a right to privacy protected as part of the liberty guarantee in the due process clause.” At his hearing, then-Judge Thomas made almost the identical statement. As a Supreme Court Justice, however, Justice Thomas has repeatedly urged the most narrow interpretation of a privacy interest possible, in *Casey*, in *Lawrence*, and at every other opportunity.

At his hearing, Judge Roberts repeatedly assured the Committee that he had “no quarrel” with various Supreme Court decisions on issues of privacy, women’s rights, civil rights, education, and other important issues. The same assurance in nearly identical words were made by Justice Thomas at his hearings, but when given the opportunity to consider those cases with which he had “no quarrel” from the bench, Justice Thomas voted to overrule.

At his hearing, Judge Roberts repeatedly assured the Committee that he had “no agenda.” The same assurance was made by Justices Thomas and Scalia at their hearings.

Besides these concerns about Judge Roberts’s views on the right to privacy and on the Establishment Clause, I also was troubled by his answers on the

Commerce Clause. I asked him if he would disagree with Justice Thomas’s extremely narrow, 19th-century, and widely-discredited view that Congress may not regulate activities occurring within a State even if they have substantial effects on interstate commerce. He refused.

There is therefore too serious a chance that Judge Roberts believes that Congress is without power to protect workers’ rights, women’s rights, and the environment on this widely-accepted constitutional basis.

We simply did not get definitive answers to these questions at the hearings.

At the hearings, I gave Judge Roberts every opportunity to distance himself from Justice Thomas’s most extreme views. He refused.

Now, Senator CORNYN, my good friend from Texas, and others from across the aisle have said that if we can’t vote for this nominee who could we vote for? Here is your answer: someone who answers questions fully and who makes his or her record fully available; someone who gives us a significant level of assurance with some answers and a record that he or she is not an ideologue;

Judge Roberts is clearly brilliant and his demeanor suggests he well might not be an ideologue.

But he simply did not make the case strongly enough to bet the farm.

There is a good chance—perhaps even a majority chance—that Judge Roberts will be like Justice Rehnquist on the bench. We know he will be brilliant, and he could well be—while very conservative—not an ideologue. That is why I struggled with this decision so long and so hard.

If he is a Rehnquist, that would not be cause for exultation; nor would it be cause for alarm. The Court’s balance will not be altered.

But there is a reasonable danger that he will be like Justice Thomas, the most radical Justice on the Supreme Court.

It is not that I am certain that he will be a Thomas. It’s not even that the chance that he will a Thomas is greater than fifty percent. But the risk that he might be a Thomas and the lack of reassurance that he won’t—particularly in light of this President’s professed desire to nominate people in that mold—is just not good enough.

Because if he is a Justice Thomas, he could turn back the clock decades for all Americans. The Court’s balance may be tipped radically in one direction and stay that way for too long.

I hope he is not a Thomas. But the risk is too great to bear, and it exceeds the upside benefit.

Because of that risk and its enormous consequences for generations of Americans, I cannot vote yes. I must reluctantly cast my vote against confirmation.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, 5 years have passed since the Presidential election of 2000, and legitimate questions

about the outcome of that campaign have left too much of America too divided. Legitimate questions about the outcome of that election have given rise to an ever-growing polarization between so-called red and blue States, between liberals and conservatives, and between Republicans and Democrats in the Congress.

Despite a somewhat more convincing outcome in the 2004 Presidential election, the divisions caused by the events of 2000 show little sign of abating. Having closely observed this widening divide, I now wonder whether Judge Roberts' confirmation will add to the bitterness and distrust of the Federal Government or whether it may serve to remind the people and the lawmakers they elect that we cannot move forward as a nation if we remain dedicated to tearing each other down.

This is my first vote on a nominee to the Supreme Court of the United States, and my obligation as articulated in the Constitution is to either consent or not consent to a choice specifically entrusted to the elected President of the United States. Some of the policy watchdogs that I respect the most and agree with on so many issues have asked whether I oppose Judge Roberts because he is not one of us, because he is too conservative, because he is too young, because he may prove effective. He is not whom we would choose, they say. And on that point, I am in full agreement.

Should the test to confirm a Chief Justice be, he is not one we would choose? I ask my friends to imagine the mess we will have left for our country if the Senate uses this test and votes solely on the basis of a nominee's political beliefs. Friends who a year ago said, We don't want ideologues appointed to the Supreme Court, now want John Roberts and the next nominee to show up at the witness table to submit to an ideological litmus test.

Here is my message to those friends: A sword forged in ideology in 2005 can be used against a progressive nominee in 2009 with an equal disregard for the Constitution and the individual.

In 2008, I fully intend to work harder than ever before to elect a President who rejects the dangerous priorities that have led us to war in Iraq and an energy policy that is folly, that assures our continued dependence on foreign oil. Should this new Democratic President have to contend with a Republican Senate majority, he or she better hope that the judicial nominations in 2005 did not become purely ideology-driven contests. If these debates are purely partisan, our future will include constitutional bedlam whenever a Supreme Court opening occurs while the Senate is controlled by the opposition party.

I reject the suggestion that a Republican nominee is, per se, objectionable. A number of certainly moderate justices nominated by Republican Presidents certainly belie this claim. The decision each Senator must make

should be based on the judicial nominee that is before the Senate, not the one that we wish was before the Senate.

To put this into historical perspective under the advice and consent responsibility assigned to the President, the President's judicial nominees to the Court have traditionally been given a large degree of deference. For example, in spite of the divisive national debate surrounding gays in the military, universal health care, Travelgate, Filegate, and the Whitewater investigation, this deference translated into 96 votes for Justice Ginsburg and 87 votes for Justice Breyer when their nominations came to a vote before the Senate. Yet these are two of the most progressive voices in the over 200-year history of the Court.

When I had the opportunity to meet with John Roberts in my office this past August, I pressed him to tell me how he viewed some of the issues that have most divided our country. The answers Judge Roberts gave me during the hour we spent together left me with the impression that he will be his own man on the Court.

Here are my judgments about the individual before the Senate now: One, on the basis of his public testimony, it is hard to see Judge Roberts as a man who will walk into the white pillard building across the street and set about tearing apart the fabric of our society; two, on the basis of his public testimony, it is hard to see Judge Roberts as a judicial activist who would place ideological purity or a particular agenda above or ahead of the need for thoughtful reason; three, on the basis of his public testimony, it is hard to see Judge Roberts as a divisive, confrontational extremist who would try to further exploit the divisions in our country.

What I saw in his public testimony and in our private meeting is an intelligent, thoughtful man, certainly a deeply conservative man with a tempered view of the role of Government.

At his Judiciary Committee hearings, nothing he said in public conflicted with what he had told me in private.

In addition to meeting with him, I have scrutinized Judge Roberts and his record closely, considering his Reagan-era documents, reading the news analysis printed in papers across our country and listened to the hearings and reviewed the transcripts of them as well. No one disputes that Judge Roberts has a brilliant legal mind. My analysis of his record leads me to conclude that he is not cut from the same originalist cloth as Justice Thomas and Justice Scalia. He does not seem to believe that the words of the Constitution are fossilized, leaving only a one-size-fits-all, 18th century remedy for every problem that our society confronts. It is hard not to get the sense that he believes in limited government.

Back in March, I led the effort in the Senate to block attempts to dictate a

specific medical treatment in Terri Schiavo's tragic case because I believed the Constitution affords families the right to decide these matters privately. This is an area, in my view, in which the Federal Government has no business intruding. Involving itself in the Schiavo case, Congress was inappropriately meddling and blatantly ignoring the limits of its constitutional authority.

I believe that the Terri Schiavo case is the first of many such end-of-life cases that will arrive at the Supreme Court's doorstep. In my view, most of these cases will involve one individual and passionately held views. Demographic trends and improvements in medical technology assure that there will be many of these cases.

Given what is ahead, I felt I had an obligation to examine how Judge Roberts saw end-of-life issues in the context of the Constitution and whether he would be willing to manipulate its meaning to authorize Government intrusion in private family matters. When I met with Judge Roberts in August, we discussed end-of-life issues at length, not because this was a litmus test for me, and I certainly don't believe in litmus tests, but because I thought it was important to carefully consider Judge Roberts' judicial temperament on this critical issue.

Judge Roberts did not say how he would have handled the Schiavo case or any case before the Court. However, Judge Roberts did say quite a bit that made a lot of sense to me and I think would make sense to the vast majority of Americans. Judge Roberts agreed that there is a constitutionally based privacy right and that while the scope of the privacy right is still being defined in the context of end-of-life care, he said that when he approached the issue, he starts with the proposition that each person has the right to be left alone and that their liberty interests should be factored in as well.

At his hearing, Judge Roberts reiterated his position, stating that a right to privacy exists in the Constitution. He stated that privacy is a component of the liberty protected by the due process clauses of the 5th and 14th amendments, and he stated this liberty interest is protected substantively as well as procedurally.

While discussing the Schiavo tragedy during our August meeting, I also asked him about Congress's authority to legislate a particular remedy in a particular case, and Judge Roberts expressed his concern about judicial independence. It was apparent to me Judge Roberts understands there are constitutional limits to the recent enthusiasm of Congress to prescribe particular remedies in a particular end-of-life case.

Concerning States rights to regulate medical practice and the scope of the 10th amendment, Judge Roberts stated he believed the Framers expected States to do most of the regulating and that they expected most regulation to

be State-based. In his view, the basic genius of the Federal system is that it affords different States the ability to approach problems in a way that is best suited to meet their different needs, and that imposing uniformity across the country would stifle the genius of our Founding Fathers.

Judge Roberts also told me he attaches great importance to legislative history in interpreting law. He repeated this point several times during his public hearings. Those who have closely studied former Attorney General Ashcroft's challenge to the Oregon physician-assisted suicide law know there is not one word in the Controlled Substances Act, the law used to launch the case, indicating the Controlled Substances Act is aimed at or should be used to overturn or undermine the right of States to regulate medical practices within their borders.

On the extremely important matter of a woman's right to choose, I asked Judge Roberts about Roe. He did not offer specific comments, but his response indicated he would not enter the Court with an "agenda" and he would respect the Court's precedents. In the public hearings, he also said he personally agreed with the conclusion of the Griswold and Eisenstat decisions, which held that the privacy right protects the right of individuals to use birth control.

His opinions on the issues that matter indicate he is intelligent, thoughtful, and that he has a tempered view of the role of the Federal Government.

Judge Roberts' combination of temperament and intelligence give him the potential to be a conciliatory voice at a divisive time in American history. He has the skills to reach across the divisions in America to show that justice can be a healing force for the wounds that cut our society so deeply. He can help to unify the country by building a record of well-reasoned opinions grounded in the rule of law, not ideology.

He will receive my vote tomorrow to be the next Chief Justice of the United States.

I want to make one final point, Mr. President, a point that is important to me. There is another vacancy on the Court, and the President is expected to send forth his nominee soon. My intention to vote for Judge Roberts tomorrow should in no way be construed as a "weathervane" for how I might vote on the next nominee. In the past, I have not hesitated to vote against several of the President's nominees to the courts of appeals when they carried the ideological and activist baggage I believed would be disruptive to our society. If the President puts forward a nominee to replace Justice O'Connor who is unlikely to ably and respectfully fill her shoes, I will vigorously oppose that nomination.

I began by voicing my question about the impact of this nomination on the body politic of our country. Among the many awesome duties of the Chief Jus-

tice, no duty is of greater importance than the duty to unify our Nation when Americans find themselves in disagreement. Different Chief Justices have shouldered this burden with varying degrees of success. This ability to unify is what is most sorely needed at this moment in our Nation's history, and I am of the opinion that Judge Roberts possesses the nature and the desire to unify the Court and, with it, our Nation. I wish him wisdom, diplomacy, and moderation as he prepares to assume this critical role.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the time from 12 p.m. to 1 p.m. will be under the control of the majority.

The Senator from South Carolina.

Mr. GRAHAM. Madam President, I would like to comment a bit on the nomination of Judge Roberts. I wish to make a political observation. This is certainly a political body, and the nomination process has politics to it. That is not a bad thing. That is to be expected.

From a Republican point of view, this is an easy vote. We are inclined to support a President when he is in power making a nomination. But that is not always the case, that every Republican votes for every nominee. I expect that will be the case here. Most of us on our side of the aisle are pleased with the nominee, someone of extraordinary intelligence and legal abilities and seems to be an all around good guy who has served his country well in every capacity that he has been called upon to serve. We will all vote en masse. It is an easy vote for us.

To our Democratic colleagues, it is not so easy. Any time you are in the minority, and the Court being an important part of American life and politics, there is a lot of pressure on my Democratic colleagues to say no for different reasons by special interest groups on the left. We certainly have them on the right. Our day will come. If there is ever a Democratic nominee, we will face the same pressure.

I would like to compliment my Democratic colleagues. Every one has taken the process seriously. There will be a healthy number of Democratic votes for Judge Roberts. To those who have decided to vote for him, history will judge you well. You have based your votes on the qualifications test. You have seen in Judge Roberts someone who loves the law more than politics. Over time, history will judge you well. One of the highlights of the Bush

administration will be the selection of Judge Roberts to be the Chief Justice of the United States.

For those who vote no, to a person everyone has struggled with it, thought about it, cast your vote. Generally speaking, the debate in committee and in the Chamber has lived up to the best traditions of the Senate. A few months ago, we were at each other's throats, about to blow up the place. There is plenty of blame to go around, but we have sort of broken that cycle. We have had a confirmation process that is in the best tradition of the Senate. We will go forward, and I hope he gets a healthy number of votes. It looks as if he will.

One thing I wanted to take some time to discuss is some of the reasoning given to vote no and make a cautionary tale about some of the suggestions why a "no" vote would be appropriate. There seems to be some suggestion that if he does not have an allegiance to a particular line of cases, particularly the right of privacy cases centering around Roe v. Wade, that you can't vote for him. That one case or that line of legal reasoning is so important that without some commitment on his part to uphold Roe v. Wade or the concept of Roe v. Wade, a "no" vote would be in order. I would argue that could be applied on our side. Most of us are pro-life. I would say 90 percent of the Republican caucus is pro-life. Probably 90 percent of the Democratic caucus is pro-choice. The country is pretty evenly divided. If we have a litmus test about Roe v. Wade or any other case, that is not doing the judiciary a good service because you are putting a judge in a bad spot.

Senator HARKIN mentioned the Americans with Disabilities Act, something he should be very proud of. He fought hard to make it part of law, and we are a better Nation for it. There are some cases involving the Americans with Disabilities Act that will come before the Court. Senator HARKIN did not think that he could vote yes because he wasn't assured that Judge Roberts would uphold the Americans with Disabilities Act in a way that he felt comfortable with in that States have been exempted from the act. We are all dealing with that issue.

The only thing I can say about a guarantee with Judge Roberts, if you are a conservative and would like to see certain Court decisions reversed, if you are a liberal and would like to see certain decisions sustained, the one thing I can promise you about Judge Roberts is he is going to make his decision based on the facts, the briefs, the record in the particular case, and the arguments made by litigants. If he overturns a precedent of the Court, he will apply the four-part test that has been the historical analysis of how to overturn a standing precedent. He is going to do it in a businesslike fashion. He is going to apply the rule of law. If you are looking for an outcome-determinative judge, someone who is going

to see things your way before they get your vote, you are going to be disappointed. To be honest, the law is better off for those answers. He is not the only one to refuse to bargain his way on the Court.

Justice Marshall was asked by Senator McClellan: Do you subscribe to the philosophy expressed by a majority of the Court in *Miranda*?

That is a major league constitutional case in our Nation's history where police officers have to inform a criminal defendant of certain rights they possess under the Constitution. That was a big deal. When Justice Marshall was coming along, that case had not been long decided. He said: I cannot answer your question because there are many cases pending that are variations on *Miranda* that I will have to pass on if I were confirmed.

Senator McClellan: Do you disagree with the *Miranda* philosophy?

Justice Marshall: I am not saying whether I disagree or not, because I am going to be called to pass on it.

Senator McClellan: You cannot make any comment on any decision that has been made in the past?

Justice Marshall answered: I would say that on decisions that are certain to be reexamined in the Court, it would be improper for me to comment on them in advance.

I couldn't say it better. This idea that Judge Roberts has been evasive, that he will not give you a detailed answer of how he will decide the concept of the right of privacy or how he might rule on interstate commerce clause cases that will certainly come before the Court, he is doing exactly what Justice Marshall did when he was in the confirmation process. He was not going to bargain his way on the Court.

Justice Ginsburg gave a very famous quote: I am not going to give you hints, any previews, no advisory opinions about matters that I believe will be coming before the Court.

If that is your test, that you have to have a guarantee in your mind that a certain line of cases or a legal concept will be upheld or stricken down, Judge Roberts is never going to satisfy you. It is good for the country that he not try to do that, just as Justice Marshall avoided that dilemma.

This is a question by Senator KOHL to Justice Souter: What was your opinion in 1973 on *Roe v. Wade*?

Justice Souter: Well, with respect, Senator, I am going to ask you to let me draw the line there, because I do not think I could get into opinions of 1973.

Senator LEAHY: You do not have the same sense, to whatever degree you consider privacy in *Griswold* settled—which is the ability to engage in birth control practices—to whatever extent that is, you do not have in your own mind the same sense of settlement on *Roe v. Wade*; is that correct?

Justice Souter: Well, with respect, sir, I think that is a question that I should not answer. Because I think to

get into that kind of comparison is to start down the road on an analysis of one of the strands of thought upon which the *Roe v. Wade* decision either would or would not stand. So with respect, I will ask not to be asked to answer that question.

He said it better than I read it. Bottom line is, he is telling Senator LEAHY and Senator KOHL that if you start asking me to compare one case with another that has viable legal concepts, that could be a foreshadowing of how I might rule on matters before the Court, and you are putting me in a bad spot and I like not to do that. I can talk about *Griswold*, but if you ask me to say am I settled about *Roe v. Wade* as I am *Griswold*, then you are basically getting a preview how I might rule on a *Roe v. Wade*-type scenario.

So the idea that Judge Roberts did not want to make such comparisons with the interstate commerce clause is not unknown to the confirmation process. Justice Souter did not want to go down that road with the right of privacy.

Judge Roberts was asked probing, hard, clever questions to try to get him to tip his hand. I think what he said was the right answer: I will follow the rule of law. There is a process of how to overturn a case. There is a process of how to decide a case. That process is, you look at the facts, you look at the record, you listen to the arguments of the litigants, and you don't prejudge. I think that will serve the country well.

The other concept that is coming into play is what burden does the nominee have, what deference should the Senate give to the President, what is the standard for confirmation. I have always believed that the idea that the President's nominee should be given deference by the Senate is a long-standing concept in our country. I am not the only one who believes that.

There is a lot of information out there from our Democratic friends who have gone down that same road and have come to the same conclusion. There are prominent law professors out there who have suggested that there is a presumption of a nomination by the President that the Senate should give great deference to the Presidential nominee and that our advise-and-consent role does not replace the judgment of the President but simply to see if the person is qualified, has the character and integrity and will wear the robe in the way that is consistent with being a judge and not turn it into power grab.

Professor Michael Gerhardt, who has advised our Democratic friends about the confirmation process established now and in the past, says:

The Constitution establishes a presumption of confirmation that works to the advantage of the President and his nominee.

He also said:

The presumption of confirmation embodied in the Constitution generally puts the onus on those interested in impeding a nomination to mobilize opposition to it.

So the general idea that the President should be given deference, in Professor Gerhardt's opinion, is accepted in terms of the practice of the Senate.

Senator BIDEN, on past nominations, has said: First, as a Member of the Senate, I am not choosing a nominee for the Court. That is the prerogative of the President of the United States and we, Members of the Senate, are simply reviewing the decision he has made. Second: Our review, I believe, must operate within certain limits. We are attempting to answer some of the following questions: First, does the nominee have the intellectual capacity, confidence, and temperament to be a Supreme Court Justice? Second, is the nominee of good moral character and free of conflict of interest that would compromise her ability—in this case it was Justice Ginsburg—to faithfully and objectively perform her role as a member of the Supreme Court? Third, will the nominee faithfully uphold the laws and Constitution of the United States of America? We are not attempting to determine whether the nominee will address with all of us—being the Senate—every pressing social or legal issue of the day. Indeed, if that were the test, no one would pass this committee, much less the full Senate.

I could not agree with Senator BIDEN more. If that is the test, we are OK. If it becomes some subjective test where you have to adopt our view of a particular line of legal reasoning, then I think you have undermined the role of the President, I think you put the Judiciary at a great disadvantage, and I think you will be starting down a road that will not pay great dividends for the Senate.

I argue that whatever votes you cast, let's not create standards that will come back to haunt the judiciary. Let's not put people in a bind, in trying to get on the Court, by making decisions or answering questions that will compromise their integrity and violate their judicial ethics to get votes.

I do not think anybody is intentionally trying to do that, but there are some disturbing comments about what the standard should be. There have been a couple of occasions on the Judiciary Committee where people have looked at Judge Roberts and said: Convince me, the burden is on you to convince me you will not do the following or you will do the following. I don't think that is helpful.

There have been some occasions in the committee where people have acknowledged the great intellect of Judge Roberts. His preparation for the job is not in question. I said in committee: If you question his intellect, people are going to question yours. He is a genius. There is no way of getting around that. He is one of the greatest legal minds in the history of the country, and I think he will be a historic choice by the President.

People have suggested: I don't know if he has the real-world experience; I know about your brain, but I don't

know about your heart. I suggest it is dangerous for us in the Senate to begin judging other people's hearts. That gets to be a slippery slope.

Senator WYDEN's statement, I thought, was dead on point. He understands the deference the body gives to the President. He pointed out, in fact, that Justice Ginsburg and Justice Breyer, two Clinton nominees, received 87 votes and 96 votes, respectively. If you start applying heart tests, I can tell you that gets to be so subjective and so political, and I think it is dangerous for the judiciary and not healthy for the Senate.

One of the issues Justice Ginsburg wrote about was the idea that prostitution should be a legal activity because to restrict women from engaging in prostitution is basically restricting a woman's right to engage in commerce.

You can agree or disagree, but from my point of view, looking at the world as I know it to be as a former prosecutor and former defense attorney who has had some experience in criminal law, if I am using the heart test or the real-world experience test, I would argue that from the experiences I have seen as a criminal defense lawyer and as a criminal prosecutor, that prostitution is hell for women; that if you really understood the life of a prostitute, it would not be a good business endeavor to uphold. It would be something we would want to deter.

That is my view based on life as I know it, having been involved in the criminal law business for 20-something years.

She said she supported the idea of Federal funding for abortion. If you wanted to try to question someone's heart from a pro-life perspective, I think it would be pretty tough to take taxpayers' dollars and use them for a procedure that millions of Americans find morally wrong.

So if we start going down the road of whether we believe a person before us has the right heart or the right real-world experiences, then you are taking the objective qualification, intellect, and character test, not an ideology—which I think is an appropriate thing—and you are beginning to put subjective elements in it that will not be good for the judiciary and will not be good for the Senate. I can assure you, if we started looking at those type of tests for Justice Ginsburg or Justice Breyer, who was a Democratic staffer, if we started looking at their philosophy or trying to judge their heart or having their value system equate with ours to the point we feel comfortable, then they would not have gotten nearly the votes they did because it is clear to me that not too long ago Republicans, during the Clinton administration, overlooked all the differences they had with Ginsburg and voted for her 96 to 3 and overlooked all the differences they had with Justice Breyer and gave him 87 votes. It is clear to me that Democrats and President Bush 1's administration overlooked all the differences

they had with Justice Scalia, and he got 98 votes.

It has been mentioned that the President has politicized this process, and there have been all kinds of veiled and direct threats about the next nominee: If you pick so and so, you are going to get a fight. If you pick Priscilla Owen, if you pick Janice Rogers Brown, you are going to get a fight, bringing back the specter of the filibuster.

What did the President do when he ran in his campaign? He talked about the Supreme Court and how important it was to him. He said, basically: If I am the President of the United States, on my watch, I am going to nominate well-qualified, strict constructionists to the Court with no litmus test, who will interpret the law and not become legislators themselves. He showed praise and admiration for Scalia and Thomas.

I would argue that something is wrong with the Senate if they can vote for someone 98 to 0 and say, If you pick someone like him, they are out of the mainstream and desiring a filibuster. How can you go from 98 to 0, someone similar to the person a decade later, and you filibuster? I would argue that if you do that, it is more about politics than it is about qualifications.

I hope we don't do that because the one thing I can assure you, knowing the President reasonably well, is that he is going to fulfill his campaign promise. He is going to send over to this body a well-qualified, strict constructionist, and to expect anything else, you ignored the last two elections. We are not going to sit on the sidelines and watch the election be overturned because of political pressure from the left. That is not going to happen.

I do expect the President to listen, as he did before he nominated Judge Roberts. I expect him to consult, as he did before he nominated Judge Roberts. I was very pleased and proud of his pick. I am encouraging the President to listen to our Democratic colleagues, listen to us all. But the most encouragement I could give the President is: Fulfill your campaign promise. Do what you said you would do when you ran for President. Send us over a well-qualified, strict constructionist conservative with no litmus test attached. If you do that, then you will have done a good service for the American people because you got elected twice telling them what you are going to do.

I have about 5 minutes, and I will let my other colleagues speak.

There were a couple of other comments about concerns with this nominee. It goes back to the memos. This nominee worked for the Reagan administration. He was in his midtwenties, and that has gotten to be a bad thing. Working for Ronald Reagan, I think, is a good thing. Justice Breyer was a Democratic staffer. No one held that against him. He worked for the Democratic side of the aisle in the Senate, and I don't remember anyone suggesting that was a bad thing.

Presidents pick people they know and with whom they are comfortable. Clinton was comfortable with Ginsburg, the executive general counsel for the ACLU, someone we would not have picked. He was comfortable with Justice Breyer, a former Democratic staffer, someone this President would not pick. This President picked someone who worked for his dad, President Bush 1, and Ronald Reagan.

There is an argument out there that adopting the Reagan position on extending the Civil Rights Act in toto, without a change, that would lead to a reverse discrimination test called "proportionality" and is out of the mainstream. Ronald Reagan won 49 States. If you can win 49 States and be out of the mainstream, I would argue the person saying you are out of the mainstream is out of the mainstream. If you picked someone similar to Scalia and that would justify a filibuster and the guy got 98 votes, there is a disconnect going on here.

One of the memos that is in question is a memo that Judge Roberts wrote about the Reagan administration's decision to grant amnesty, for lack of a better word, to illegal aliens in this country. He was writing a memo to suggest how the President should respond to an inquiry by Spanish Today, a Latino, Hispanic newspaper. He talked about the idea that it would be well received in the Hispanic community to grant amnesty. And he said to the effect that Spanish Today would be pleased that we are trying to grant legal status to their illegal amigos.

Somehow that one phrase has been suggested that this young man, working for the Reagan administration, committed some kind of a wrong that would deny him the ability to be fairly considered for the Supreme Court 20-something years later. I argue, No. 1, that if you read his writings in terms of what he was talking about, it was not meant to be slanderous, it was not meant to be a derogatory remark—he answered the question fully—that it was not meant to be that way at all. That was a commonly used term in the White House, the term "amigos," and he made a correct observation: that certain Hispanic groups did welcome President Reagan's decision.

Bottom line is, if we are going to take a phrase that a person wrote when they were 26, and that is going to be a reason to vote no, woe be to anybody else coming before this committee. I would not want that to be the standard for me.

He never apologized because he did not think he had anything to apologize about. So this is much ado, in my opinion, about nothing. You have read his writings. He used Latin, French, and Spanish terms all over the place. He is kind of a witty guy. You may not like his sense of humor, but I think it is given sometimes in that vein. The idea about, you know, more homemakers becoming lawyers, who said we need more homemakers than lawyers—and I

think a lot of people agree with that, and his wife happens to be an attorney, by the way—taking these phrases out of context and not looking at life in total is not fair. Not one person came before this body or the committee to say Judge Roberts has lived his life in any way, shape, or form to demean any group in America or individual. It is quite the opposite. He has received praise from everybody he has worked with on both sides of the aisle because he is basically a very good man. So I hope we will not make that the standard in the future.

Final thoughts. The vote is not in question in terms of confirmation. The process is in question. And that to me is as important as the vote total. The President is going to get another pick. That is the way it has happened. He has had a lot of things happen on his watch historic in nature. Whatever you think about President Bush, whether you like him or not, he has had to deal with some major league events. Let me tell you, some will go down good and not so good in history. That is the life of a President. But one thing I can say for certain is that his decision to make John Roberts Chief Justice of the U.S. Supreme Court will go down well in history. It will be one of the greatest things he has done as President of the United States because he has picked one of the most uniquely qualified men in American history to serve on a Court that needs all the unity it can find, and this guy will be a consensus builder. The next one is coming and it is coming soon. There is all kind of jockeying already about what the President should do and what he should not do. I hope and pray we will remember the best traditions of the Senate, that we will listen to the Joe Bidens of the past, when he informed us that our role is to give deference to the Presidential nominee, look at their character, intelligence, and qualifications; that we will remember what Senator KENNEDY said about Justice Marshall: it is not your job, we shouldn't hold someone's political philosophy against them. We should look at who they are and what kind of judge they would be, would they be fair.

So as the next pick is about to be made, the Senate can fight if we want to or we can recognize that elections matter, we can judge the nominees based on their qualifications, integrity, and character, whether they are going to wear the robe in some improper fashion, or we can start putting political tests on the Presidency that will come back to haunt everybody and every party. If you want someone such as O'Connor—President Clinton did not think 1 minute about replacing Justice White with Justice Ginsburg. No one asked him to think about that. This idea that you have to have an ideological match is something new. What is old and stood the test of time is that Presidents get to pick once they win, and our job is to make sure they pick wisely in terms of character, integrity,

and qualification. And if we will stick to that test and not substitute our political philosophy for that of the President and not require a political allegiance of the nominee to our way of thinking about a particular line of cases or a particular concept in law, but judge the entire person, we will have served the country well. If we get into the mud and start fighting each other over the second pick, because some people don't like how the election turned out, then we will set a trend that will come back to haunt this body, haunt all future Presidents, and we will be worse off as a nation.

With that, I am going to end with the idea I am optimistic that we will not go down that road, we will give the next nominee the respect and deference this nominee has, and we will vote our conscience, and the vote will come and the vote will go. And the worst thing we could do is politicize the judiciary any more than it has been politicized. If you are selected to be on the Supreme Court, there will be millions of dollars to run you down and destroy your life, and that is going to happen on both sides of the aisle if we do not watch it. The best thing the Senate can do is use this opportunity to stand up to those people who want to run down somebody and ruin their life unfairly, because our day will come as Republicans. If we can unite around the idea we are not going to let special interest groups take over the Senate, the country will be stronger.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I congratulate my colleague and good friend from South Carolina for a fine statement.

I also rise today in support of President Bush's nomination of Judge John Roberts to serve as Chief Justice of the United States.

President Bush could not have nominated an individual more qualified to be confirmed as the next Chief Justice of the United States. If one were to prescribe the ideal training regimen for a future Chief Justice, Judge Roberts' career may well serve as the model.

Judge Roberts has interacted with the Supreme Court in nearly every conceivable capacity. After law school, he held a prestigious position at the Supreme Court as a clerk to Justice William Rehnquist. He then went on to argue 39 cases before the Supreme Court, representing both public and private litigants. He currently serves as a judge on the U.S. Court of Appeals for the DC Circuit often referred to as the second highest court in the land.

In short, he has worked at the Supreme Court, represented dozens of clients before the Supreme Court, and served as a judge on the court that many consider a stepping-stone to the Supreme Court. I cannot imagine someone more qualified to now serve as Chief Justice of the Supreme Court.

After spending considerable time with Judge Roberts the nominee, I

came to be equally impressed with John Roberts the man. He is humble, unassuming, polite, and respectful. In that respect, he shares the values of many of my fellow Coloradans.

The humility he exudes is reflected in his view on the role of judges and the courts. Judge Roberts says:

[A] certain humility should characterize the judicial role. Judges and Justices are servants of the law, not the other way around.

He describes himself as a "modest judge," which is evidenced in his "appreciation that the role of the judge is limited, that judges are to decide the cases before them, they're not to legislate, they're not to execute the laws."

This judicial philosophy is imperative to preserving the sanctity of the Constitution that is under attack by a handful of activist judges activist judges who proclaim the Pledge of Allegiance unconstitutional and attempt to redefine the institution of marriage. Unlike these activist judges, Judge Roberts will be on the side of Constitution.

As a Senator representing Colorado, I also appreciate the uniqueness of the issues important to Colorado and the West. The departure of Justice O'Connor, and now Chief Justice Rehnquist, marks the loss of a Western presence on the Supreme Court.

Earlier this year, I asked President Bush to nominate a judge with an understanding of issues important to Colorado and the West, such as water and resource law.

I asked Judge Roberts about his understanding of Western resource and water law. Judge Roberts acknowledged the loss of the Western presence on the Court and assured me that he understands the uniqueness to the West of such issues as water, the environment, and public lands.

He shared his experience working on several cases in the State of Alaska, encompassing issues on rivers, Indian law, and natural resources. He also described his practice of traveling to the site of cases when he believes it is beneficial to his understanding of the facts. This practice is demonstrative of his commitment to fully understanding cases from the perspective of both sides.

I was pleasantly surprised to learn that he currently has a law clerk from New Mexico. Law clerks sit at a judge's right hand and are integral in the judge's decisionmaking process. I am hopeful that Judge Roberts will continue to surround himself with individuals who have a Western perspective.

The Senate Judiciary Committee has reviewed Judge Roberts' record more extensively than any previous Supreme Court nominee. The Administration produced more than 76,000 pages of documents related to Judge Roberts' distinguished career in public service. Judge Roberts testified for more than 20 hours before the Senate Judiciary Committee.

During the extensive review process, the country learned a great deal about

Judge Roberts' fitness to serve on the Supreme Court.

We learned about his judicial philosophy, one which is firmly rooted in the rule of law and unwavering in its reverence for the Constitution. I believe his most telling statement was this:

I come before the Committee with no agenda. I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda, but I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability, and I will remember that it's my job to call balls and strikes, and not to pitch or bat.

We learned that Judge Roberts subscribes to "the bedrock principle of treating people on the basis of merit without regard to race or sex." His belief in these principles is echoed in praise from several women's and minority groups.

The Minority Business Round Table says "his appointment to the U.S. Supreme Court would certainly uphold our core American values of freedom, equality and fairness."

The Independent Women's Forum applauds Judge Roberts as a "very well qualified candidate with a reputation of being a strict interpreter of the law rather than someone who legislates from the bench."

We learned that Judge Roberts recognizes the limitations on the government's taking of private property and the role of the legislature in drawing lines that the Court should not. The Court in *Kelo* permitted the transfer of property from one private party to another private party to satisfy the Constitution's "public use" requirement, essentially erasing this fundamental protection from its text. Judge Roberts says the *Kelo* decision "leaves the ball in the court of the legislature. . . . [Congress] and legislative bodies in the States are protectors of the people's rights as well. . . . [Y]ou can protect them in situations where the Court has determined, as it did 5-4 in *Kelo*, that they are not going to draw that line."

We learned that Judge Roberts will rely on domestic precedent to interpret the U.S. Constitution, not foreign law. Judge Roberts said, "as a general matter . . . a couple of things . . . cause concern on my part about the use of foreign law as precedent . . . . The first has to do with democratic theory. . . . If we're relying on a decision from a German judge about what our Constitution means, no President accountable to the people appointed that judge, and no Senate accountable to the people confirmed that judge, and yet he's playing a role in shaping a law that binds the people in this country."

Given his keen intellect, impartiality, temperament, sound legal judgment, and integrity, it is not surprising that Judge Roberts enjoyed bi-

partisan support by the Senate Judiciary Committee. I expect that he will enjoy similar bipartisan support in his confirmation vote tomorrow morning.

I want to commend President Bush on the unprecedented level of bipartisan consultation he engaged in with the Senate prior to this nomination. The Constitution grants the power to the President to nominate and the Senate to provide advice and consent. Although Senators can provide input, the Senate does not co-nominate. When the President sends forth highly qualified candidates, this body has an obligation to the American people to provide a timely up-or-down vote.

I commend my colleagues on the respectful hearings and expeditious process. The Ginsburg Standard was applied to Judge Roberts fair, respectful hearings; no prejudging of cases likely to come before the court; and a timely, up-or-down vote.

With consultations on the next nominee already well under way, and an announcement imminent, I am hopeful that my colleagues will apply the same standards.

Judges are not politicians. The Senate debate should reflect that the job of a judge is to review cases impartially, not to advocate issues. Judges should be evaluated on their qualifications, judicial philosophy, and respect for the rule of law.

I am confident that President Bush will send forth a highly qualified nominee to replace Justice O'Connor, and I am hopeful that my colleagues will continue to build on the spirit of bipartisanship witnessed during this confirmation process.

In conclusion, I cannot imagine a better qualified candidate than Judge Roberts to lead this nation's highest Court into the 21st century. I believe his rhetoric matches his actions.

On behalf of the citizens of Colorado, I thank Judge Roberts for his willingness to serve our country. I am hopeful that the fair and respectful hearings accorded to him by this body will serve to inspire the best and the brightest of future generations to make similar sacrifices in the name of public service.

I strongly urge my colleagues to cast a vote in favor of Judge John G. Roberts' confirmation as the 17th Chief Justice of the United States.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Madam President, after listening to my friend from Colorado and my good friend from South Carolina, and then to look at the statement that I have, it appears we are all saying about the same thing, but we just all haven't had the opportunity to say it yet. I will try to put a little different slant on it.

We know the qualifications of this man, Judge Roberts. He has consistently shown me excellence in all aspects of his previous academic and his professional career. He is widely thought of as one of the best legal minds in the country, is highly re-

spected by his colleagues as a fair-minded, brilliant, and temperate jurist. He graduated from Harvard College *summa cum laude*. He did it in only 3 years. He then graduated from Harvard Law School at the top of his class.

Less than 3 years ago, Judge Roberts was confirmed by a unanimous vote to the DC Court of Appeals, which is often referred to, as my friend from Colorado says, as the second highest court in the land. He was also a partner in the prestigious law firm of Hogan & Hartson. He specialized in U.S. Supreme Court litigation, arguing numerous cases before the very Court to which we seek to confirm him today. Further, he had an active practice in appellate law.

I guess what we look for in the men and women we like to see on the country's highest Court is pretty much found in all the qualifications of Judge Roberts. He had worked in the private sector. He also worked in the White House under President Ronald Reagan as Associate Counsel. In addition, he earned a highly prestigious clerkship on the Supreme Court for Chief Justice William Rehnquist—that in 1980 and 1981. Then he was nominated by this President and went before the Judiciary Committee.

We watched those hearings with a great deal of interest. I speak not as a member of that committee or even as an attorney, but what we heard more than anything else—and this is important to my State of Montana—is that we will have a qualified, fair, and competent Supreme Court Justice. That is important. When questioned on all of those qualifications, fairness, and competence, no one challenged any part of those elements. In this respect, Judge Roberts earned the "well qualified" rating from the American Bar Association, which is the highest rating that association offers. There was no challenge there.

He continually impressed my colleagues in the Senate by showing his immense knowledge of the law while reflecting his vast understanding of the rule of law and the importance of precedent. There was no challenge there.

What becomes important is that we know that our Supreme Court Justices understand their duty is to interpret the law as it is reflected in the cases that come before them and refrain from personal biases and from legislating or putting their biases into those cases.

He impressed me when he said that he wanted to be the umpire. He didn't want to be the pitcher or the batter; he just wants to call the balls and the strikes. I appreciate that. I spent a lot of years on a football field, and I was one of those who wore the striped shirt. When I look back on that game, maybe our judiciary should be a little bit like this great American sports feature of football. When you think about it, 4 old referees—some of them overweight

whom I could talk about—go out on a field of 22 young men who are hostile, mobile, and bent on hurting each other, and we have very few problems because those striped shirts are the arresting officers, the judges, and the penal officers. They do it in 30 seconds, and they do it without very many complaints. Thus the discipline of the game: 22 young men in armor and dead set on winning the contest.

Throughout his hearings before the Judiciary Committee, Judge Roberts proved over and over that he understands the role of the judiciary as an interpreter and not a legislator and why it is important to our governmental system that our judges across America refrain from overstepping their duties. The law is the law. Yes, it can be a subject of interpretation, but look how simple our Constitution is. It doesn't use very many big words. They are very simple. There is a lot of difference between the word "may" and the word "shall," and you can interpret them.

He explained his judicial style during his hearings by saying:

I prefer to be known as a modest judge . . . It means an appreciation that the role of the judge is limited, that a judge is to decide the cases before them. . . .

They are not to change it or use their biases to execute a judgment. That is pretty important.

When you look at his private life, the values of how he has progressed in his professional life, how he has carried himself and what is personally important to him—family, being a good husband, a provider—we see all of those values that we Americans hold in very high esteem.

Then we move it over into now what kind of a judge will he be. He was questioned on a lot of social issues that the courts have no business even considering. That falls on us, the elected representatives of America, and our constituency. What their values are should be reflected here. Yet what I heard was questions on human rights.

It is a wonderful thing, this Constitution we have. The Constitution was not written for groups, it was written for you as the individual. It is your personal Bill of Rights and how we structure our Government and the role of each one of those equal entities and how they relate and interact with each other—the executive, the judicial, and the legislative.

It is important to me and the people I represent that we have judges on the bench who will not prejudge cases. He may have a bias one way or the other, but what does the law say as it pertains to me as an individual citizen? This judge made his own commitment to listening, to hearing both sides of the case, and is committed to a fair and reasonable outcome, whether the judge personally likes or dislikes the eventual results. His approach to the law, simply put, is one of restraint. He is shown not to be an ideologue with an intent of imposing his views or his biases on the law.

Will he always rule in a way that would be consistent with my philosophy? I would say no. I have a feeling, though, however he rules will be fair, and he will not compromise any of the principles of the law as written. He explained:

As a judge I have no agenda, I have a guide in the Constitution and the laws that are precedents to the court, and those are what I apply with an open mind after fully and fairly considering the arguments and assessing the considered views of my colleagues on the bench.

I am not sure if it is the job to really draw a consensus when you have nine men and women who have strong views of the law and the Constitution and maybe would interpret them in many different ways, but what this man has shown us is strong character, integrity, and his immense knowledge of the law.

Uphold the Constitution, which protects us all—and we have heard a lot about that lately. People who are maybe short of patience would come up to us and ask, What is taking Iraq so long to get a constitution? I said, You know, it took almost 3 years to put ours together.

I still question: If we had had television and news channels, spin meisters, commentators, and reporters who seemed to inject their bias every now and again into the news, I am not real sure we would have a Constitution yet.

This man has shown us he has all the qualifications to be a judge, especially a judge on the highest Court in the Nation.

On behalf of my constituents in Montana, and from all that I can read and all the information I can gather, I strongly urge my colleagues to join me in voting aye on Judge Roberts as Chief Justice of the United States.

When the premise was wrong, he wasn't afraid to challenge the premise. That is unique when coming before any kind of a committee in a legislative body. That is what impressed me. The premise is assumed instead of factual. That is the importance to all of us when making judgments that affect so many of us in our daily lives.

I thank the Chair. I yield the floor, and I suggest the absence of a quorum.

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

The assistant 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, indeed, a privilege for me to—

The PRESIDING OFFICER. Will the Senator abstain for a moment.

Under the previous order, the time from 1 to 2 p.m. is under the control of the Democratic side.

Mr. WARNER. That is correct. I see one of my distinguished colleagues rising to be the floor manager of this period of time, but he very courteously

said I could open up, if that is approved by the Chair.

Mr. President, as I said, it is a great honor for me to first and foremost stand on this floor at this great moment in contemporary history. Tomorrow, this Chamber will, I anticipate, with a strong bipartisan vote, exercise its constitutional right of giving consent to the nomination of John Roberts to serve as the next Chief Justice of the United States.

I am privileged to know the nominee by virtue of the fact that we both, at different times in our careers, served in a very prestigious and revered law firm in our Nation's Capital, the law firm of Hogan & Hartson. When I joined the firm approximately forty-five years ago, Nelson T. Hartson was very active in Hogan & Hartson. I had the good fortune of being one of his aides-de-camp. Mr. Hartson's philosophy and his standard of ethics permeated that law firm then, as they still do today.

As a consequence of our mutual affiliation with Hogan & Hartson, I was privileged to be asked by Judge Roberts to introduce him when he was nominated by the President to serve on the United States Court of Appeals for the District of Columbia Circuit. In the 2 years he served on that court, he established an extraordinarily fine record.

I was privileged to once again introduce Judge Roberts to the Judiciary Committee some two weeks ago at the start of his confirmation hearing to serve in this highest of positions in our land.

I would simply say this: As I have come to know this magnificent individual, he is, in my judgment, an unpretentious legal intellectual. I say that because he is a man of simplicity in habits. He has a lovely family. He has a marvelous reputation among colleagues in the legal profession who are both Democrats and Republicans and conservatives and liberals. He is admired by all. In that capacity, as an unpretentious legal intellectual, he is, in my judgment, a rare if not an endangered species here in America for his personal habits and extraordinary intellect and for the manner he conducts himself every day of his life.

In fact, in the 27 years I have been privileged to serve in the Senate, slightly more than 2,000 judicial nominations have been submitted by a series of Presidents to the Senate for "advice and consent." John Roberts stands at the top, among the finest.

I commend our President on making such an outstanding nomination—a nomination which will receive strong bipartisan support in the Senate.

Just 4 months ago, with the judicial confirmation process stalled in the Senate, and with the Senate on the brink of considering the so-called nuclear or constitutional option, there was an aura of doubt, at the time, that any Supreme Court nominee would receive a vote reflecting bipartisan support.

But on May 23, 2005, 14 U.S. Senators, of which I was one, committed themselves, in writing, to support our Senate leadership in facilitating the Senate's constitutional responsibility of providing "advice and consent" in accordance with article II, section 2.

In crafting our Memorandum of Understanding, the Gang of 14 started and ended every discussion with the Constitution. We discussed how, without question, our Framers put the word "advice" in our Constitution for a reason: to ensure consultation between a President and the Senate prior to the forwarding of a nominee to the Senate for consideration.

Accordingly, in the Gang of 14's Memorandum of Understanding, Senator BYRD and I incorporated language that spoke directly to the Founding Fathers' explicit use of the word "advice." That bipartisan accord reads as follows:

We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

With respect to the nomination before us today, I believe that the President has met his constitutional obligations in an exemplary way.

In my view, that consultation between the President and individual Senators laid a foundation for the confirmation of John Roberts with bipartisan support.

The Gang of 14's Memorandum of Understanding provided a framework that has helped the Senate's judicial confirmation process. It has enabled the Senate to have six up-or-down votes on judicial nominations and now the Senate is about to confirm Judge John Roberts.

While I thoroughly understand that President Bush didn't choose a nominee that some in the Senate might have chosen if they were President, that is not what the Constitution requires. Indeed, in Federalist Paper No. 66, Alexander Hamilton makes it clear that it is not the Senate's job to select a nominee. It is the Senate's responsibility to provide advice to a President on who to nominate and then to grant or withhold consent on that nomination. On the other hand, it is the President's responsibility, and solely the President's responsibility, to nominate individuals to serve on our courts. As Hamilton so clearly 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 oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President.

In my view, the Senate was given a meaningful opportunity to provide its advice to the President, and the President respected the Senate's views when he nominated John Roberts. Soon, the Senate will provide its consent to that nomination.

John Roberts' credentials are well-known and of the highest quality.

He earned a B.A., *summa cum laude*, from Harvard College and his law degree, *magna cum laude*, from Harvard Law School. At Harvard Law School, he served as managing editor of the Harvard Law Review. Subsequent to graduation, Mr. Roberts worked as a Federal law clerk for Judge Friendly on the U.S. Court of Appeals for the second Circuit, and later as a law clerk for Justice William Rehnquist on the Supreme Court. He has worked in the Department of Justice, the Reagan administration, the George H.W. Bush administration, and he practiced law for many years in private practice.

But while John Roberts' legal credentials are unquestionably impressive, equally important is the type of person that he is. Throughout his legal career, both in public service, private practice, and through his pro bono work, John Roberts has worked with and against hundreds of attorneys. Those attorneys who know him well typically speak with one voice when they tell you that dignity, humility, and a sense of fairness are hallmarks of John Roberts.

In my view, all of these traits came across to those of us who watched the hearings before the Senate Judiciary Committee. John Roberts unquestionably demonstrated a mastery of the law and a commitment to decide cases based upon the Constitution and the law of the land, with appropriate respect and deference to prior Supreme Court precedents. He views his role as one of impartial umpire, rather than as one of ideologue with an agenda. He testified to all of this under oath.

To me, all of these qualities—John Roberts' legal credentials and his temperament—represent the embodiment of a Federal judge, particularly a Chief Justice of the United States. And I am confident that the vast majority of the millions and millions of Americans who watched his confirmation hearings agree.

Indeed, the American Bar Association has given John Roberts its highest rating, unanimously finding him "well qualified" for this position. And just slightly more than 2 years ago, the Senate unanimously confirmed him for a Federal appeals court judgeship by voice vote.

Before I conclude my statement in support of this outstanding nominee, I would like to highlight a few key facts of Senate history and tradition with respect to Supreme Court nominees. I find these facts particularly illustrative.

Over the last 50 years, America has seen a total of 27 Supreme Court nominees. Six of those nominees received the unanimous consent of the Senate

by voice vote. Another 15 of those nominees, including seven current members of the U.S. Supreme Court, received the consent of the Senate by more than 60 votes. In fact, only three nominees to the Supreme Court over the course of the last 50 years have failed to receive the consent of the Senate.

Chief Justice Rehnquist was confirmed to the Court as an Associate Justice in 1971 with 68 votes in support, and later confirmed as Chief Justice with 65 votes. John Paul Stevens received the consent of the Senate 98 to 0. Justice O'Connor, Justice Scalia, and Justice Kennedy were all confirmed by the Senate unanimously. Justice Souter was confirmed via a vote of 90 to 9. Justice Ginsburg was confirmed by a vote of 96 to 3. And Justice Breyer received the Senate's consent by a vote of 87 to 9.

Like all of these highly qualified Americans who came before him seeking Senate confirmation to the Supreme Court, John Roberts has earned, over a lifetime, the strong vote of bipartisan support he is about to receive.

Mr. President, I will yield the floor to my distinguished colleague at this time who will be the manager of this period. I say to my colleague, thank you for participating in the Gang of 14, as we have become known. Perhaps in the course of our remarks today we can talk about the mission, the challenge of that group, and how, in my humble judgment, we did succeed in enabling our leadership to once again put in motion the Senate's role in the confirmation of those nominated by our President for the Federal judiciary.

I think back when there was a great uncertainty about that process, and even some thought of invoking certain rules of the Senate by way of change, and how my distinguished colleague from Nebraska and I stood, with others in that group, and were able to lay a foundation which, I say with a deep sense of humility, may well have contributed to our being here today and casting that historic vote tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Mr. President, I first thank you for the opportunity to speak today. And I say to my distinguished colleague from Virginia, it was a pleasure to get to know you better through the Gang of 14 in our efforts to bring about advice and consent with the White House in the nomination process for the Supreme Court.

It is always difficult to take either less or more credit than you deserve, but I think in this situation, by working together, we were able to bring the Senate into fulfilling its obligation to deal with the confirmation of judicial nominees. It made it possible for us to be able to have a nomination and a process that works so well that it will now result in an up-or-down vote on Judge Roberts.

The Senator from Virginia is right. There were suggestions that we needed

to change the rules because of certain practices on the part of certain Members of the Senate that raised doubts about the process, whether we could get up-or-down votes on judicial nominees, particularly appellate court nominations and perhaps Supreme Court nominees. But by working together, we found a solution that I believe in very many ways held on to the traditions of the Senate that are good but also invoked a process that has resulted now in what we are going to be able to accomplish tomorrow. We were able to refuse to engage in extreme partisanship but worked together in partnership to develop a compromise. We paved the way. We preserved the traditions. And I believe in some respects we have also assisted in leading to the historic outreach by the White House to an overwhelming number of our colleagues for their input under the advice and consent portion of our agreement that we shared with the White House.

I personally thank the White House for reaching out. The administration has reached out to many of our Members on several occasions. Most recently, I had the pleasure and the privilege of being contacted for my thoughts about the next nominee and the process that would be used there.

I think we have also learned not to believe everything we hear about the Senate not being able to accomplish much, the criticism that Senators are lost in partisanship and deadlock through the unwillingness of people to compromise or be able to work together. I believe we disproved that theory with this Gang of 14.

We have gone through divisive elections. We know America needs to be brought together. We do not seek to further divide ourselves. We need to work together. It gave us an opportunity to, in many ways, reduce the partisan tension that was ripping this body to the extent that it was difficult to get anything done, particularly as it might have been difficult to get through the nomination process for the Supreme Court.

So it is a pleasure for me to be here on the floor and a real privilege to be associated with my colleague from Virginia. We have been joined by other members of the Gang of 14 who I know have some similar thoughts they would like to express.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, if I might say, the distinguished Senator from Nebraska was a leader among the Gang of 14. I say to the Senator, I guess you might say you were one of the "Founding Fathers" of that group, and modesty prevents you from acknowledging that leadership. We are joined on the floor by two of our colleagues. I purposely scheduled my appearance to coincide with members of the Gang of 14 whom I am privileged to be with today.

But I think, as the Senator pointed out about the advice and consent clause, we, the Gang of 14, want to acknowledge the important contribution of Senator BYRD of West Virginia. He and I sort of partnered together to draw up that short paragraph which recognizes and points out the Founding Fathers put the word "advice" in the Constitution for a specific purpose. As the distinguished Senator from Nebraska said, indeed, our President fulfilled that. But I wanted to acknowledge Senator BYRD's very major participation in our group.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I rise today to comment with respect to the Gang of 14. I join my good friend from Nebraska and my good friend from Virginia and my good friend from Arkansas here today in again reminding ourselves as a Chamber that the 14 Members of the U.S. Senate who came together came here to do good. What they decided to do and we decided to do in the formation of that agreement was to transcend partisan politics to try to find a common purpose for the benefit of this great institution, the U.S. Senate, and for the benefit of our Nation.

I commend the leadership, particularly of our senior members of that group of 14 Senators, including the great Senator from West Virginia, ROBERT BYRD, who worked closely with the Senator from Virginia, especially on the advice and consent portions.

All of the members of the group were very instrumental in putting the compromise together.

I would offer two observations with respect to that process and that agreement. The first is, it is my hope, as the newest Member of the U.S. Senate, the Senator who still ranks No. 100, that this is a kind of template that can be used as our Nation faces difficult issues in the future. We were able to put aside partisan politics to get beyond the gridlock that had existed in this body for some period of time.

We must be able, as a Chamber to do the same thing with respect to other very difficult issues, such as the Federal deficit or how we engage in the recovery of the gulf coast or how we deal with the issues of health care, because my involvement in this group was based on the fact that I believe it is our responsibility as leaders in our country to get about doing the people's business. What was happening was we had gotten too involved in this impasse that had been going on for a very long time.

The second point I wish to make is to underscore the importance of the advice and consent provision of our Constitution. It was Senator BYRD and Senator WARNER who believed it was important to include that provision as part of the agreement. It was in recognition there is a joint responsibility between the President of the United States and the Senate in the appointment and confirmation of persons to

the bench that that advice and consent provision really needed to be part of that agreement.

From my point of view, it is very important that advice and consent provision of the Constitution be honored because of the fact that, as we make our decisions, it is very important that these decisions, which will have a long-lasting impact on the history of America, be based on the most informed consent possible. The way you get the most informed consent possible is that there be a communication and a free flow of information between the President and the White House and the members of the Judiciary Committee and this body.

So I again commend the Senators from Virginia and West Virginia for having worked so hard on that long weekend to craft language that became a keystone of this document.

Finally, I would say that through this process I also became comfortable with Judge Roberts, recognizing that he is in the mainstream of political and, more importantly, legal thought of America. I think the Members who were part of this group, led by the Senator from Nebraska and the Senator from West Virginia, are also part of that mainstream of America.

Mr. President, I thank my colleagues from Virginia and Arkansas and Nebraska.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, one of the things that was surprising to my constituents in Arkansas is that I would actually come to Washington, DC, and join a gang. They sometimes wonder what we do up here and why we do it. I am very proud to be part of this gang, with my 13 colleagues who stood tall and exercised some of the best traditions and best judgment that Senators can. One of the lessons we learned through the Gang of 14 process and trying to take the nuclear option off the table—and also trying to get some up-or-down votes on some more nominees—is that good things happen when Senators talk to each other.

I have learned since I have been in Washington that we spend a lot of time talking about each other and not enough time talking to each other. I hope this serves as an object lesson. It shows we can work together in this political environment. The truth is, we talk about how bad things are, and sometimes they do get bad. But basically, we are all sent here by our States. Each State gets two Senators. Even the two Senators from the same State don't always agree. We don't have to agree. But certainly all 100 of us should, as the Book of Isaiah says, reason together. We should come together and put the country first and put others' interests ahead of our own. We should try to continue to work together and build on not just a bipartisan approach but in many ways a nonpartisan approach where we look at

the challenges facing our country and try to approach those as best we possibly can.

I know a lot of people around the country and in this Chamber and this city are focused on the next nomination. We haven't even had a vote on John Roberts. Nonetheless, a lot of people are concerned about the next nomination. I understand that. In some ways, and rightfully so, we should be focused on that. My colleagues have touched on it already. But part of the language Senator WARNER and Senator BYRD crafted during this agreement—we all helped in different ways on this language and had our thoughts incorporated in the language, but Senator BYRD and Senator WARNER took the lead on the language—is the advice and consent portion of the agreement. Basically all we do is encourage the President to take the Constitution literally. When the Constitution says that it shall be with the advice and consent of the Senate, we take that literally. We hope the President will seek our advice.

Supposedly either the President or the White House reached out to about 70 of us when we received the John Roberts nomination. That works, and that is very positive. I hope we see that again.

Some of my constituents in Arkansas have asked me: Don't you have some anxiety about John Roberts? Gosh, he used to work for the Reagan administration. There are things in his background that various people don't agree with.

My response is: Certainly, I have anxiety about John Roberts. I have anxiety about any nominee that any President will nominate to the Supreme Court. It is a lifetime appointment. There is no question about the influence and the impact that one Supreme Court Justice can have on the American system of justice and on American society. I have anxiety about anybody. I certainly have some about John Roberts. But nonetheless, he has the right stuff to be on the Court.

I am proud of the courage my colleagues showed in the time when it mattered and we came together and worked it out, the Gang of 14.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, today I am announcing my support for Judge John Roberts to be Chief Justice of the United States.

From the beginning, I told the White House I would like to see a nominee that the vast majority of the American people would say, yes, that is the quality of person who ought to be on the Supreme Court. When the nomination of Judge Roberts was first announced, my initial impression was that he met that test. I had a chance to visit with him personally at some length in my office, and I concluded from that visit that Judge Roberts is exceptional. Not only is he of high intelligence and

strong character, he also is someone of midwestern values of honesty and decency.

I have looked at his record. I find that he is in the judicial mainstream. Yes, he is a conservative, but my own belief is that the Court is strengthened by a range of views. I don't think we should have all progressives or all conservatives. We need to have people of differing views and differing backgrounds to make the Supreme Court function appropriately.

When Judge Roberts came to my office, I asked him about his association with Judge Friendly. He clerked for Judge Friendly. He is reported to be very impressed by Judge Friendly's service. I asked him what impressed him about Judge Friendly. He told me one of the things that most impressed him is that Judge Friendly did much of his own work. He didn't just rely on clerks to do the work. I also asked him what else impressed him about Judge Friendly.

He said: You know, you could not tell whether he was a liberal or a conservative, a Democrat or Republican. All you could tell from his rulings was that he had profound respect for the law.

I thought that was a pretty good answer. I went on to ask him: Judge, at the end of your service, how would you want to be remembered?

He said: I would want to be remembered as a good judge, not as a powerful judge but as a good judge.

I said to him: What does that mean to you, being a good judge?

He said to me: Listening to both sides, putting aside one's personal prejudices to rule based on the law. He said: I have a profound respect for the law.

In the confirmation hearings, we saw Judge Roberts perform brilliantly. His mastery of the law, his judgment, his demeanor confirmed for me that he is someone who deserves my support.

Beyond that, I had a chance to talk to Judge Roberts again on the phone last week. I said: Judge, I saw in your confirmation hearings that you said you are not an ideologue.

He said: Senator, I can tell you, I do not bring an ideological agenda to the court. What I bring is a profound respect for the law.

I told him I believed him. I think he is absolutely conservative. That is not disqualifying. I also think he is somebody of extraordinary talent and somebody who will listen to both sides and rule based on the law. He has a healthy conservatism, believing that the job of a Justice is not to make the law but to interpret the law. That is the appropriate role for a judge in our system. He has it right with respect to that issue.

I believe Judge Roberts has the potential for greatness on the Court. Rarely have I interviewed anyone in my 19 years who so impressed me with the way their mind works and their basic demeanor. I have interviewed

others who struck me as arrogant and pompous and filled with themselves, somebody I would never want to have in a position of power over the people I represent. I do not feel that way in the least bit about Judge Roberts. He is someone who is steady and even. He is somebody who is thoughtful and quite exceptional.

I know there are groups who feel very strongly on one side or another. There are colleagues who have made different judgments. I respect that. But I believe Judge Roberts is the kind of nominee who deserves our support, and he will have mine.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank our distinguished colleague from North Dakota. That was truly a beautiful set of remarks. It is not just that you indicated that you will cast your vote in support; it was a very thoughtful reflection on a very important responsibility we as Senators have.

I thank again the Senator from Nebraska, the Senator from Arkansas, the Senator from Colorado. We have been a team together for some time. I am delighted to have had the privilege to be here on the floor with each of them.

In conclusion, I reflect back on, once again, the Federalist Paper No. 66 in which Alexander Hamilton said: 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 oblige him to make another, but they cannot themselves choose. They can only ratify or reject the choice of the President.

We are on the eve of accepting that choice, giving our consent. Again, in my 27 years in this institution, I cannot recall a more humble and yet enjoyable group I have worked with than these 14 Senators. It had been my hope that our distinguished colleague from West Virginia could join us today. I asked him and he said he would if he possibly could. But were he here, we would all stand again and thank him for his guidance as we worked through this situation.

I thank my colleague from Nebraska and yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I thank my colleague from Virginia for his wise counsel through the process of bringing together 13 other colleagues to bring about a confirmation process and nomination process that has worked. Now we are on the eve of this confirmation vote on the 17th Chief Justice of the United States. The question is, what is next? We also have another Supreme Court vacancy to fill. I hope the President and the White House will continue to reach out and seek the advice of our colleagues so we

can face that nomination with the same kind of input we did in the case of Judge Roberts.

Let me say that the late Senator from Nebraska Ed Zorinsky said on so many occasions that in Washington there are too many Republican Senators and too many Democratic Senators and not enough United States Senators. I can say as the gang of 14 got together, there were less Republicans and less Democrats than there were United States Senators, anxious to work and bring about a resolution to the judicial impasse, but also to pave the way for where we are today and where we are going to be tomorrow and where we are going to be in the next confirmation process.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the time from 2 to 3 p.m. will be under the control of the majority.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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 (Mr. SUNUNU). Without objection, it is so ordered.

Mr. TALENT. Mr. President, I ask unanimous consent that the next hour under majority control be allocated as follows: 15 minutes for Senator TALENT, 10 minutes for Senator VITTER, 15 minutes for Senator THUNE, and 20 minutes for Senator BUNNING.

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

Mr. TALENT. Mr. President, it is really a privilege for me to spend a few minutes visiting with the Senate about Judge Roberts. He is probably the most analyzed and evaluated Supreme Court nominee ever. Based on my study of his record and my discussions with him—which have certainly not been extensive but have been enough to help me get a feel for the man—I believe that he will turn out to be one of the best Chief Justices ever.

We have learned a great deal about who he is. We know about his extraordinary professional accomplishments. We have seen the overwhelming bipartisan support that he has earned from his colleagues in the legal profession. We heard from John Roberts himself on the rule of law, on the judicial role, and the kind of service he intends to provide to the Nation as Chief Justice should the Senate confirm him.

I said before he is one of the most analyzed and evaluated Supreme Court nominees. He spent almost 20 hours before the Judiciary Committee while Senators asked him 673 questions. Senators then asked him 243 more questions in writing. And I am sure he thought the bar exam was a struggle. Judge Roberts provided nearly 3,000 pages to the Judiciary Committee, in-

cluding his published articles, congressional testimony, transcripts from interviews, speeches, and panel discussions, and material related to the dozens of cases he argued before the U.S. Supreme Court.

The Judiciary Committee obtained more than 14,000 pages of material in the public domain. And as if all of that were not enough, the committee obtained a staggering 82,943 pages of additional material from the National Archives and both the Reagan and Bush Libraries regarding Judge Roberts' service in those administrations.

If you total that up, there was more than 100,000 pages of material on a 50-year-old nominee, which amounts to 2,000 pages for every year of his life.

What did all that material reveal? Simply put, that Judge Roberts is one of the finest nominees ever to come before the Senate. His professional record speaks for itself, but I am going to speak about it for a minute.

He was an excellent student. He graduated from Harvard—I can forgive him that—in only 3 years as an undergrad. I am a University of Chicago lawyer myself. He became the top graduate in law school and became editor in chief of the Harvard Law Review. He served as clerk for Judge Friendly, who was, by consensus, one of the greatest circuit court judges ever. He served as clerk for Chief Justice Rehnquist. He went on to become Deputy Solicitor General of the United States. He became one of the top partners in one of the top law firms in the country and argued 39 cases before the Supreme Court. In 2003, he was confirmed unanimously by this Senate to be a judge on the Court of Appeals for the District of Columbia Circuit.

We learned a lot about him as a person as well. He embodies the idea of being fair, being thoughtful, and being capable. He is certainly hard working. He is certainly brilliant. He managed his testimony before the Judiciary Committee without a note. He is a man of integrity, he is honest, and he is devoted to his family.

Those are the qualities we want in the men and women who serve our Nation on the High Court. They are the kind of qualities that will move America forward and move the judicial branch forward, and more on that in a minute or two.

He has proven beyond any doubt that he has the qualifications, the temperament, the knowledge, and the understanding to serve as America's next Chief Justice. I was particularly impressed by the humility he showed through the process. I think it is very important that judges have a judicial temperament and, for me, that begins with the idea of service.

When you are a judge, the people who come before you have to treat you with respect because of your position. You should conduct yourself in that position so they want to treat you with respect, they feel that is owing to you, not just because of your office but be-

cause of how you conduct yourself in office.

I would hazard to say even those who will oppose his nomination for other reasons would agree that he has that kind of a temperament. He wants to be on the Court because he loves the law, and he wants to be a judge because he wants to serve the United States of America. Those are the right reasons to want to be on the Supreme Court of the United States.

We have had this opinion ratified by the individuals who know him the best—by his colleagues on the bar, Democrats and Republicans alike, who have overwhelmingly supported his elevation to the Supreme Court. I think it is very important when you look at judicial nominees to make certain they have support from people from all parts of the political spectrum and all parts of the jurisprudential spectrum.

A point I made on other occasions on this floor about judicial nominations is that it is misleading in a way to talk about a 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 statutes and interpreting the Constitution. They may differ as to theories or constructs, if you will, as they approach different parts of the Constitution.

There is not one mainstream, and often 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. Just because reasonable people looking at the history and the text of the document might disagree as to what is exactly the right answer does not mean there are no wrong answers.

The wrong answer, as Judge Roberts said so eloquently and so often in his testimony, is one that does not respect the rule of law. 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 in issue. Whatever their theory of interpreting the Constitution is, they should be consistent in applying it. They should be circumscribed by their own jurisprudence. They should have a standard against which they measure their decisions, and that standard has to be other than their own predilections on the underlying issue.

It is one thing to be ruled, to some extent, by judges. We are talking about officers of the Government. So the decisions have the power of law, and we have always, to some extent and in appropriate ways, been ruled by judges. It is another point to be ruled by judicial whim. This is the distinction Judge Roberts made over and over again, for which I think we should all be grateful.

Because of his attitude in that respect, more than 150 Democratic and Republican members of the DC Bar, including well-known Democrats such as

Lloyd Cutler and Seth Waxman, wrote to the Senate calling Judge Roberts one of the very best and most highly respected appellate lawyers in the Nation.

The American Bar Association has given Judge Roberts a rating of "unanimously well-qualified," its highest possible rating. As Steve Tober, the chairman of the ABA Standing Committee on the Federal Judiciary, explained: Judge Roberts has the admiration and respect of his colleagues on and off the bench, and he is, as we have found, the very definition of collegial. This is another quality that I hope and believe Judge Roberts will bring to the role of Chief Justice. I think he can operate in that Court in a way that pulls the Justices together where their convictions honestly allow them to be pulled together. It is one thing to disagree when you have strongly different opinions on the jurisprudential matters before the Court; it is another to disagree because over time you have become part of one faction or you have become alienated or estranged on some other grounds from some of the other Justices.

That is not good, and I believe, just my gut opinion after talking with him and watching him is that this is a person who can lower the temperature on the Court, who can shed light rather than just heat on many of the issues that are before the Court.

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

The PRESIDING OFFICER. The Senator has 6 minutes remaining of the 15 minutes allocated.

Mr. TALENT. I did not want my eloquence to outstrip the time I had available, Mr. President, so thank you for that.

We have heard a lot from Judge Roberts himself, and maybe it is good for me to close by quoting some of what he has said about the judicial function. I thought he did an excellent job of explaining to people what the judicial role is. Of course, to explain something clearly you have to, to some extent, oversimplify it, and he admitted the times he was doing that.

He talked about the judge being the umpire, and somebody else basically writes the rules. The judge is the umpire. Believe me, that gives plenty of discretion and authority to the judge to develop the law in one direction or another but to develop it within the constraints of an objective rule of law.

Judge Roberts said about this:

If the people who framed our Constitution were jealous of their freedom and liberty, they would not have sat around and said, "Let's take all the hard issues and give them over to the judges." That would have been the farthest thing from their mind. Now judges have to decide hard questions when they come up in the context of a particular case. That is their obligation. But they have to decide those questions according to the rule of law, not their own social preferences, not their policy views, not their personal preferences, but according to the rule of law.

That leaves room for Supreme Court Justices, for the rule of law, to include

their views developed over time carefully with respect to colleagues and arguments from litigants about how particular provisions of the Constitution ought best to be interpreted in a range of cases so as to reflect the purposes of the document and the impulses of the Framers.

There is room there for that, but always according to the rule of law, not according to a desire to make the case or make the result be a particular thing, or to make Americans live the way the judge wants them to live, rather than the way they have chosen to live in the decisions they make about their own lives or the decisions they make through their representatives. I think Judge Roberts understands that. He understands that is a judicial role with which we can all live.

He clerked for Judge Henry Friendly. Another great court of appeals judge—he had an interesting name—was Learned Hand. If I had met his parents, I would have asked them why they called him Learned Hand, but they did. Judge Hand said one time, and he was referring to the same thing Judge Roberts was referring to about the rule of law: I would not choose to be governed by a bevy of platonic guardians even if I knew how to choose them, which I most assuredly do not.

The first right, the first birthright of every American, is to participate through the representative process in their own governance. The first and most basic right is the right to govern yourself through the processes set up in our Constitution. And it is not out of a desire to avoid difficult decisions but out of a respect for that right that Judge Roberts talked about the rule of law. He manifested in those hearings a confidence that I think we should all reflect on in the judgment and the decency of the American people. It is OK, whether your views about social policy are on the rightwing or whether they are on the leftwing, whether they are someplace in the middle, it is OK basically to leave the development of our culture and our society to the wisdom and the decency of the American people. The center will hold. The people will move us in an orderly and decent direction as they have for 200 years. We don't need to be ruled by platonic guardians or dictators, whether they are in the form of judges or anybody else. There is plenty of scope, in the Senate, on the other end of Pennsylvania Avenue, and in the Supreme Court building as well, for the exercise of individual leadership and appropriate discretion to try to move the people in a direction that we think is appropriate, with their consent. But there is no reason to feel out of some fit of desperation or panic that courts or anybody else have to make the American people do something they have not chosen the orderly processes to do. That is what Judge Roberts meant when he was talking about the rule of law.

That is why I believe, because of that and also his professional qualifications,

he is going to do an outstanding job as Chief Justice of the United States, and that is why I think he will be confirmed by an overwhelming majority of this body.

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

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota is recognized for 15 minutes.

Mr. THUNE. Mr. President, I rise today to voice my strong support for the nomination of Judge John G. Roberts to be Chief Justice of the United States. This is a historic moment, Mr. President, as many of my colleagues have already noted. This moment marks only the 17th time in the history of our Republic that the U.S. Senate has considered a nominee to be Chief Justice.

As one of the Senate's newest Members, it is a great privilege for me to participate in this process. To have had only 16 individuals lead the judicial branch of government in our history illustrates the most important characteristic of the judicial branch, and that characteristic is lifetime tenure.

I believe the guiding question for each of us in determining a nominee's fitness for this post should be whether the person is dedicated to applying the Constitution to every case considered by the Court, and not adding to or changing the Constitution's text to suit his or her own personal policy preferences.

I was pleased to have met privately with Judge Roberts just yesterday. I came away from that meeting even more convinced that this man has the ability and temperament necessary to lead the Supreme Court. I believe Judge Roberts is dedicated to the rule of law and the principle of judicial restraint, and most importantly, will not substitute his own policy preferences for those of the elected representatives in the executive and legislative branches of our government.

The Supreme Court gets the last word on some of the most challenging and divisive issues of our day. Because Federal judges and justices have lifetime tenure, we must ensure that those who populate Federal bench are people of strong character and high intellect, with a passionate commitment to applying the law as it is written, rather than legislating from the bench.

Judges and justices must say what the law is, not what they believe it should be. That is the job of the Congress. That is what the authors of the Constitution intended.

I believe Judge Roberts' career embodies these principles. As Judge Roberts stated during his hearing, judges are like umpires, and umpires don't make the rules, they apply them. I do not believe Judge Roberts will engage in the judicial activism that we have witnessed on the Supreme Court and the lower Federal courts in the past few decades.

Even in the recent past, we have witnessed several instances of judicial activism. Judicial activism manifests itself when justices detect “penumbras, formed by emanations” in the Constitution, as Justice Douglas did in the case of *Griswold v. Connecticut*—in other words, judges who rely on their personal views rather than the Constitution when deciding matters of great importance.

We have seen what damage the Supreme Court is able to do when it is composed of individuals who are not committed to judicial restraint. Instead of acting as umpires and applying the law, some on the Supreme Court and the Federal bench are pitching and batting.

The most recent example came in the case of *Kelo v. City of New London*, decided just this past June. As you know, Mr. President, the Constitution says the government cannot take private property for public use without just compensation. However, in the *Kelo* case, the Supreme Court emptied any meaning from the phrase “for public use” in the fifth amendment.

In *Kelo*, the Supreme Court held that a city government’s decision to take private homes for the purpose of economic development satisfies the “public use” requirement of the fifth amendment. This case makes private property vulnerable to being taken and transferred to another private owner, so long as the government’s purpose for the taking is deemed “economic development.”

While I understand that many of the principles reflected in the Constitution are written broadly, and sometimes can be subjected to conflicting interpretations, I think we can all agree that the Supreme Court cannot be adding or deleting text from the Constitution. Yet that is what happened in the *Kelo* case. The majority effectively deleted an inconvenient clause in the fifth amendment.

The Supreme Court is also engaging in a troubling pattern of relying upon international authorities to support its interpretations of the laws of the United States. In *Atkins v. Virginia*, the Court cited the disapproval of the “world community” as authority for its decision. In *Lawrence v. Texas*, the Court cited a decision by the European Court of Human Rights as authority for that decision. Most recently, in *Roper v. Simmons*, the Court cited the U.N. Convention on the Rights of the Child—a treaty never ratified by the United States—as authority for that decision.

Article II, section 2 of the Constitution requires two-thirds of the Senate to ratify a treaty. Democratically elected Members of the Senate, accountable to the people, have refused to ratify the U.N. Convention on the Rights of the Child.

Unfortunately the Supreme Court chose to ignore this fact and based their judgment in part on a treaty never ratified by the United States.

Clearly, some on the Supreme Court are substituting the policy preferences of democratically elected representatives with their own. This is judicial activism at its worst.

As we near the completion and expected confirmation of Judge Roberts, I want to take a moment and look ahead as the President will soon make another nomination to the Supreme Court. It is important that the nominee to replace Justice O’Connor share Judge Roberts’ commitment to judicial restraint and dedication to the rule of law. It is important because the Supreme Court will be considering several cases in the near future that may have far-reaching consequences.

The Supreme Court will probably consider the Pledge of Allegiance case that was recently decided in the Ninth Circuit at the district court level. In that case, the district court held that the words “under God” in the Pledge of Allegiance violate the establishment clause of the first amendment. However, in the Fourth Circuit, the appellate court came to the opposite holding—that the Pledge of Allegiance did not violate the establishment clause. Where there are conflicting holdings in the lower courts, the Supreme Court must become the final authority on the matter, and it is important that Judge Roberts and individuals who share his approach are on the court to confront this issue.

During the next term, the Supreme Court will also consider a case about a State’s parental notification law and possibly a case about partial-birth abortion. Again, these are instances where the Supreme Court will have the last word on one of the most divisive moral issues of our time. It is critical that those who confront these cases are deferential to the elected branches of our government, exercise restraint, and follow the law.

After our confirmation vote tomorrow on Judge Roberts, the President will forward his nominee to fill the seat vacated by Justice O’Connor. It will then become our duty in the Senate to provide our advice and consent on that nomination. It is a responsibility that we should all take very seriously. The manner in which we handle that nomination will say a lot about the Senate as an institution.

I read in today’s edition of the *Washington Post* that several of our Democratic colleagues, as well as the Democratic National Committee chairman, are already threatening to filibuster the next nominee to the Supreme Court. It is shocking to me that they are threatening a filibuster of the next nominee before they even know who the nominee is going to be. They are even threatening to filibuster possible nominees who were just confirmed to the appellate courts and explicitly included in the Memorandum of Understanding that seven Democrats and seven Republicans signed onto last May.

That is wrong and the American people will see it for the blind partisanship

that it is. I would remind my colleagues on the other side of the aisle that they have sworn to uphold the Constitution through their representation in this body, not to thwart its intent or reshape its application to suit the nattering liberal elite and their special interest groups. I implore my Democratic colleagues not to blindly abuse the filibuster. These threats are symptomatic of the breakdown of the nomination process, and they must stop.

The process by which justices and judges are nominated and confined has degenerated to a point where ideological litmus tests are too often applied and nominees are torn apart by personal attacks.

The nomination process should not be brought down to the level of personal attacks on the nominee or fishing expeditions into the nominee’s political allegiances. I believe there is a lot of room for improvement in the process, and I hope to see such improvement as we consider the next nominee.

One ideological litmus test I am hearing about a lot these days is that the Supreme Court must somehow maintain its “balance.” Where in the Constitution does it say that a certain balance must be maintained on the Supreme Court? According to the Constitution, the President is entitled to nominate the individuals he desires to have on the courts, and we in the Senate must determine whether the nominee is fit and qualified. There should be no ideological litmus test for nominees. If a nominee is fit and qualified, he or she should be confirmed.

I believe Judge Roberts is eminently fit and qualified to serve as the next Chief Justice. I will proudly cast my vote for him, and I urge my colleagues to do the same.

Thank you, Mr. President. I yield the remainder of my time.

**THE PRESIDING OFFICER.** Under the previous order, the Senator from Louisiana is recognized for 10 minutes.

Mr. VITTER. I thank the Chair.

**THE PRESIDING OFFICER.** Under the previous order, the Senator from Louisiana is recognized for 10 minutes.

Mr. VITTER. I thank the Chair.

I, too, rise in strong support of the nomination of John Roberts to be Chief Justice of the U.S. Supreme Court. I do that for two reasons, two equally important reasons. One is the strong qualification and background of Judge Roberts. But the second and perhaps just as important or even more important is the fact that this nomination and this confirmation process I believe has gotten us back as a Senate, as a country to the process that the Founders intended and the sort of values and the sort of qualifications, the sort of judgment by the Senate that the Founders intended.

We are finally remembering that it is the President’s prerogative to nominate qualified persons to fill judicial vacancies, and in the past the Senate

has accorded great deference to the President's selection. Justice Ginsburg was overwhelmingly confirmed 42 days after her nomination. Justice O'Connor was overwhelmingly confirmed 33 days after her nomination. So we are returning to that determination of the President's prerogative.

The White House is to be commended for engaging in unprecedented consultation with respect to this nominee. So we are also returning to a very robust and full and healthy consultation process. I understand that the Bush administration consulted with more than 70 Senators on the Roberts nomination, countless conversations and phone calls and meetings and now is a strong part of our tradition which we are certainly returning to.

Moreover, few would disagree that President Bush could not have nominated a more qualified person for this position. John Roberts has an impressive academic background, a distinguished career in Government service, private practice, and as a Federal judge.

So we are also returning to that fine tradition that actual qualifications matter. It is not all about ideology and political positions but qualifications, judicial temperament, those sorts of important considerations matter, first and foremost.

Certainly, Judge Roberts has those. He graduated *summa cum laude* from Harvard college, my alma mater. He also graduated from Harvard Law school, *magna cum laude*. I guess he couldn't get into Tulane Law School, as I did, but I congratulate him on his accomplishments at Harvard. After graduation, he law clerked for Judge Henry Friendly on the U.S. Court of Appeals for the Second Circuit and then for William Rehnquist on the U.S. Supreme Court.

Judge Roberts enjoyed a distinguished career as a public servant in many different positions during the Reagan administration and became a partner at a major and highly respected law firm in Washington, DC, where he acquired the reputation as one of the finest Supreme Court advocates in the country. In fact, he argued an impressive 39 cases before the Supreme Court. Of course, as we all know, Judge Roberts was appointed in 2002 by President Bush for the U.S. Court of Appeals for the District of Columbia Circuit—those sort of mainstream qualifications.

Academic, practice, smarts, judicial temperament—all are certainly very important. But I think the single most important factor which qualifies Judge Roberts for this esteemed position is his appropriate view of what it means to be a judge, his appropriate view of the limited role of the judiciary and what that means in our system of government.

He has said, frankly and refreshingly, in a straightforward way, that judges should not place ideology above thoughtful legal reasoning. He is not

the sort who will legislate from the bench. His judicial philosophy is based on the rule of law and on respect for the Constitution.

Let's think about what he said in his own words. This is what he said on September 12 at his confirmation hearing:

[A] certain humility should characterize the judicial role. Judges and justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make the rules, they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules but it is a limited role. Nobody ever went to the ball game to see the umpire."

He also said on the same occasion:

... I come before the committee with no agenda, I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda. But I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability, and I will remember it is my job to call balls and strikes, and not to pitch or bat.

That, first and foremost, is the tradition we are getting back to with this confirmation. I sincerely hope that it is a tradition in which we remain grounded. Let's remember again the lessons of this nomination and this confirmation. Let's remember that it is the President's prerogative to nominate qualified persons to the bench. Let's remember that the Senate does have an important consultative role and let's all encourage the President to perform that consultation in a full and robust fashion, as he did with Judge Roberts. Let's remember that qualifications—smarts, academic credentials, practice history—are very important when you are talking about a judicial nominee. And let's all remember, first and foremost, that judges are umpires, they are not the players in the baseball game. That is the crucial distinction that I think we have lost over the past several decades and that we are finally trying to pull back to.

It is very important for us as a body to remember that lesson of this nomination of this confirmation as we move on. As we move on, I do think that is the most important open question. As the previous speaker mentioned, already certain Democrats in this body are threatening a filibuster without having the foggiest notion who the next nominee to the U.S. Supreme Court may be. Already they are threatening a filibuster of circuit court nominees who have basically been agreed to in terms of no filibuster in the Senate.

That would move us dramatically in the opposite direction from the one I have spoken about. That would turn the clock back. That would move us 180 degrees and point us again in that wrong direction.

I will be proud to join with other Members of this body tomorrow for this historic confirmation vote. I will

be proud to vote yes for Judge John Roberts to be the next Chief Justice of the U.S. Supreme Court.

Just as proudly, just as fervently, I will argue and fight to make sure that where we are today is where we remain in terms of future nominations and future confirmations; that we all remember that we are talking about an umpire to enforce the rules of the game, not a player—not a batter we like or a fielder we prefer but the umpire to enforce the rules as written.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Kentucky is recognized for 20 minutes.

Mr. BUNNING. Mr. President, I rise in strong support of John Roberts to be the next Chief Justice of the U.S. Supreme Court. Confirmation of a Supreme Court Justice, particularly the Chief Justice, is one of the most important duties we have in the Senate. I hope we can put politics and partisanship aside and swiftly confirm him.

Earlier this year, we found ourselves in an unprecedented position. The Democratic minority decided to use Senate rules to block judicial nominees. The minority tried to take away the power of nomination that the Constitution gives the President. But President Bush was solidly reelected last fall, and during the campaign he stressed the type of judges he would nominate—those who respect the law and the Constitution and who will not legislate from the bench.

The American people knew what they were getting when they reelected President Bush. President Bush kept his word. His judicial nominees have been highly qualified and worthy of confirmation. The minority's obstructionism ended earlier this year, or at least for now. Many on the left want to see a filibuster against John Roberts, but I have no doubt that John Roberts will be confirmed soon. Our job is to determine the qualifications of the nominees. Then we should vote to approve or oppose them. Anything else is to disregard the oath we took when we joined the Senate.

Our job is not to oppose nominees because we think their views are different from ours. We should not oppose nominees to keep our political base happy. Regardless of all the excuses, nominees deserve a vote. That is it.

John Roberts is extremely qualified to serve on the Supreme Court, and he is as qualified to be Chief Justice. He is, no doubt, one of the most qualified nominees to come before the Senate since I have been here. He is a brilliant legal scholar, an accomplished attorney, and a fine judge. I will strongly support him.

I do not need to spend too much time restating John Roberts' qualifications. They have been stated. He graduated with honors from Harvard college and its law school. He clerked in the Second Circuit Court of Appeals and for Chief Justice Rehnquist when he was an Associate Supreme Court Justice.

John Roberts also worked for the Attorney General, the White House counsel and Solicitor General in previous administrations.

In private practice, he was one of the best appellate and Supreme Court litigator's in the Nation. He argued an unprecedented 39 cases before the Supreme Court. Now he is a judge on the DC Circuit Court of Appeals, where he has been since we confirmed him unanimously in 2003.

His resume is not what convinces me that he will be a fine Chief Justice. What is clear is that John Roberts respects the law and Constitution and will be faithful to the proper role of a judge. In his confirmation hearings, Judge Roberts used an example to explain the proper role of a judge. It has been stated before. He said a judge is like an umpire, not a player or a coach. And similar to an umpire, a judge applies the rules to the situation at hand. An umpire doesn't rewrite the rules or enforce what he thinks the rules ought to be.

I know a little bit about umpires. I have dealt with them, and all types of them, for years. Some are liberal and some conservative with the strike zone. Some were unpredictable and made the strike zone up as the game went along. The worst umpires decided the outcome of the game by playing favorites or enforcing their own version of the rules. The best umpires applied the rules as written in the rule book and let the rules and the players dictate the outcome of the game.

As Judge Roberts said, that is how judges should act. The law, and not judges, should decide the outcome of the cases. The rules of the game, the writing of the laws is done by Congress. The President implements and enforces the laws, the judiciary settles disputes by applying laws and the Constitution. Judges are not lawmakers as umpires are not players. If umpires want to be players, that umpire should quit and join a team. If a judge wants to write laws, he should run for Congress.

We have seen courts try to replace Congress and legislatures. Social issues have been taken out of the political process and decided by unelected judges. The voice of the people has too often been ignored. Activism of a few judges threatens our judicial system.

If judges keep exercising powers not granted to them, the public and its servants may tune out the courts and ignore them altogether. That would be bad and we would all suffer. I think Judge Roberts sees that danger. As Chief Justice, he will protect the Constitution and reputation of the courts.

At his confirmation hearing, Judge Roberts recognized the damage of an activist judiciary. Their activism undermines the authority and respect needed to overturn truly unconstitutional actions. Courts must not be activists and settle public policy disputes. Judge Roberts also sees that danger, and I trust he will work hard to keep the Court within its boundaries

and implore judges to exercise restraint in decisionmaking. A key part of that restraint is to not wade into public policy disputes. I imagine it is tempting for judges to impose their personal views when making decisions.

But I believe Judge Roberts will exercise restraint and encourage the Federal court system to do the same.

Many of my colleagues are frustrated over Judge Roberts not revealing his views on public policy.

As Chief Justice, Judge Roberts is not going to act like a Senator. He will not let his personal views influence his decision and rulings.

The complaints of some of my colleagues led me to believe that they did not understand the role our Founding Fathers intended for the courts. Congress is the policymaking branch of government. The President and the administration enforce the laws. And the courts act as neutral decisionmakers when disputes arise.

But my colleagues know this.

And so I fear they see the courts as a political arm to implement their liberal policy agenda.

To them—the Supreme Court is a super legislature. But that is not what our Framers envisioned. And that is not how Judge Roberts will use his position as Chief Justice.

The left turns to the courts to impose their agenda because they cannot advance it through elections. They cannot pass their laws through Congress or legislatures. They cannot even get elected by running on their liberal policies. So they must use the courts to impose their agenda.

What is that agenda?

Unlimited abortion on-demand; banning schoolchildren from saying the Pledge of Allegiance; banishing the Ten Commandments from public places; rewriting the definition of marriage; and banning arms for self-defense.

That agenda does not sell with America or in Congress.

So the last great hope for liberals is the judicial bench. And that is why they oppose nominees who do not agree to their liberal activist agenda.

The only thing stopping the rewriting of our Constitution are judges that will support the rule of law.

John Roberts is one such judge. He will not write new laws from the bench.

As Chief Justice, he will set an example for the court system to follow the same principles.

Many Senators have expressed frustration at not knowing Judge Roberts' political views. I do not know his views either.

I have not asked him. And I will not ask him.

They do not matter. I trust him not to let his political beliefs influence his decisions.

During his hearing, Judge Roberts rightly declined to answer how he would rule in specific cases.

The current Supreme Court Justices also declined to answer similar questions.

Answering those kind of questions would corrupt and politicize the process.

Judicial nominees would turn into politicians campaigning for office to get confirmed—pledging to vote a certain way in order to gain votes.

They would also have to make promises to the President in order to get nominated.

Judges must be selected based on their qualifications.

I have not asked Judge Roberts about his personal political views. I have not asked him about his legal views. I do not need to know how he will rule in a certain particular case—because I know his approach to the law—and that is all I need to know.

John Roberts will lead by example and earn the respect of the other Justices and the American public. He will also be joined on the Court by another new Justice.

I trust President Bush will choose another highly qualified nominee to replace retiring Justice Sandra Day O'Connor.

If the new nominee is in a similar mold and has the same respect for the rule of law, then I will be glad to support the next nominee.

I have seen comments from some of my Democrat colleagues that they will filibuster certain nominees. That is most unfortunate. And it could bring us back to the point where we were earlier this year.

I hope and pray the minority does not do this.

But make no mistake about it. We will ensure that the next nominee receives fair treatment in the Senate and gets a vote.

I thank President Bush for keeping his promise to nominate outstanding individuals to our courts.

I thank Chairman SPECTER for ushering this nomination swiftly through his Judiciary Committee.

And I thank John Roberts for his service to our country.

I vow very strongly to vote for him when his vote comes up tomorrow.

I yield the floor.

Mr. SESSIONS. Mr. President, I would like to express my agreement with the Senator from Kentucky. He stated the case very clearly for the proper role for a judge. I know he faced many an umpire in his Hall of Fame baseball career. But he knows when they make the call, they are stuck with it, and he has every right to expect that that umpire is going to make the call not based on whether they favor one team or another or one side or another but what the rules of the game are.

I think that metaphor Judge Roberts utilized as he talked about the role of a judge is an apt one.

I saw Senator BURNS here. He used to be a football referee. I wanted to ask him: Senator BURNS, if you thought that the holding call was a little bit inadvertent and it wasn't too a bad a holding call but the penalty called for

15 yards, should the referee be free to impose 10 yards because they think that might be more fair? No. Of course, not. Those are the basic principles of rules.

I am pleased that we have a nominee who I think understands it.

Activism is a concern of the American people. It is something that should concern all of us because it represents a movement by unelected, lifetime-appointed judges to impose policy decisions and values on the American people. If it is required by the Constitution, that is their job. If it is not required and not a part of the Constitution, they should not be engaged in those kinds of issues.

The high point I think of activism was when two Supreme Court Justices in every death penalty case declared that they dissented and they would oppose all death penalty cases in the United States because they believed the Constitutional prohibition on cruel and unusual punishment prohibited the death penalty. That might sound plausible. But the Constitution itself has half a dozen references to capital crimes. That means crimes for which you may take somebody's life. It has references to not being able to take life without due process of law. Obviously, you could take life with due process of law. And when the Constitution was written, every single State, every single Colony, members of the Confederacy, had the death penalty, and they did when the Constitution was written.

So it is obviously the judges' decision that they didn't like the death penalty. They declared it was unenlightened public policy involving a standard of decency and all of that, and that justified their opinion. But that wasn't so, was it? Because State after State has maintained the death penalty. Many have enacted death penalties after they eliminated the death penalty.

It is not what the American people rejected, in fact, and would never have been rejected by the members of the legislatures of all the States.

They tried to say the Constitution prohibited any State from having a death penalty.

That is an extreme abrogation of power, and it is something we should be concerned about.

What did Judge Roberts say?

I see my chairman, Senator SPECTER, who has done such a great job in moving this nomination forward. I want to speak long and will yield the floor to him. I had my opportunity to make a few remarks earlier.

But I think it is important for us to listen to the eloquent, beautifully repeated—I am going to touch on a few of his statements—but the repeated statements of Judge Roberts in different ways that affirm so clearly that he knows what the role of the judge is in the American legal system. I picked out a few.

It is that rule of law that protects the rights and liberties of all Americans. It is the envy of the world, because without the rule of law any rights are meaningless.

Mr. Chairman, I come before this committee with no agenda. I have no platform.

Neither the President nor Members of our side of the aisle are asking any nominee to impose our political agenda on this country. I would never do that. That is not the role of a judge. But neither do I think the judge ought to be opposing any agenda. And I certainly am offended when they oppose the agenda which I don't agree with, which I think is the province of the legislative branches. Judge Roberts understands that.

Then he goes on:

That's a paraphrase, but the phrase, calmly poise the scales of Justice if, if anything, the motto of the court on which I now sit. That would be the guiding principle for me whether I am back on that court or a different one, because some factors may be different, the issues may be different, the demands may be different, but the Bill of Rights remains the same. And the obligation of a court to protect those basis liberties in times of peace and in times of war, in times of stress and in times of calm, that doesn't change.

What a beautiful statement.

Another:

Like most people, I resist the labels. I have told people when pressed that I prefer to be known as a modest judge, and to me that means some of the things that you talked about in those other labels. It means an appreciation that the role of the judge is limited, that a judge is to decide the cases before them, they're not to legislate, they're not to execute the laws.

Another:

I don't think the courts should have a dominant role in society and stressing society's problems. It is their job to say what the law is.

Isn't that correct?

But the Court has to appreciate that the reason they have that authority is because they're interpreting the law, they're not making policy, and to the extent they go beyond their confined limits and make policy or execute the law, they lose their legitimacy, and I think that calls into question the authority they will need when it's necessary to act in the face of unconstitutional action.

That is a brilliant statement.

If a court consistently abuses its power, does not remain faithful to the Constitution, at some point it may have to take a very unpopular stand to truly and rightfully defend the Constitution against congressional Presidential overreaching.

Will they have the credibility to do so? Not so, perhaps, if they have squandered it by improper legislation for many years that has undermined public confidence in the Court.

That is exactly what he is saying—a beautiful statement.

If you believe in our Constitution, if you believe in the laws to protect our liberties and that laid the foundations for our prosperity, one must believe that we have to enforce the Constitution, even if you might not agree with some part of it.

He was asked, "Are you an originalist? Are you a strict constructionist? What label do you put on yourself, Judge?"

He said this:

I do not have an overarching judicial philosophy that I bring to every case, and I think that's true. I tend to look at the cases from the bottom up rather than the top down. And like I think all good judges focus a lot on the FACTS. We talk about the law, and that's a great interest for all of us, but I think most cases turn on the facts, so you do have to know those, you have to know the record.

In other words, we were asking him to blithely make his views known on how he would rule on this case or that case. By the time it gets to the Supreme Court of the United States there has been a full trial and maybe hundreds, maybe thousands of pages of transcript and records. There are facts that underlie the dispute, and it is only after the facts are asserted that a judge needs to be making a decision about the outcome of a case.

Judges apply the facts to the legal requirements of the situation, and only then make a decision. He refused to make opinions on cases that may come before him. Of course, he should not make opinions on that. He has not studied the record, the transcript, talked with the other judges, read the briefs, or heard the oral arguments of counsel. He should not be up there making opinions on the cases. That is so obvious. He was pushed, pushed, and pushed to do that and criticized for not doing so. That is the rule of the law: Do not make a decision until you know the facts and the law.

I will say this: We have had a tutorial on the rule of law under the American system. We have had a classroom exercise beyond anything any Member could ask for on the role of a judge in the American system. It was a beautiful thing. I am pleased to see many of my colleagues on the other side of the aisle have seen fit now to announce they intend to support Judge Roberts. That is the right thing. I am confident, also, the President will submit another nominee, just like he promised, who will be consistent with the same philosophy of Judge Roberts—one who does not seek to impose any political agenda, liberal or conservative, on the American people, but will simply consider the facts, consider the arguments of counsel, and decide the case before them.

That is what we have a right to ask and to insist on to preserve the rule of law in this country, which, more than any other country in the world, reveres and respects and venerates law and order.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, before the distinguished Senator from Alabama yields the floor, I thank and compliment him for his comments and for his work on the Judiciary Committee. He has been steadfast in his participation in all matters but especially with the nomination proceedings as to Judge Roberts. It ought to be noted for the record.

Mr. President, Senator DOMENICI was here seeking an opportunity to speak. I ask unanimous consent he be sequenced following my speech.

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

Mr. SPECTER. Mr. President, I have sought recognition today to comment on a story which is in the Washington Post today captioned "Filibuster Showdown Looms in the Senate: Democrats Prepare For Next Court Pick."

I suggest it is in the national interest that there be a lowering of the decibel level of the partisan rhetoric. There is no doubt that the process for the nomination, hearings, and confirmation of a Supreme Court nominee is part of the political process. I further suggest partisanship has its limits.

The partisanship which is demonstrated in this report by the Washington Post today seems to me to be flagrant, extreme partisanship, flagrantly excessive partisanship, really out of bounds and out of the mainstream.

The core objection raised by certain Democratic political activists as outlined in the Washington Post story is frustration among party activists who think their elected leaders did not put up a serious fight against Judge Roberts.

I was present as chairman of the committee during the entire proceeding. I can state it was a very vigorous fight. It is not necessary to have ARLEN SPECTER's characterization of it. The record speaks for itself. We had experienced Senators on the Democrat side of the aisle who questioned Judge Roberts very closely and who came to the conclusion they would vote no, which they did in the committee proceedings. Senator KENNEDY, who can doubt his tenacity? Senator BIDEN, who can doubt his sincerity? And Senator FEINSTEIN questioned eloquently in many directions. Senator SCHUMER was on top of all of the issues not only in three rounds of questioning which we had, 30 minutes and then 20 minutes and then 30 more minutes, but in the submission of written questions. And Senator DURBIN, the assistant minority leader, spoke and all voted against Judge Roberts because that was their conclusion.

But who can say they didn't put up a strong and tough fight? That is an insult to those dedicated Senators tending to their business to say they did not put up a professional fight.

There are at this moment some 18 announced or reported Senators on the Democrat side who are going to vote in favor of the Roberts nomination: Senator BAUCUS, Senator BINGAMAN, Senator BYRD, Senator CONRAD, Senator DODD, Senator DORGAN, Senator FEINGOLD, Senator JOHNSON, Senator KOHL, Senator LANDRIEU, Senator LEAHY, Senator LEVIN, Senator LIBERMAN, Senator NELSON of Nebraska, Senator NELSON of Florida, Senator PRYOR, Senator SALAZAR, and Senator WYDEN.

Among those 18 Senators are some veterans of the Senate whose credentials cannot be challenged as progressive, as liberal, as forward-thinking Senators.

I will quote from just a few of the comments which they have made. Senator LEAHY was the first among the Democrats to speak out in favor of the nomination of Judge Roberts to be Chief Justice. As the ranking member, I sat next to him during the entire proceeding. I can attest firsthand the conscientious way Senator LEAHY approached this nomination. It was not a matter of our discussing the merits. It was not a matter of my trying to persuade him.

I have served with Senator LEAHY for 25 years, and many years before that, back in 1969 when I was the host at the National District Attorney's Association Convention in Philadelphia, I was Philadelphia's D.A., and Pat Leahy, a young prosecutor from Burlington, VT, was the prosecuting attorney in his jurisdiction. I could see him struggle with the nomination as a matter of conscience. He came to the conclusion that was where his conscience led.

I identified with his courageous move in the committee. It is not easy to go against the party line, and Senator LEAHY was prepared to do that.

His statement was a very thoughtful statement, as Senator LEAHY is accustomed to be: He commented extensively on Judge Roberts' reliance on the Raich decision, moving away from Lopez and Morris on the commerce clause. He comments extensively on the precedence of Roe and Planned Parenthood v. Casey and forcefully on a number of occasions regarding the recognition to the right to privacy embodied in Griswold v. Connecticut.

Senator LEAHY commented about the assurances which he accepted from Judge Roberts about taking the mold of Justice Jackson, moving away from being a partisan in the administration as Attorney General to being an impartial judge.

There is much more, but the record of what Senator LEAHY has said speaks for itself.

In addition to Senator LEAHY, there are other very well established Senators on the other side of the aisle, impeccable standing in the liberal community. Senator LEVIN spoke in favor of Judge Roberts; Senator DODD spoke in favor of Judge Roberts for Chief Justice; Senator FEINGOLD in the committee; Senator LIBERMAN. I have already enumerated the Senators.

So when there are some so-called Democrat political activists who speak up and are critical, as they were of Senator LEAHY after he made the opening declaration, first of the Democrats to speak—we are all subject to comment and we are all subject to criticism, but I was taken a little aback by the criticism which came to Senator LEAHY after he made his declaration. I have been the object of such substantial criticism myself, so I know what it

was like. But I think it goes a little too far when the so-called political activists are raising these objections out of purely partisan motivations. One activist was quoted in this story as saying that Democrats must vote against Judge Roberts, otherwise "we will not win an election."

The political process, I submit, goes only so far. And as foreign policy debate stops at the water's edge, at least it used to traditionally, I think that extreme partisanship stops at the consideration of a nominee for the Supreme Court of the United States. That is a line at which party loyalties ought to end and there ought to be independence. That is the confluence of the three branches of Government where, as we all know under our Constitution, the President nominates, where the Senate conducts proceedings and confirms or rejects, and where the nominee, if confirmed, if approved, then takes a seat on the Supreme Court. That is a line in the administration of justice in the United States where partisanship, rank, extreme partisanship ought to end.

The so-called political activists are blunt in what they had to say. Their concern is "restoring enthusiasm among the rank and file on the left."

I suggest there is a higher calling on selecting a nominee for the Supreme Court, and especially for a Chief Justice, which transcends appeal to extremes at one end of the political spectrum or the other.

This kind of comment, I believe, is only going to inspire corollary comment from the other end of the political spectrum. We simply do not need it. I sensed, and have commented publicly on, a lot of frustration bubbling just below the surface in the Roberts nomination hearings. I am concerned about the next nomination. We are looking at a replacement for Justice O'Connor, who was a swing vote. I have stated both publicly and privately my hope we will find someone in the mold of Judge Roberts.

The statements which were made by Senator LEAHY, by Senator LEVIN, by Senator DODD, by Senator FEINGOLD, and others all focused on the approach of Judge Roberts to modesty and stability. And it was more than the words he uttered, it was the way he conducted himself. It was the way he spoke about the cases when he answered the questions and when he did not answer questions. I spoke at length earlier, on Monday, about questions which I thought he should have answered but he did not answer. But that is the nominee's prerogative. And then the Senator's prerogative is to make a decision on how the Senator is going to vote. But when you talk about a filibuster, this body was at the risk of a virtual civil war, with the Democrats filibustering and with Republicans threatening to exercise the constitutional or nuclear option. I took the floor earlier this year on several occasions to urge an independent stand. I

heard so many Democrats say they did not like the idea of a filibuster and I heard so many Republicans say they did not like the idea of the constitutional or nuclear option, but Democrats felt constrained to the filibuster and Republicans felt constrained to the nuclear or constitutional option.

I urged my colleagues to take an independent stand, that when you talked about the long-range composition and the long-range approach of the institution of the Senate, it was more important than the passions of the moment. I went into some detail and quoted how the Senate saved judicial independence in the impeachment proceedings of Supreme Court Justice Chase in 1805 and 1806 and how the U.S. Senate saved the independence of Presidential prerogatives in the impeachment proceeding of President Andrew Johnson. The Congress had passed a law saying there had to be consent by the Senate for the President to remove a Cabinet officer. Secretary of War Stanton bolted himself in his office. He would not leave. Because President Johnson would not tolerate that kind of usurpation of Presidential power, he was impeached. In this Chamber, he was saved. The Senate saved him.

When you talk about the institutions of the Senate, we do not need outsiders telling us when to filibuster. We do not need outsiders and political activists on either side telling us when to filibuster or when to exercise the constitutional option. We were elected. They were not.

When you have men of the stature of Senator LEAHY and Senator DODD and Senator LIEBERMAN taking a position, those positions ought to be respected. When you have hard-fighting Senators such as KENNEDY and BIDEN and SCHUMER fighting a nomination and voting no, their positions ought to be respected.

So I hope as to this headline in the Post about "Filibuster Showdown Looms in Senate," it is the last time we will hear the word "filibuster" and that we will have a nominee who will command respect, that we will have an orderly, dignified proceeding in the Judiciary Committee in another round of hearings, and that we will acquit ourselves with distinction.

At a time when the Congress is under a very heavy fire on all sides for so many items—or the response to the hurricane and for the highway bill and for spending and for a lack of offsets—I have heard many comments that the Senate has acquitted itself very well throughout the entire confirmation process, not just what was done in the Judiciary Committee, but what has been done on the floor of the Senate, and what will be concluded tomorrow when the full body votes.

So we do not need outsiders telling us how to conduct our business. They can make their suggestions. They have freedom of speech. But it ought to be within bounds. This sort of extreme, excessive partisanship has no place in

the selection of the next Supreme Court Justice.

In the absence of any Senator seeking recognition, Mr. President, 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. STEVENS. 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. STEVENS. Mr. President, is it proper now to speak on the nomination of Judge Roberts?

The PRESIDING OFFICER. Yes, it is in order.

The President pro tempore is recognized.

Mr. STEVENS. Mr. President, having lived and studied alongside one of the greatest legal minds of my generation, I believe Judge Roberts' capability and knowledge of the law is superior to any of his generation. When I was at Harvard Law School, my roommate was H. Reed Baldwin. He had abilities quite similar to those of John Roberts. He was the top of our class, No. 1, and on the Harvard Law Review. He was what I call a Renaissance man. He could handle almost any subject. Unfortunately, he suffered an untimely death; otherwise, he might have once been in the same place John Roberts is today.

During the Judiciary Committee's hearings, Juneau Mayor Bruce Botelho testified in support of Judge Roberts' nomination. Bruce, whom I know well, was Attorney General for the State of Alaska from 1994 through 2002. He employed John Roberts to represent our State before the Supreme Court on a wide range of issues, including the Venetie case involving Indian country claims and cases related to submerged lands issues, natural resource matters, and the Alaska Statehood Act. As a matter of fact, I met with Judge Roberts then and have met with him since. He has a brilliant legal mind.

I am not alone in that opinion. Judge Roberts has been to our State many times, and he has won the respect of Alaskans who hold a wide range of political beliefs and opinions.

Judge Roberts also won the respect of the bar association of the District of Columbia, of which I am a member. In 2002, when Judge Roberts was nominated to serve as a Federal court of appeals judge on the U.S. Court of Appeals for the District of Columbia Circuit, more than 150 Members of the DC bar sent a letter to the Judiciary Committee of the Senate supporting his nomination. I know many of the bar members who signed this letter. They are a distinguished and bipartisan group of lawyers, law professors, and public servants. I think they said it best:

John Roberts represents the best of the bar.

I agree with their opinion and the opinion of many Alaskans who have

worked with him. I shall vote to confirm Judge Roberts as the 17th Chief Justice of the U.S. Supreme Court. I urge all of my colleagues in the Senate to do the same.

I ask unanimous consent that the letter I mentioned be printed in the RECORD.

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

DECEMBER 18, 2002.

Re Judicial Nomination of John G. Roberts, Jr. to the United States Court of Appeals for the District of Columbia Circuit.

Hon. TOM DASCHLE,  
Hon. ORRIN HATCH,  
Hon. PATRICK LEAHY,  
Hon. TRENT LOTT,  
*U.S. Senate, Washington, DC.*

DEAR SENATORS DASCHLE, HATCH, LEAHY, AND LOTT: The undersigned are all members of the Bar of the District of Columbia and are writing in support of the nomination of John G. Roberts, Jr., to serve as a federal court of appeals judge on the United States Court of Appeals for the District of Columbia Circuit. Although, as individuals, we reflect a wide spectrum of political party affiliation and ideology, we are united in our belief that John Roberts will be an outstanding federal court of appeals judge and should be confirmed by the United States Senate. He is one of the very best and most highly respected appellate lawyers in the nation, with a deserved reputation as a brilliant writer and oral advocate. He is also a wonderful professional colleague both because of his enormous skills and because of his unquestioned integrity and fair-mindedness. In short, John Roberts represents the best of the bar and, we have no doubt, would be a superb federal court of appeals judge.

Thank you.

Sincerely,

Donald B. Ayer, Jones, Day, Reavis & Pogue; Louis R. Cohen, Wilmer, Cutler & Pickering; Lloyd N. Cutler, Wilmer, Cutler & Pickering; C. Boyden Gray, Wilmer, Cutler & Pickering; Maureen Mahoney, Latham & Watkins; Carter Phillips, Sidley, Austin, Brown & Wood; E. Barrett Prettyman, Jr., Hogan & Hartson; George J. Terwilliger III, White and Case; E. Edward Bruce, Covington & Burling; William Coleman, O'Melveny & Myers; Kenneth Geller, Mayer, Brown, Rowe & Maw; Mark Levy, Howrey, Simon, Arnold & White; John E. Nolan, Steptoe & Johnson; John H. Pickering, Wilmer, Cutler & Pickering; Allen R. Snyder, Hogan & Hartson; Seth Waxman, Wilmer, Cutler & Pickering; Jeanne S. Archibald, Hogan & Hartson; Jeannette L. Austin, Mayer, Brown, Rowe & Maw; James C. Bailey, Steptoe & Johnson; Stewart Baker, Steptoe & Johnson.

James T. Banks, Hogan & Hartson; Amy Coney Barrett, Notre Dame Law School; Michael J. Barta, Baker, Botts; Kenneth C. Bass, III, Sterne, Kessler, Goldstein & Fox; Richard K. A. Becker, Hogan & Hartson; Joseph C. Bell, Hogan & Hartson; Brigida Benitez, Wilmer, Cutler & Pickering; Douglas L. Beresford, Hogan & Hartson; Edward Berlin, Swidler, Berlin, Shreff, Friedman; Elizabeth Beske (Member, Bar of the State of California); Patricia A. Brannan, Hogan & Hartson; Don O. Burley, Finnegan, Henderson, Farabow, Garrett & Dunner; Raymond S. Calamaro, Hogan & Hartson; George U. Carneal, Hogan & Hartson; Michael Carvin, Jones, Day, Reavis & Pogue;

Richard W. Cass, Wilmer, Cutler & Pickering; Geogory A. Castanias, Jones, Day, Reavis & Pogue; Ty Cobb, Hogan & Hartson; Charles G. Cole, Steptoe & Johnson; Robert Corn-Revere, Hogan & Hartson.

Charles Davidow, Wilmer, Cutler & Pickering; Grant Dixon, Kirkland & Ellis; Edward C. DuMont, Wilmer, Cutler & Pickering; Donald R. Dunner, Finnegan Henderson Farabow Garrett & Dunner; Thomas J. Eastment, Baker Botts; Claude S. Eley, Hogan & Hartson; E. Tazewell Ellett, Hogan & Hartson; Roy T. Englert, Jr., Robbins, Russell, Englert, Orseck & Untereiner; Mark L. Evans, Kellogg, Huber, Hansen, Todd & Evans; Frank Fahrenkopf, Hogan & Hartson; Michele C. Farquhar, Hogan & Hartson; H. Bartow Farr, Farr & Taranto; Jonathan J. Frankel, Wilmer, Cutler & Pickering; Johnathan S. Franklin, Hogan & Hartson; David Frederick, Kellogg, Huber, Hansen, Todd & Evans; Richard W. Garnett, Notre Dame Law School; H.P. Goldfield, Vice Chairman, Stonebridge International; Tom Goldstein, Goldstein & Howe; Griffith L. Green, Sidley, Austin, Brown & Wood; Jonathan Hacker, O'Melveny & Myers.

Martin J. Hahn, Hogan & Hartson; Joseph M. Hassett, Hogan & Hartson; Kenneth J. Hautman, Hogan & Hartson; David J. Hensler, Hogan & Hartson; Patrick F. Hofer, Hogan & Hartson; William Michael House, Hogan and Hartson; Janet Holt, Hogan & Hartson; Robert Hoyt, Wilmer, Cutler & Pickering; A. Stephen Hut, Jr., Wilmer, Cutler & Pickering; Lester S. Hyman, Swidler & Berlin; Sten A. Jensen, Hogan & Hartson; Erika Z. Jones, Mayer, Brown, Rowe & Maw; Jay T. Jorgensen, Sidley Austin Brown & Wood; John C. Keeney, Jr., Hogan & Hartson; Michael K. Kellogg, Kellogg, Huber, Hansen, Todd & Evans; Nevin J. Kelly, Hogan & Hartson; J. Hovey Kemp, Hogan & Hartson; David A. Kikel, Hogan & Hartson; R. Scott Kilgore, Wilmer, Cutler & Pickering; Michael L. Kidney, Hogan & Hartson; Duncan S. Klinedinst, Hogan & Hartson; Robert Klonoff, Jones, Day Reavis & Pogue.

Jody Manier Kris, Wilmer, Cutler & Pickering; Chris Landau, Kirkland & Ellis; Philip C. Larson, Hogan & Hartson; Richard J. Lazarus, Georgetown University Law Center; Thomas B. Leary, Commissioner, Federal Trade Commission; Darryl S. Lew, White & Case; Lewis E. Leibowitz, Hogan & Hartson; Kevin J. Lipson, Hogan & Hartson; Robert A. Long, Covington & Burling; C. Kevin Marshall, Sidley Austin Brown & Wood; Stephanie A. Martz, Mayer, Brown, Rowe & Maw; Warren Maruyama, Hogan & Hartson; George W. Mayo, Jr., Hogan & Hartson; Mark E. Maze, Hogan & Hartson; Mark S. McConnell, Hogan & Hartson; Janet L. McDavid, Hogan & Hartson; Thomas L. McGovern III, Hogan & Hartson; A. Douglas Melamed, Wilmer, Cutler & Pickering; Martin Michaelson, Hogan & Hartson; Evan Miller, Hogan & Hartson.

George W. Miller, Hogan & Hartson; William L. Monts III, Hogan & Hartson; Stanley J. Brown, Hogan & Hartson; Jeff Munk, Hogan & Hartson; Glen D. Nager, Jones Day Reavis & Pogue; William L. Neff, Hogan & Hartson; J. Patrick Nevins, Hogan & Hartson; David Newmann, Hogan & Hartson; Karol Lyn Newman, Hogan & Hartson; Keith A.

Noreika, Covington & Burling; William D. Nussbaum, Hogan & Hartson; Bob Glen Odle, Hogan & Hartson; Jeffrey Pariser, Hogan & Hartson; Bruce Parnly, Hogan & Hartson; George T. Patton, Jr., Bose, McKinney & Evans; Robert B. Pender, Hogan & Hartson; John Edward Porter, Hogan and Hartson (former Member of Congress); Philip D. Porter, Hogan & Hartson; Patrick M. Raher, Hogan & Hartson; Laurence Robbins, Robbins, Russell, Englert, Orseck & Untereiner; Peter A. Rohrbach, Hogan & Hartson; James J. Rosenhauer, Hogan & Hartson.

Richard T. Rossier, McLeod, Watkinson & Miller; Charles Rothfeld, Mayer, Brown, Rowe & Maw; David J. Saylor, Hogan & Hartson; Patrick J. Schiltz, Associate Dean and St. Thomas More Chair in Law, University of St. Thomas School of Law; Jay Alan Sekulow, Chief Counsel, American Center for Law & Justice; Kannon K. Shanmugam, Kirkland & Ellis; Jeffrey K. Shapiro, Hogan & Hartson; Richard S. Silverman, Hogan & Hartson; Samuel M. Sipe, Jr., Steptoe & Johnson; Luke Sobota, Wilmer, Cutler & Pickering; Peter Spivak, Hogan & Hartson; Jolanta Sterbenz, Hogan & Hartson; Kara F. Stoll, Finnegan, Henderson, Farabow, Garrett & Dunner; Silviya A. Strikis, Kellogg, Huber, Hansen, Todd & Evans; Clifford D. Stromberg, Hogan & Hartson.

Mary Anne Sullivan, Hogan & Hartson; Richard G. Taranto, Farr & Taranto; John Thorne, Deputy General Counsel, Verizon Communications Inc. & Lecturer, Columbia Law School; Helen Trilling, Hogan & Hartson; Rebecca K. Troth, Washington College of Law, American University; Eric Von Salzen, Hogan & Hartson; Christine Varney, Hogan & Hartson; Ann Morgan Vickery, Hogan & Hartson; Donald B. Verrilli, Jr., Jenner & Block; J. Warren Gorrell, Jr., Chairman, Hogan & Hartson; John B. Watkins, Wilmer, Cutler & Pickering; Robert N. Weiner, Arnold & Porter; Robert A. Welp, Hogan & Hartson; Douglas P. Wheeler, Duke University School of Law; Christopher J. Wright, Harris, Wiltshire & Grannis; Clayton Yeutner, Hogan & Hartson (former Secretary of Agriculture); Paul J. Zidlicky, Sidley Austin Brown & Wood.

Mr. STEVENS. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Is it appropriate now for the Senator from New Mexico to speak?

The PRESIDING OFFICER. It is appropriate.

Mr. DOMENICI. Is there a time limit?

The PRESIDING OFFICER. There is none.

Mr. DOMENICI. I thank the Chair.

Mr. President, it is, indeed, a privilege to come to the Senate Chamber to speak on behalf of such a distinguished nominee for Chief Justice of the Supreme Court. I have a unique perspective on Judge Roberts because I practiced law for 16 years before I came to the Senate, during which time I got to meet and try cases, and read opinions by many judges. I have also been here for 33 years, during which time I have had the luxury and privilege of hearing

from, reading transcripts of, and voting for 10 Supreme Court nominees. So everyone sitting on the Supreme Court now I have had the luxury of considering through the confirmation process, which means I have heard what each of those eight justices said, and I have seen what qualifications they came before the Senate with.

Based upon my previous experiences, it is almost as if Judge Roberts were destined to be a Supreme Court Justice. As I have listened to him, read what he has written, reviewed his background, and watched his conduct before the Judiciary Committee, it has become clear to me that he exemplifies many great qualities. When I look at him in comparison with nominees of the past, considering those men and women that I have previously voted for, it has become clear to me that he was born to serve his nation on our highest court.

Frankly, in all deference to the judges I have voted for heretofore, I have never been more confident that the President picked the right person for the right job at the right time as I am today.

If there is a perfect judge that can be visualized based upon all of the judges I have seen, listened to, read about, and voted for, this man seems to me to be extremely close to such a picture. He will be a judge for whom I will be extremely proud to have voted for.

Many people have described the message I am trying to convey about Judge Roberts in different ways, and there have been some excellent analyses of his qualifications. The largest newspaper in my home state of New Mexico wrote: "In addition to his encyclopedic fluency in constitutional law and the flesh and blood history behind it, Roberts exhibited a fine quality for a Chief Justice: collegiality. Justices, like Senators, disagree. Roberts showed he can disagree without disrespect, leaving open the door to work toward consensus. If Democrats cannot accept Roberts, is there any suitable Republican nominee?"

I appreciate those words from the Albuquerque Journal, and I agree with the question they raise. Democrats who want a Democratic nominee who fits their mold and agrees with their positions will have to wait until there is another Democratic President for such a nominee to come before the Senate. That is the way it has always been, and my friends from the other side of the aisle cannot expect a Republican President to nominate an individual who will carry their beliefs onto the court. Such a belief is not consistent with history or with tradition.

I will close by saying that I have great confidence that in 5 years, God willing, in 10 years, God willing, I can look back at Judge Roberts' performance as our Chief Justice and say: I was right in how I analyzed what he has been, what he is today, and what he will be as a Supreme Court Justice. I don't think I will be surprised or let down.

And I know, looking back at nominees for whom I voted, that such is not an ordinary expectation. Some judges for whom I voted did not turn out to be what I expected. But I am quite confident that Judge Roberts will not be anything but the great judge I expect as I look back on his tenure in the ensuing years.

I congratulate the Judge on his nomination. I hope he will remain loyal to what he has said and the way he has said it when he pledged what he wanted to be and what he would be. I wish him the very best because if he is successful, it will be good for America. His success in this job is correlated with good relationships under our Constitution between the great powers of the executive, legislative, and judicial branches.

I yield the floor and thank the Senate for listening.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I appreciate the opportunity to comment on the issue before us, which of course is Judge John Roberts. Certainly we have been hearing all about him for the last several days and nearly everything that is to be said has been said at least once. But I do want to take the opportunity to say I am very impressed with this candidate for Supreme Court Chief Justice. I am convinced that he will be a strong defender of the Constitution, that he has an exceptional ability to interpret the Constitution with respect to the law, and that certainly he has the background and qualifications to do that.

I am not an expert in law, but I do feel strongly that the Court is there to measure what is done in other places, what is done in the executive branch, and what is done in the legislative branch with respect to how it fits into the Constitution.

I have met with Judge Roberts, and I appreciated the opportunity to get better acquainted with him. I am very impressed with his demeanor and his character. It is comforting to see someone you think is extremely qualified for such an exceptional job and, at the same time, seems to see the world pretty much from the standpoint we all do, just as a human being, a person who wants to live in a country with freedom, in a country with constitutional law, in a country that does the best for everyone, and I have that impression. So I feel very good about him.

He has great respect for the rule of law and that, it seems to me, is one of the most important aspects of our country. I have had a chance to visit other places. I have had a chance to talk with kids about other countries. As I have gone about, one of the big differences is we have a rule of law, not a rule of people who happen to be in a strong position at the time, but a rule of law that exists and continues in the Constitution to be interpreted by the Supreme Court.

Of course, Judge Roberts has credentials that are outstanding. His edu-

cational background is great. He has been a White House Counsel, so he knows how that works. He has been a Deputy Solicitor General, so he knows how that aspect of it works, too. And he is a circuit judge, so he has a background as a judge. I believe that is very important.

I am very impressed, I am very pleased, and I am very proud to be a part of voting for him. I think the vote will be strong.

I shared with Judge Roberts a few areas about which I am concerned. I did not ask his opinion on them, but rather in the State I am from, Wyoming, we are very concerned about venue shopping. We are very concerned about the idea of people filing suit or going to the proper district court or area to get one that is sympathetic. That is not the way it ought to be. The Federal court that deals with the issue from an event in our history has to be in that history, and I wanted to share that with Judge Roberts.

I am very concerned about eminent domain, with regard to people's rights and property, gun rights, endangered species. Again, I did not ask him for his opinion on those issues because that is not the issue. The issue is, as legislation is passed, are they consistent with the Constitution, and that is, indeed, the role of judges—to listen to the facts and see how they apply to the rule of law.

I was very impressed, as most of us were as we watched some of the interrogation in the committee, with his conduct. Of course, he was pressed many times with different kinds of questions and tried to be pushed into making specific stands on his own opinion on issues, which really is not what it is all about. That is for him to decide when those issues come up with respect to the law, with respect to the Constitution. He handled that situation very well.

We have the opportunity—and a very pleasant opportunity—to support a man who has the qualifications, who has not politicized his background, a learned lawyer, a well-trained lawyer. I am persuaded he will be a strong defender of the Constitution.

I must confess that is the strongest point I support and seek to see the Court do. I think that will happen.

Mr. President, if I may, during this time, I wish to divert from this subject for a minute or two.

GOVERNMENT REORGANIZATION AND PROGRAM PERFORMANCE IMPROVEMENT ACT OF 2005

Mr. President, I wish to talk about a condition that is very much important to us, where we have unusual events happening in our country. We have the situation in Iraq. We are defending ourselves there and the freedoms of this country there. I just came from a hearing. I am very proud of what is happening in Iraq, and I think we are making some progress towards getting people to take care of their own country. That, of course, is the goal, and I am sure we will be there until that goal is achieved.

Then comes along the problems with the disasters on the gulf coast. Both of those events, of course, have given us special needs for spending, and we have had to spend. It is right to spend when we have emergencies that arise of that nature, but then we find ourselves in the position of, what do we do about this excessive spending and how do we handle it?

I see it as the same thing we undertake in our families. If an emergency happens in the family, you have to handle it. You have to find some way to deal with that emergency. At the same time, your family activities go on and you have to take care of those. Then you have to decide: How can I make some changes in my economic situation to deal with this excessive spending because of an emergency.

That is where we are now. We are talking about all kinds of ways. I hope we take enough time to deal with these situations on the gulf coast and give the help those people need. That is the responsibility of the Federal Government. I hope we make sure there is accountability with those moneys spent, that we can be sure they are spent the way for which they are defined to be spent. I hope we make sure the Federal Government does what it is supposed to do and that the other units of government—State, local, and private sector—do what they are supposed to do. But we still will spend a great deal of money and, indeed, we should.

We also have to consider that over the past year, because of Iraq and other events, we have also had an increase in our deficit. Our deficit has gone up. So we need to find some ways to do something about it. Obviously, we will take a look at spending and see what areas we can reduce. I hope we do that as we finish our budget for this year. We need to.

We should take a look at some of the ways we raise money, in the case of some taxes, that probably we might otherwise change. Perhaps they will have to be left as they are for a while and continue to offset some of these costs.

I wish to specifically mention a bill I am currently sponsoring that requires the regular review of Federal programs. This should be done anyway, but it makes it particularly important as we look toward this business of spending. It is called the Government Reorganization and Program Performance Improvement Act. It creates the necessary mechanism, I believe, to set up some commissions to take a look, No. 1, at programs that have been in place, let's say, for 10 years, and to determine if, in fact, the program is still as needed as it was 10 years ago, to see if it accomplished what it was set up to do 10 years ago and now is completed, could be ended, or could be put in with some other program, or could be reduced because the situation may not be the same as it was when a program was put in place. Even though there probably was a very good reason to have

the program then, is the reason still good? Should we be changing it?

It is really a modernization effort, something we would do in every business, something we should do, which is take a look at what we have done historically and see if they are appropriate and can be done better.

The second half is to not only look at programs that might be unnecessary or wasteful, but take a look at programs that will continue, but are they being done as efficiently as they can be.

One of the issues we have to take a look at in terms of excessive spending is controlling the size of the Federal Government. It has continued to grow and grow. We have sort of developed a political notion that if there is anything needed anywhere, let's get the Federal Government to pay for it.

Well, that is a nice thing to do. The fact is we are supposed to be divided up, and there are local governments, State governments, and the Federal Government, each of which has its own responsibilities and its own areas and we ought to be seeking to define what the role of the Federal Government is and sort of restrict those things to that area so that we can control size.

So this program would inventory the programs, would have proactive steps toward improving and eliminating unnecessary and redundant efforts, and it would help us return to fiscal responsibility. It is kind of common sense in Government. It provides a framework to do that. I don't think anybody will disagree with the notion that we ought to evaluate programs to see if they are still efficient, effective, and needed, if they could be more productive. Nobody would argue that concept, but we don't really have a system to do that. I believe this is a good Government measure, and I certainly urge my colleagues to take a look at the bill S. 1399 and urge their consideration and sponsorship of this bill.

Mr. President, we always have a responsibility to make sure that Government is as efficient as possible, that spending is as effective as possible, that we hold spending to the minimum to do the things we need to do but not in excess of that, and I think we have an opportunity to put that kind of measurement into place and to ensure that those things can happen.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I ask unanimous consent that the next hour under majority control be allocated as follows: 20 minutes for Senator CORNYN, 5 minutes for Senator COCHRAN, 15 minutes for Senator BENNETT, and 20 minutes for Senator ALLEN.

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

Mr. CORNYN. I thank the Chair.

Mr. President, I am going to talk about the nominee that we presently have before the Senate, Judge John Roberts, in a moment. First, let me express my concerns about a Washington

Post story that was published today entitled "Filibuster Showdown Looms in Senate." The curious thing about this article is it does not talk about the nominee for Chief Justice of the United States, John Roberts, the nominee that is actually pending before the Senate. Rather, what this article talks about is the next nominee of the President of the United States to fill the seat of Justice Sandra Day O'Connor.

I am afraid it is perhaps a sign of the times in which we are living and perhaps a sign of the contentiousness with which the nomination for a vacancy on the Supreme Court has met in the Senate that some of my colleagues are already talking about a filibuster of the next nominee of the President when that nominee has not yet been named. I think it takes partisanship to a new level, to threaten to block an up-or-down vote on the Senate floor when we do not even know who that person is yet and, indeed, some apparently cannot conceive of the possibility that this President would nominate someone on whom they would at least allow an up-or-down vote. We are not talking about a Senator not following their conscience but talking about Senators, a minority in the Senate prohibiting a bipartisan majority from casting an up-or-down vote without even knowing who that nominee is going to be.

We ask that nominees for the courts not prejudge cases that will come before them. I would think that we should also ask Senators not to prejudge nominees who have not even been nominated by the President yet. Whomever the President nominates should be entitled to an up-or-down vote on the Senate floor. We are not a country that believes in the tyranny of the minority but, rather, we believe in a fair process and an up-or-down vote and majority rule. That is all we would ask for this yet-to-be-named nominee.

But now let me go to the business at hand and say that I will vote to confirm Judge John G. Roberts as the next Chief Justice of the United States. Before I explain why I am going to vote for his confirmation, I first want to explain the reasons why I am not.

First, I am not voting for his confirmation because he told us how he would rule on cases or issues that might come before the Supreme Court. Some of my colleagues have said that they will not vote to confirm Judge Roberts because they are not certain how he would rule on cases or issues that will come before the Court. They are not certain whether he will vote in favor of abortion rights, for example. They are not certain that he will vote in favor of racial preferences and quotas. They are not certain whether he will vote to give the Federal Government unlimited regulatory power to the exclusion of State and local government. I am not certain how Judge Roberts is going to vote on these issues either, but although my constituents are as concerned and as interested in these issues as anyone, I am not going

to refuse to vote for this nominee on that basis. Judges are not politicians. They do not come to Washington to run on a political platform. They do not say: Vote for me, and I will put a chicken in every pot. They are not supposed to come before the Senate and promise to vote this way or that way on a matter that will come before them. Certainly, I understand as well as anyone why the American people, and Members of the Senate included, are curious about how Judge Roberts is likely to rule on future cases. I am curious about that, too. But sometimes we have to put our curiosity aside for a greater good. We do not want to create a situation where a Justice cannot win confirmation to the Supreme Court unless he pledges to vote this way or that way on certain hot-button issues of the day. Judges are supposed to be impartial, and they are supposed to be independent. That is why they have lifetime tenure once confirmed. Judges cannot be either impartial or independent if they are forced to make promises to the Senate of how they will vote in order to get confirmed.

Some of my colleagues have said they simply cannot or will not put promises to politicians aside for this greater good of independence and impartiality. One of my colleagues says she wants to know who will be the winners on certain issues when Judge Roberts is on the Court. I can tell you who the winners will be. The winners are going to be the parties whose positions are supported by the Constitution and laws of the United States of America. Judge Roberts eloquently explained this during his confirmation hearing. He was asked whether he would rule in favor of the little guy. His answer was that if the Constitution and laws of the United States supported the little guy's position, the little guy will win. But if the Constitution says that the big guys are supported, their position is supported by the Constitution and laws of the United States and the facts in the case, then he will vote in favor of the big guy.

This is exactly how it should be. Over the Supreme Court of the United States, as you look at that stately edifice, it says, "Equal justice under the law," not that justice will be rendered in favor of the little guy all the time or against the big guy all the time or, conversely, for the big guy all the time and against the little guy. That is the antithesis of equal justice under the law. As a matter of fact, we all recall that Lady Justice wears a blindfold for a very good reason—because justice is about the law, not about persons who are sitting in front of a judge.

Mr. President, second, I am not voting for this confirmation because he turned away clients with legal positions with which my constituents or some of us might disagree. Some of my colleagues have said they will vote against Judge Roberts because they are unsure of his heart. They are saying that his heart may not be pure because

in private law practice he would not turn down clients with positions anathema to liberal special interest groups. Now, although they acknowledge that Judge Roberts has donated his time to clients who, for example, were on the liberal side of a lawsuit over gay rights, they criticize Judge Roberts because at his confirmation hearings he said he would have donated his time to clients on the conservative side of that same issue had they approached him first.

This is perhaps the strangest argument of all against this nominee. My colleagues are going to vote against him because they think it is heartless to take on clients regardless of whether he agreed with them or not? That is the very essence of being a lawyer, a professional, an advocate. Lawyers are somewhat like public accommodations in a sense. Similar to hotels, restaurants, and the like, when lawyers place their shingle out and say, I am willing to entertain cases that people may bring to me, they are supposed to serve anyone who comes through the door, as long as they have an arguable legal position or factual position with which the Court might ultimately agree. As a matter of fact, our adversarial system of justice depends on lawyers not just taking cases with which they perhaps ideologically are inclined to agree but, rather, they are supposed to take the facts and the legal arguments and do the very best they can so that in a clash that plays out in our adversarial system of justice in the court room, the judge can make the best decision based on the best legal arguments and that jurors can decide what the truth is based on this clash of opposing positions.

People are not supposed to be judged by the lawyers. Rather, in our system they are supposed to be judged by a jury of their peers. But if lawyers were constrained or prohibited from representing people with whom they might personally not agree, then they would never have a chance to be judged by a jury of their peers because they would not have a lawyer to take their case so that it could be presented to that impartial conscience of the community.

I wish to ask where this reasoning of my colleagues might lead. There are any number of clients who few people would support politically but who need legal representation in our adversarial system. Criminal defendants are the most obvious example. Do my colleagues plan on punishing a lawyer who did not refuse to represent someone who is accused of a crime? Do they plan to disqualify anyone from service in the Federal judiciary who has ever represented someone accused of a crime? Or do they plan to disqualify only those lawyers who did not shun conservative clients or causes? I do not believe you can tell anything about a person's heart, that is, a legal professional, professional advocate by whom that person has represented as a law-

yer. But even more important, I do not think the confirmation process should be about the nominee's heart. I, for one, do not want judges sitting in judgment in a court of law who are going to be guided by their heart and sympathies, rather than the law of the land and the facts as found by the trier of fact. I want judges who will side with the party who has the best argument and whose position is most consistent with established law that we all can recognize and read and understand for ourselves.

Again, Lady Justice is blindfolded for a reason. Justice should not depend on who you are or who you know. It should depend on who has the law on their side.

Third, I am not voting for John Roberts because he will preserve some hypothetical quixotic ideal of balance on the Supreme Court. Some of my colleagues have said they will vote for Judge Roberts because he is not any more conservative than his predecessor, Chief Justice Rehnquist, whom he will be succeeding. But they issued the warning that I started out with: Mr. President, don't you dare nominate someone we disagree with next time or we will use this unconstitutional filibuster. We will break with 200 years of precedent in the Senate and the very premise of our law, which is based on majority rule. We will break with that and we will filibuster in the Senate and prevent your nominee from ever taking the bench if you nominate someone we perceive is more conservative than Sandra Day O'Connor.

My colleagues have said this is important because they want to preserve balance on the Court. Preserving so-called balance on the Court has never been the basis of a Supreme Court confirmation vote. The examples of this are legion. One of the last Supreme Court nominees to win confirmation was Justice Ruth Bader Ginsburg, who replaced Justice Byron White. Justice Ginsburg, I think it is clear, I think we would all agree, was an unabashed liberal and one of the most zealous supporters of abortion rights who has ever been confirmed to the U.S. Supreme Court.

Justice White, nominated by President John F. Kennedy, was fairly conservative by contrast and indeed was one of the dissenters in the celebrated case of *Roe v. Wade*. Yet Justice Ginsburg, a self-avowed liberal, replaced a moderate to conservative Justice on the Court, and she was confirmed by a vote of 96 to 3. No one argued that Justice Ginsburg should be defeated because she would somehow shift this ideological balance on the Court.

But she is only one example. Justice Clarence Thomas, one of the most conservative members of the Court, was nominated and confirmed to succeed Justice Thurgood Marshall, arguably one of the most liberal.

Chief Justice Burger, President Nixon's antidote to judicial activism, replaced Chief Justice Earl Warren,

whose name, in the minds of some, was synonymous with the phrase judicial activism.

Justice Goldberg, who believed the ninth amendment gave the Supreme Court a license to invent new constitutional rights, replaced Justice Frankfurter, the father of judicial restraint.

So it is clear this has never been the way it has been, historically. Nor is there any precedent or any obligation of a President to try to seek ideological balance when nominating someone to the Supreme Court. The reason why is very simple. Elections are supposed to have consequences. The President is entitled to put the people on the Supreme Court who share his values and his judicial philosophy; in this case one who believes the policymaking ought to primarily emanate from the elected representatives of the people in Congress, not life-tenured judges who are unaccountable.

If Presidents were not entitled to change the Supreme Court, then Abraham Lincoln could not have changed the *Dred Scott* case, and Franklin Delano Roosevelt could not have changed the *Lochner* Court. I doubt my colleagues who are arguing for this ideological lockstep, or uniformity, would have favored that.

But that brings me to why I am supporting this nominee, and the reasons are actually pretty simple. First, Judge Roberts is simply one of the most qualified individuals ever nominated to serve on the Supreme Court. Indeed, he may very well be the best qualified. We have heard it before. He graduated the top of his class, he clerked for two of the finest judges in the Nation, he served, with great distinction, two Presidents. He has argued 39 cases before the U.S. Supreme Court and is widely regarded as the finest oral advocate before the Court living today.

In only 2 years on the D.C. Circuit Court of Appeals, he has already acquired a reputation as one of the most respected judges in America. Even the *New York Times*, which has editorialized against this nomination, has conceded that few lawyers in America could compete with Judge Roberts in professional accomplishments.

There was a time not too long ago when a brilliant career such as Judge Roberts' was sufficient to win confirmation to the Supreme Court, when we did not have ideological tests, litmus tests; when we didn't have filibusters that blocked the majority from actually having an up-or-down vote to confirm a nominee.

Whereas Judge Roberts has spent his career representing clients on both sides of every issue, we saw in Justice Ginsburg, whom I mentioned a moment ago, a jurist spending most of her career representing the single client, the American Civil Liberties Union, on one side of these issues. She voiced support for some pretty extreme positions. She

supported taxpayer funding for abortions. She thought there was a constitutional right to polygamy and prostitution. Suffice it to say, her ideas were far outside of the legal, not to mention the political, mainstream of America.

Finally, I am going to vote to confirm this nominee because this judge understands the proper role of an unelected Supreme Court Justice in a democratic Nation.

Mr. President, I ask unanimous consent for an additional 3 minutes.

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

Mr. CORNYN. To repeat, Judge Roberts understands the proper role of an unelected Supreme Court Justice in a democratic Nation. Ours is not a nation where nine judges sit in a marble edifice and decide what is good for us. Nor is it a Nation conceived on the premise that these nine unelected judges should be primarily policymakers. Rather, our notion of justice and law is based on consent of the governed. You can read it in the Declaration of Independence. Obviously, were unelected, lifetime-tenured judges to depart from the text of the Constitution, depart from precedent, and get into a mode of sort of freewheeling ad hoc public policymakers, they would have departed in the extreme from the framework laid down by our Founders and from the framework ensconced in our Constitution.

I will vote to confirm this nominee. I hope my colleagues will do likewise. I hope further that my colleagues, who have already stated their intention to filibuster the next nominee, will wait until the President has in fact named a nominee to succeed Justice Sandra Day O'Connor. It is just possible—it is just possible they will be surprised and they will find the President has, indeed, selected another nominee in the mold of John Roberts, who will be overwhelmingly confirmed as Chief Justice of the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 5 minutes.

Mr. COCHRAN. Mr. President, I appreciate the opportunity to speak on behalf of Judge John G. Roberts' nomination to serve as Chief Justice of the United States. The Members of the Senate may disagree on many legal and political issues, but I am confident a majority of the Senate will agree that Judge John Roberts should be confirmed. He has provided the Judiciary Committee with the story of his life. He has answered questions on a wide range of issues. In the process, he has demonstrated the ability, the temperament, and the wisdom to serve as Chief Justice of the United States.

The process of providing advice and consent on a Supreme Court nomination is one of the Senate's most significant constitutional responsibilities, although it is not something we are called upon to do very often. Eleven

years have passed since the Senate last exercised its duty to provide advice and consent to the President on his selection of a Supreme Court nominee; 19 years have passed since the Senate last considered a nominee for Chief Justice.

By now, all Senators and most Americans have come to know the impressive life story of John G. Roberts, Jr. He is a summa cum laude graduate of Harvard University and an honors graduate of the Harvard Law School. He was an editor of the Harvard Law Review.

After graduating from law school with high honors, Judge Roberts served as a law clerk to a judge on the Second Circuit Court of Appeals and as a law clerk to then Associate Justice Rehnquist on the U.S. Supreme Court. He has also served as a Special Assistant to the Attorney General of the United States and as an associate counsel to President Ronald Reagan.

After those years of public service, he spent 3 years in private practice at a well-respected law firm, specializing in civil litigation. Judge Roberts then returned to public service as the Principal Deputy Solicitor General of the United States.

During these years of service at the Department of Justice and as a lawyer in private practice, Judge Roberts argued 39 cases before the U.S. Supreme Court. His performance before the Court earned him a reputation as one of the Nation's premier appellate court advocates.

Two years ago Judge Roberts was unanimously confirmed by this Senate to the U.S. Circuit Court of Appeals for the District of Columbia. This circuit court is considered by many to be the Nation's second highest court.

Judge Roberts is a devoted husband, a dutiful father of two young children, and he is a good and honest man. I closely followed the Senate Judiciary Committee's hearings on his nomination to be Chief Justice. It is clear to me that he is the right person for this very important responsibility. Judge Roberts has served with distinction in every job he has ever had. His record is compelling evidence that he would be an able and thoughtful member of the Supreme Court, and that his experience and his respect for the rule of law demonstrate he would be an outstanding Chief Justice of the United States.

The quality and correctness of opinions and decisions by the Supreme Court will depend upon the conscientious application of reason and the rule of law by Chief Justice Roberts and his colleagues on the Supreme Court. I think Judge Roberts fully understands the role of the Supreme Court Justice and is totally qualified to discharge the duties of Chief Justice. I believe he will be fair to all and, in the application of the rule of law, impartial and unbiased.

This is serious business. The members of the Federal judiciary are charged with the responsibility of protecting our rights as American citizens, adjudicating our grievances, pro-

moting order and justice, and serving as stewards of the rule of law. The Chief Justice of the United States is the highest ranking official in the judicial branch of our Federal Government. He is in charge of the management and administration of the highest Court in the land. I believe Judge Roberts has what it takes to be an outstanding Chief Justice.

I congratulate the President for his selection of Judge Roberts and I commend the President for his nomination. His nominee will be in an important position in our Government. I am pleased, indeed, that I will be able to vote in favor of his confirmation by the Senate.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah is recognized for 15 minutes.

Mr. BENNETT. Mr. President, most of the speakers who have discussed this subject have talked about Judge Roberts' qualification. There is no point in my referring to them or repeating them again.

There is a point that I do wish to make with respect to the entire process, which I think needs to be emphasized and stressed. It is this: Nominations are not elections.

Read the Constitution, and we see that it allows for elections. It provides for elections. It says there are places where elections are appropriate. The President is elected. The Vice President is elected. The Members of the Senate and House are elected. But members of the Cabinet are not; they are appointed by the President. And to allow the election process to have an influence, they have to be confirmed by the Senate. But they are not elections.

The same thing is true very much with respect to the judicial branch. A nomination for the Supreme Court is not an election.

The reason I make such stress of that is because there are many groups out there who think this is an election. There are big ads on television. They are organizing demonstrations. They are walking around with placards. That is what you do when you try to influence voters in an election. This is not an election. The Founding Fathers understood that it should not be an election.

There are some who have made up their minds long in advance of any nomination as to what they are going to do. I think, quite frankly, if President Bush were to somehow resurrect John Marshall and send his name to the Senate to be the Chief Justice of the United States, People For the American Way and Ralph Neas would insist that he was badly out of the mainstream and unqualified to be Chief Justice, even though history says he was the greatest Chief Justice in our history. But if he were picked by George W. Bush, that group would immediately say he is radical, he is out of the mainstream.

We are getting the same thing with respect to Judge Roberts—an election

campaign complete with television ads and placards and demonstrations saying that Judge Roberts is out of the mainstream.

I do not know where you go to find mainstream today. I do not know exactly where the mainstream is. I know where the left bank of this particular stream is. The New York Times is against Judge Roberts. That was predictable. That was as sure as the Sun would rise—that the New York Times would be opposed to anybody George W. Bush proposed.

The Washington Post is usually thought of as being fairly close to the left bank, but the Washington Post looked at this nominee and said this is a qualified nominee.

The American Bar Association tries to be as much of the mainstream as they can. They have given Judge Roberts' nomination their highest support, "well qualified," unanimously. Maybe they are not mainstream enough for some of these people who are using this argument.

The Los Angeles Times is not thought of as a rightwing organization. The Los Angeles Times said it would be a travesty if we didn't confirm Judge Roberts by a wide margin.

Why do we want to confirm somebody like Judge Roberts? Why is the President's nomination a good one? In my view, it is because Judge Roberts understands one fundamental truth. Along with the one I have just given, a second fundamental truth, if you will, is that nominations are not elections and judges are not politicians, or more appropriately judges are not legislators. You have elections for legislators. You should not have elections for judges.

Judge Roberts put it this way in describing his understanding of his responsibility. We have heard this before with respect to this nominee, but it is worth repeating. He said to the committee:

I come before the committee with no agenda. I have no platform.

Again, judges are not legislators.

Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda but I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability. I will remember that it is my job to call balls and strikes and not to pitch or bat.

In other words, he is the umpire, he is not a player. We have seen an example brought up in an effort to try to derail Judge Roberts' nomination of how he called "balls and strikes" and how he was not a legislator. It has been dropped now because those people who raised it didn't realize that it was going to be analyzed properly and turn out to be embarrassing to them rather than to the judge.

But there was the case of the 12-year-old girl in Washington who, while wait-

ing with her friend at the Metro station to buy a Metro ticket, happened to eat a single french fry, and she was arrested, handcuffed, and taken down to the station. Judge Roberts upheld the action of the Metro Police.

Horrors, came the groups. There is an election. We can grab onto this as an example that we can sensationalize and win votes on. Then they examined the matter very carefully, and we got Judge Roberts' actual opinion in this case. He did not victimize a 12-year-old girl who was arrested for eating a french fry. This is what he said in his opinion that once again outlines the truth of his position that he will be an umpire, not a player, not a legislator.

He said:

No one is very happy about the events that led to this litigation. A 12-year-old girl was arrested, searched and handcuffed, all for eating a single french fry in a Metro rail station. The child was frightened, embarrassed, and crying throughout the ordeal. The District Court described the policies that led to her arrest as "foolish," and, indeed, the policies were changed after those responsible endured the sort of publicity reserved for adults who make young girls cry. The question before us, however, is not whether these policies were a bad idea but whether they violated the Fourth and Fifth Amendments to the Constitution.

He put the emphasis in the right place. This was a stupid law. It was passed for some other reason and turned out in administration to be a stupid law. It was passed by legislators, people with legislative responsibility. It was repealed by legislators. It should not be repealed by the judge just because it is stupid.

I remember a conversation that took place after the Supreme Court ruled on the bipartisan Campaign Reform Act. It is no secret that I opposed that act as vigorously as I could. We passed it nonetheless. The President signed it. Then a lawsuit was filed. It went all the way to the Supreme Court. The Supreme Court found that the law was constitutional and upheld it.

I will not reveal names because these were private conversations, but a Member of the Senate had the occasion to have a conversation with a member of the Supreme Court. The Member of the Senate said to the member of the Supreme Court: How could you uphold that law? That is a terrible law.

The member of the Supreme Court appropriately said: You are right. It is a terrible law. You shouldn't have passed it.

In other words, the Supreme Court should not be the one that corrects our mistakes unless we violate the Constitution. The Supreme Court should not take a position unless we violate the Constitution. The Supreme Court is not made up of legislators who fix things; it should be made up of people who examine the law.

Even if the law is foolish enough to punish a 12-year-old girl for eating a french fry on the Metro, the Supreme Court should say: Legislators, this is a dumb law. You ought to fix it. But it is not our responsibility to legislate.

The real reason so many groups have tried to turn Judge Roberts' nomination into an election rather than a nomination is because they lost the election and they are hoping they can turn the Supreme Court into a super-legislature that is beyond the reach of voters. Clearly, that is not what the Founding Fathers had in mind. Clearly, when they put the responsibility to make the choice in the hands of the President, they were saying this will be a nomination and not an election. If the Founding Fathers had wanted the Supreme Court at the national level to be open to the electoral process, they would have done what others have done at the State level. There are States where the appointment to the supreme court of the State is an electoral process. Whether that is good or bad is the subject for another conversation. But in this circumstance, we are talking about the U.S. Constitution, which every Member of this Chamber has taken an oath to uphold.

If we are going to uphold the Constitution of the United States and defend it against all enemies who would undermine it, be they foreign or domestic, we should preserve the constitutional process of nominations coming from the President of the United States. He has to answer to the people for his decisions. He should be the one to make the nomination. He is the one who is given the powers specifically.

We can say, Mr. President, we don't consent to that because we think you made a mistake, but we in the Senate should not condone those who are trying to turn the nomination process into an electoral process. Because we should understand as Members of the legislature that members of the judiciary are not legislators, and we should not move in a direction of turning them into legislators by participating in an election-type process in vetting their credentials. If this man is qualified, he should be confirmed. If he is unpopular with the electorate, that should be irrelevant. The Constitution does not allow for that to intrude upon the confirmation process.

There is no question but that John Roberts is qualified.

I end with a conversation I had with one of my colleagues who made up his mind to oppose Judge Roberts. I said to him: In a theoretical situation, suppose you had everything you own on the line in a nasty lawsuit, and you had a legal problem where you could lose everything. Who would you choose to defend you? Which lawyer would you hire, John Roberts or a member of the Senate Judiciary Committee? He laughed immediately. He said: Bob, it isn't even close. If John Roberts is the obvious choice for a personal attorney for someone who needs real help, why should he not be the obvious choice for the Nation that needs real help?

He will be a superb Chief Justice, and I will vote for him with great confidence.

The PRESIDING OFFICER. Under the previous order, the Senator from Virginia is recognized for 20 minutes.

Mr. ALLEN. Thank you, Mr. President.

Mr. President, I rise this afternoon in strong support of the confirmation of Judge John Roberts to be the 17th Chief Justice of the United States.

When we first learned of this vacancy on the Supreme Court earlier this summer, I laid out the principles of what kind of judge I believe the President should nominate and how the nomination process should proceed. It should be a dignified approach as a due process. It should be fair, and there should be a vote.

Federal judges are appointed for life. When one recognizes those debates in the founding of our country, Mr. Jefferson wanted judges appointed for terms, and Mr. Hamilton wanted them for life. Unfortunately, in my view, Mr. Hamilton won. The only time there is any scrutiny on the part of the public is at this time of confirmation. While some may not like the editorials, some may not like the TV ads, the demonstrations, and all the speeches. I don't think judges ought to be legislators, and I don't agree with some of their perspectives in our free country. Let us as Senators not say that people are wrong to demonstrate, run TV ads, advocate and express their views, even if we may not be in agreement with them. That is one of the foundational principles of our country. Ultimately our role is to listen, to examine judicial nominees based upon our criteria. Obviously, we can listen to the people and then ultimately it is our responsibility to vote.

The following are the criteria I use to judge a judge. I have always believed the proper role of a judge is to apply the law, not invent the law. The proper role of a judge is to uphold the Constitution, not amend the Constitution by judicial decrees. The proper role of a judge is to uphold the intent of the Constitution and the principles of our Founders, not to indulge in self-satisfying judicial activism. The proper role of a judge is to protect and, indeed, to defend our God-given rights, not to create or deny rights out of thin air.

I believe it is my responsibility and the responsibility of all Senators to make sure that America's courts, including, of course, and most importantly, the Supreme Court, are filled with qualified men and women who possess the proper judicial philosophy in our representative democracy.

Laws are to be made by the representatives of the people. The people are the owners of the government. At the local level, they elect city councils, parish leaders, county boards of supervisors. Then we have State legislators, Governors, and, of course, Federal legislators, Congress, and the President.

However, colleagues, every week, and almost every day, we see the consequences of activist judges who do not properly respect our representative de-

mocracy. They do not understand or respect the proper role and responsibilities of a judge not to be an executive and not to be a legislator.

Let me share with my colleagues two examples of judicial activism, decisions where the rule of law which is one of those foundational bedrock pillars of a free and just society, where these concepts have been eroded and ignored by judges.

Exhibit A comes from the Ninth Circuit Court of Appeals. The Ninth Circuit has trampled upon the will of the people of California by ruling that the Pledge of Allegiance cannot be recited in California public schools because it contains the words "under God." They fail to see that the Pledge of Allegiance is not the establishment of any religion. It is a patriotic act. If a student does not wish to recite the Pledge of Allegiance, he or she is not compelled to do so. They can sit there quietly as the pledge is recited.

This is a terrible ruling, not just because it violates the will and the values of the people of California, which it surely does, but it is also a terrible ruling because it actually displays a woful and inexcusable ignorance of America's legal and historical traditions going all the way back to Mr. Jefferson's statute of religious freedom. This is all sacrificed on the altar of judicial activism.

Unless the Ninth Circuit reverses itself, then the Supreme Court of the United States should ultimately reverse this prohibition of the Pledge of Allegiance in schools.

Exhibit B comes from, I regret to say, the highest Court in the land, the Supreme Court of the United States. This past summer, in the case of *Kelo v. City of New London, Connecticut*, five Supreme Court Justices willfully ignored the Bill of Rights, allowing local governments, acting as commissars, the right to take someone's home, a person's home to be taken not for a road, not for a school, not for a legitimate public use, but simply because they think they can generate more tax revenue from the property upon which that home is located.

Colleagues, home ownership is the greatest fulfillment of the American dream. Every American should have the opportunity to own the home in which they live. Every child is enriched by learning and appreciating the value and pride of home ownership. That is why I advocate economic policies that make home ownership more affordable to more people. It is not just good economic sense, it is also an issue of fairness. It is an issue of opportunity in this land we call home, America.

This outrageous decision that is forcing people out of their homes, the very definition of the American dream, in the name of expanded government tax revenue, is amending the Bill of Rights by judicial decree and is contrary to what I believe is a fair and just society.

These are just two examples of judicial activism. We do not need any more

judicial activists on the Ninth Circuit, on the Supreme Court, or any court in this land. The only way to stop this insidious effect of judicial activism is to confirm well-qualified judges who possess good legal minds and understand their role in our Republic. Judges are not to be legislators or executives. Judges should fairly adjudicate disputes based upon the law and the Constitution.

I believe Judge Roberts is precisely that kind of judge. I believe Judge Roberts has the credentials, the values, and the temperament to be an outstanding Chief Justice.

Let me briefly touch on some of his outstanding credentials. He graduated *summa cum laude* from Harvard College, *magna cum laude* from Harvard Law School, was a law clerk for both Judge Friendly and later for Chief Justice William Rehnquist, a Justice Department aide for the Reagan administration, the Principal Deputy Solicitor General in the first Bush administration, a private attorney with Hogan & Hartson, and since 2003, an esteemed judge on the D.C. Court of Appeals.

I supported Judge Roberts' confirmation to the D.C. Court of Appeals, and his service there has confirmed my confidence in his outstanding capabilities. I have been impressed not only by his keen judicious mind but also his commitment to the Constitution and understanding the importance of the rule of law and the role of a judge.

I met with Judge Roberts back in August. We discussed things one on one. I found him to be a very well grounded individual. He possesses the right judicial philosophy. I know people are concerned that some judges might get in there and somehow get out of touch in the rarefied air of judgeships, particularly on the Supreme Court. I thought it was good he cuts his grass every now and then—not that it is a qualification to be a judge, but it shows he understands how people live in a relatively normal way.

Most importantly, we talked about the importance of precedence, individual rights, the interpretation of Federal and State laws, and what deference should be given to laws passed by the representatives of the people, as well as a variety of other issues.

I am very comfortable with Judge Roberts and his understanding of the role of a judge, the importance of the Constitution, and that the Constitution should not be amended by judicial decree.

I enjoyed asking him what he thinks the role of international law or laws from other countries should be for judges. We will not have others from another country tell us what our laws ought to be. I love his judicious approach that any judge who uses international laws or the laws from other countries to make decisions upon cases in the United States, those judges are trying to accrue to themselves more power than they should have. The powers of Federal judges in this country

come from the laws that are passed by the people in the United States. If you start trying to get extraneous laws, that is judicial expansion. He understands the modest and respectful way a judge should handle cases.

Later in his confirmation hearings, we saw how Judge Roberts continued to show a rare reverence for our Constitution and the Supreme Court's responsibilities under our Constitution. He declared:

Judges are not to put in their own personal views about what the Constitution should say, but they are supposed to interpret it and apply the meaning that is in the Constitution.

Judge Roberts went on to say:

[J]udges need to appreciate that the legitimacy of their action is confined to interpreting the law and not to making it, and if they exceed that function and start making the law, I do think that raises legitimate concerns about [the] legitimacy of their authority to do that.

It is refreshing to hear those words from the lips of a Supreme Court nominee. May other judges in the Federal court system understand and respect that, as well.

As we get ready to vote tomorrow on Judge Roberts, this is exactly how this system and this process ought to work—fair and open hearings where the nominee explains his or her judicial philosophy but refuses to prejudge individual cases, and following all of the scrutiny and the questions and examination, there is a fair, up-or-down vote on the Senate floor. This is the American tradition. This should not be an exception. This should be the rule and the way we treat judicial nominees, not just this nominee but future nominees.

I remind my colleagues, we will soon have another Supreme Court vacancy to fill. We will need to fill it very soon. We should be fair and dignified, we should be deliberative, and when it is over, we should vote. Yes, that is our responsibility, to vote.

I am looking forward to having John Roberts serve as Chief Justice of the Supreme Court of the United States. I am also looking forward to confirming other well-qualified judges who understand and appreciate the foundational principles of our country and who will reinforce the rule of law by fairly adjudicating disputes protecting our freedom of religion, protecting our private ownership of property, and our freedom of expression.

John Roberts, I believe, will go down in history as one of the great Chief Justices of the Supreme Court. Let him also become a role model for all other men and women who will follow on Federal benches.

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

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

Under the previous order, the time from 5 p.m. to 6 p.m. will be under the control of the Democratic side.

The Senator from Delaware.

Mr. CARPER. Mr. President, those of us who are privileged to serve in the Senate literally cast thousands of votes during the years we spend here. Some votes are procedural in nature and of little consequence. Others are far more meaningful. Katrina relief, pension reform, and trade agreements come to mind. Once in a great while, though, we are called upon in this body to cast a vote of such importance to our Nation that it will resonate for years to come—whether to authorize the use of military force against another nation or whether to impeach a President. There are few votes, however, we will cast in our time here that are likely to leave a more lasting impact on America than the one we will cast tomorrow morning. In confirming the nomination of John Roberts—something that is all but certain—we not only will authorize him to serve as the Chief Justice of the U.S. Supreme Court, we will also make him the leader of the judicial branch of our Government. God willing, he will hold that post for as long as most of us in the Senate are likely to live. A great deal is riding on this vote for our country and its people, both today and for a long time to come.

For many of us, this one is a close call. Understandable concerns have been raised on a number of fronts about what kind of Chief Justice John Roberts ultimately will make. Do the writings of a young man in his twenties reflect the views of this 50-year-old man today? If not, why was he reluctant to clearly say so publicly when given that opportunity? Why did the current administration refuse to allow any scrutiny of the writings of Judge Roberts from when he served as the No. 2 person in the Solicitor General's Office of former President Bush? What direction would Chief Justice Roberts seek to lead the Supreme Court in the coming years on issues relating to privacy, to civil rights, and to the prerogatives of the Congress to set policy that may be at odds with the views of State and local governments? How will Judge Roberts seek to interpret and apply the Constitution and a wide variety of laws, both State and Federal? Will the Roberts Court respect precedent or aggressively seek to establish new ones?

The honest answer to most of these questions is that none of us really know for sure—not the President, probably not even Judge Roberts himself. That uncertainty explains at least in part why this vote is so difficult for many Members of this body. So we are asked to make a leap of faith. For some, that leap is large. For others, it is not.

For myself, I have decided to take that leap of faith. After a great deal of

deliberation, conversations with many Democrats and Republicans on the Senate Judiciary Committee, as well as with others back home and here, I have decided to vote tomorrow to confirm the nomination of John Roberts to serve as our Nation's Chief Justice. Time will determine the wisdom of that decision, along with the decisions of each of our colleagues who join me in casting our votes tomorrow.

Yesterday, I had the privilege of meeting with Judge Roberts in my office. There, we discussed many of the concerns and question marks I mentioned just a few minutes ago. His responses were forthright. They were insightful. And I believe they were sincere.

Our conversation also provided me with insights into how a young man from a small town in Indiana could grow up, attend Harvard, become one of the most admired lawyers in America, be nominated for the Supreme Court, not once but twice, and then sit through 3 days of often grueling questioning before the Senate Judiciary Committee, responding calmly and respectfully to questions on a wide range of legal issues without the benefit of any notes or even a pad of paper.

Judge Roberts and I spoke with one another at length about our respective childhoods and of our parents and the roles they played in our lives and the values they instilled in us and in our siblings. We also talked about our educational opportunities, our careers, our mentors, our spouses, and even about the children we were raising.

It was a revealing and encouraging conversation. It was a revealing and encouraging conversation in that it provided me with important insights into his personal values and with a measure of reassurance on the direction he may ultimately seek to lead the highest Court of our land.

I shared with him that in the 8 years before coming to the Senate, I served as Governor of Delaware. In that role, I nominated dozens of men and women to serve as judges in our State courts, several of whom enjoy national prominence given my State's role in business and corporate law.

Ironically, and I think wisely, Delaware's Constitution requires overall political balance on our State's courts. For every Democrat who is nominated to serve as a judge, Delaware Governors must nominate a Republican, and vice versa. The result has been an absence of political infighting and a national reputation for Delaware's State judiciary regarded by some as the finest of any State in our land.

The qualities I sought in the judicial nominees I submitted to the Delaware State Senate included these: unimpeachable integrity, a thorough understanding of the law, a keen intellect, a willingness to listen to both sides of a case, excellent judicial temperament, sound judgment, and a strong work ethic. In applying those standards to Judge Roberts, I believe he meets or

exceeds all of them. To my knowledge, no one has questioned his integrity, his intellect, or his knowledge of the law. Democrats and Republicans alike watched, along with a national audience, as Judge Roberts fielded any number of tough questions over the 3 days of hearings and responded knowledgeably, respectfully, with humility, and occasionally with self-deprecating good humor. In all candor, I am not sure any of us would have done as well.

Having said that, though, questions and doubts remain about where Chief Justice Roberts will come down on a number of issues—reproductive rights, civil rights, and respect for congressional prerogatives, to mention a few. I might add that, if truth be known, all of those doubters are not liberal Democrats. Some of them are conservative Republicans.

The answers to these questions will come in the years ahead as Chief Justice Roberts assumes this important post and begins to lead this Court and the judicial branch of our Government. In the end, some of the decisions he helps to formulate may surprise and confound people on all sides of the political spectrum. That is something one of his earliest mentors, Judge Henry Friendly of the Second Circuit Court of Appeals, has done for years.

Let me pause and ask my colleagues today to think back just for a moment. How many of us would ever have imagined that a Texas Congressman and Senator with Lyndon Johnson's early civil rights record would go on to champion the civil rights of minorities like no other American President in the 20th century? Who among us, watching former Representative and Senator Richard Nixon, a Cold War warrior for decades, would have foreseen the role he played in opening the door for U.S. relations with Communist China? Then, too, recall, if you will, the loathing many conservatives came to feel toward the late Chief Justice Earl Warren, a nominee of President Eisenhower, or the disdain many liberals came to feel toward former Justice "Whizzer" White, a nominee of President Kennedy.

The truth is that life and its experiences do change us and some of our views in ways that cannot always be predicted. Having children of our own and later welcoming those children into our lives as well as learning from our mistakes and from the mistakes of others can combine to make us wiser, to temper our views, to broaden our horizons and deepen our understanding of the views of others with whom we share this planet. And so it is likely to be with Judge Roberts.

As I prepare to take a leap of faith tomorrow—albeit not a reckless one, in my view—let me close with a few words of advice, respectfully offered, to our President. A second nomination looms just around the corner. President Bush's choice of that nominee is, in many respects, as important as this one. The next choice can divide this

Congress and our country even further or it can serve to bring us a little closer together. We need a choice that unites us, not one that divides us further.

We also need a choice that reflects the diversity of this country in which we live. There are any number of well-qualified women, and maybe even a few men, who would be a good choice for the seat now held by Justice Sandra Day O'Connor. On behalf of all of us, Mr. President, let me encourage you to send us one of those names.

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

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

Mrs. MURRAY. Mr. President, I rise to announce my vote on the nomination of Judge John G. Roberts, Jr., to be the 17th Chief Justice of the United States.

I do not cast this vote lightly. I recognize how critical the courts are in protecting and advancing the rights of all Americans. I know what is at stake. I am also mindful that John Roberts has been nominated for a lifetime appointment to the highest seat on the highest Court in our country. In our system, there is no backstop or review of a Supreme Court Justice once he or she is confirmed. That means under the Constitution we in the Senate have the responsibility to fully evaluate each nominee before voting, and that is exactly what I have done.

For me personally, casting a vote on a nominee to the Supreme Court carries special meaning. Thirteen years ago the nomination of another Supreme Court Justice, Clarence Thomas, helped launch my own path from the kitchen table in Shoreline, WA to this historic desk on the floor of the Senate. During the Thomas confirmation, I was deeply frustrated that the questions I believed needed to be answered were not even raised. I was troubled that average Americans, moms and dads, had no voice in a process that would affect their rights and liberties.

This time I had the opportunity to ask those questions directly to the nominee. I was pleased to work with my Democratic women colleagues to open the process and empower people across the country to submit questions to the nominee via a Web site that Senator BARBARA MIKULSKI created. Today not only did I have the opportunity to ask those questions directly, but the weight has also been on my shoulders.

For days I have struggled with whether this nominee represents the fear I have of the worst motives of this administration or whether he represents the best hopes of a country for wise decisions that protect our rights and our freedoms and our responsibil-

ities. No one of us can know for sure. There is no doubt that anyone I would have nominated would have come from a different background with a different history, but this was not my choice. There is much I do not know about how Judge Roberts will rule, but as history has shown, none of us can predict that. And without a crystal globe, I must make this very difficult decision based on what I do know and upon the criteria I have long used to evaluate nominees for judicial appointments.

This evening I talk about how I have applied my standards to other nominees for the Federal bench. I am especially pleased that in Washington State we do judicial nominations the right way, through a careful, bipartisan process that helps us select qualified candidates without regard to politics. In Washington State, I have worked with different administrations to craft a process that helps us identify and confirm qualified individuals for the Federal bench. We solicit input from a wide variety of respected individuals within the Washington State legal community, and then we personally interview each recommended candidate prior to submitting his or her name to the White House for consideration.

During the Clinton administration, my colleague Senator Gorton and I worked together to recommend and support individuals for appointment to the Federal bench. Senator Gorton and I disagreed on a lot of issues, but we did agree that when it came to our duty in confirming individuals to the third and coequal branch of our Government, we should set aside partisanship and focus on qualifications. That tradition has continued with my colleague Senator CANTWELL. We got off to a rough start on this approach because the Bush administration at first did not want to continue the fair process Senator Gorton and I had established, but eventually the wisdom of our process prevailed. While there have been hiccups along the way, we have used it to confirm qualified people to serve on the bench.

Through this fair and deliberative process, I have supported nominees with a wide variety of backgrounds. I have supported people who have come from privileged backgrounds and those who beat the odds to realize their achievements. I have supported Democrats and Republicans. Each time, though, I was confident that I was supporting an individual who would serve every American who came before them well, and I have not been disappointed.

My home State of Washington is 2500 miles away from Washington, DC. In many ways it is even further than that in terms of our independence of thought. The White House would do well to learn from the example we set in Washington State, and I hope the Bush administration will do a better job of consulting with the Senate on its next nominee and providing a more complete record of that nominee's background and writings.

Some have suggested to me that I use my vote to register my disapproval at things the Bush administration has done or that I use my vote to send a message to the President. While I am angry about mistakes and miscalculations and misrepresentations and misdirected priorities of the Bush administration, this vote is not the place to vent those frustrations. Fairness requires that I evaluate each nominee on his or her own merits, without a predetermined outcome, just as I expect every judge to do when a case comes before them. My vote is based on the same standards I have used for years, not on anger or in sending messages or ignoring a nominee's actual record.

This would be an easier decision if we had a complete record. The White House has refused to provide more recent memos from Judge Roberts' work in the Solicitor General's office which would have provided us with a clearer picture of the nominee. I, frankly, think the White House's position is a reflection of the general breakdown in the process that we use to select and confirm judges today. With this administration, consultation with the Senate is cursory at best, and from the very beginning there has been often a kind of "spoils of war" approach to how they view appointments to the Federal bench. I believe this approach has resulted in unqualified individuals being forwarded by the administration to the Senate for consideration. This approach has contributed to the partisan rancor regarding nominations to the courts.

These actions are even more concerning in light of the second vacancy the Bush administration is set to fill in the coming weeks. I do not believe that an honest, fair evaluation could be completed with any less material information than we were provided during this confirmation process. I believe the Bush administration is attempting to set a dangerous precedent with its words and actions or lack thereof, and I fear that future court nominations could be even more contentious as a result.

In looking at nominees for our courts, I always follow a very deliberative process of having a set of standards and comparing individuals who come before us as nominees to that set of standards. I examine their record and their experience and their testimony. I see if they meet the basic standards of honesty and ethics and qualifications and fairness. Then I evaluate if they will be independent, evenhanded in deciding cases, and if they will uphold our rights and our liberties. Those standards help me ensure that when any American, regardless of background, comes before the court, he or she receives a fair hearing and that the resulting decision renders justice according to the law.

In reaching a decision on Judge Roberts, I reviewed all of the information that was available, and then I examined how Judge Roberts measured up

to my criteria for judicial nominees. I followed the Judiciary Committee hearings closely. I read the transcripts. I have spoken directly with Judge Roberts twice, once in a meeting in my office and once by phone.

Looking at my standards, I found Judge Roberts to be honest, ethical, qualified, and fair. I believe he will be evenhanded in deciding cases. On those criteria, Judge Roberts clearly met my test. It was my last criteria, upholding the rights and liberties of all Americans, where I had a harder time evaluating Judge Roberts. I wish the White House had been more forthcoming in making available more documents that would have shed light on some of his more recent work and opinions. I wish the nominee himself had been more responsive to questions in his testimony before the Senate Judiciary Committee.

Through this process, I have concluded that Judge Roberts is a decent person with keen intellect and high ethical standards. I believe he does know the difference between the role of advocacy, which he has held in the past, and the role of judge. I think he has the capacity to be fair, and I think he aims to serve all of the American people.

On the question of upholding the hard-won rights and liberties of the American people, I believe Judge Roberts has a healthy regard for precedent and intends to apply a thoughtful approach to interpreting the law. This is not to say I would expect or even hope to agree with every decision he might make or every opinion a Chief Justice Roberts might author. In making my decision, I recognize that history has shown no one can accurately anticipate what type of Justice a nominee may ultimately become.

For many weeks I have known some people in Washington State will be disappointed in my decision regardless of what that decision is. I have heard from friends and colleagues, constituents and strangers, on all sides of the question. Many of them have surprised me in their candor and in their position. All this has led me to struggle with the decision for many days now. I have read up on Judge Roberts. I have listened to the thoughts of others. I have talked with the judge himself. All the while, it has been an extremely close call in my mind, for I know the gravity and the consequences of this important vote. I have had deep and lasting concerns. But I have had strong, heartfelt hopes as well.

In the end, I returned to the basic criteria I use on any tough question and to the values the people of Washington State sent me here to protect. In examining that criteria and those important values, I have made a decision that I hope everyone can understand and appreciate and even be proud of. I am satisfied that Judge Roberts meets my long-held criteria and, therefore, I will vote to confirm his nomination.

I believe Judge Roberts is well qualified to serve. I believe he is intelligent and honest and fair. Is he wise? Only time can answer that. I cast this vote with the hope that John Roberts will be an individual who will combine common sense and decency with a real respect for how the law affects each American as he serves out his tenure on the Supreme Court. In spending time with him and reviewing the available record, I believe Judge Roberts has the capacity to be that kind of justice.

Throughout our history, America has always had to confront challenges and enjoyed a lively debate on how to meet them. Today is no different. Our great Nation is confronting enormous challenges, and the debate over how to address those challenges has caused great divisions in our country. Many people, as I do, fear the direction in which this country is headed. They fear for our security. They fear we are not doing enough at home to secure a stronger future, and they fear the progress we have made in the last several generations is being eroded by a political agenda. Those fears are well founded, and they are real. But our country was also founded on hope, hope that by securing individual liberty, a free people could govern themselves in the interest of promoting the common good, hope that despite our differences, we could band together to create strong communities and a better future for generations of Americans to come. That spirit of hope is alive today and should help guide us at least as much as our fears.

My vote tonight is a vote of hope—hope that despite our differences, we can unite around the common good; hope that equal justice under the law means something powerful to every American, regardless of background or political persuasion; and hope that John Roberts responds to the needs of this Nation to have a Supreme Court that honors our past and helps secure the rights and liberties of every American into the future.

When I asked Judge Roberts what kind of judge he wanted to be, he said: A Justice for all Americans. I hope my vote, along with the diverse group of my Senate colleagues, reminds him every day that he must be a judge for all Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I compliment my colleague from Washington State for the incredible job she does here every day, for the thoughtfulness she brings to this process, and the wonderful job she does representing the people of Washington State. She is a delight to work with and someone who I think brings to the table thoughtful consideration, with a strength and a courage and a wisdom that should make the people of Washington State proud, and I know it does.

I come here today after much thought and prayer over a decision

that is incredibly important. I agree with my colleague from Washington State that this is a time where our Nation needs much hope, whether it comes from the devastation we have seen in the gulf coast in the southern region of our Nation, whether it is the families of our soldiers who find themselves giving of themselves and of their families to protect the rights and the freedoms in which we in this Nation take great pride, and it is also as we come to the consideration of a Supreme Court nomination by the Senate which I find to be one of the most important and consequential duties we have as an institution in our system of Government.

I think the American people look to us now with hope that we will work in a bipartisan way, in a way of union, in uniting our Nation to bring about a coequal branch of our Government that can reassure the American people of justice and of hope.

This is especially true when the candidate being considered has been nominated to the position of Chief Justice of the United States, not simply an Associate Justice but someone who is going to provide the leadership to the highest Court in our land.

As the Senate performs its duty under the Constitution with regard to this nominee, I am also mindful this is the first Supreme Court nominee I have been called upon to evaluate as a Senator from the great State of Arkansas. I have no doubt this is one of the most important nominations I will consider during my tenure in public service.

Given the import of this decision for the future of this Nation and the responsibilities I have to my constituents and my country, I have examined all of the information available about Judge Roberts' nomination to ensure I have given this matter the full attention it needs and, most importantly, that it deserves.

In making my decision, I very carefully and deliberately reviewed the record compiled by the Senate Judiciary Committee. Further, I have considered the views of Arkansans, both those who think Judge Roberts will make a fine Supreme Court Justice and those who have real concerns about the direction he might lead this very important Court.

I have also met with Judge Roberts privately to get a better sense of who he is as a person, his temperament, and, most importantly, what his experiences have been in his life that may form his views and the interpretation of the Constitution.

Additionally, I have considered the views of his peers and colleagues in the legal community on both sides of the political spectrum who know Judge Roberts, who have worked with him firsthand and have a firsthand knowledge of his works and abilities.

Finally, I have prayed. I searched my conscience and reflected on my principles as a Senator for the people of the

State of Arkansas, using my experience, coming from the salt of the earth in east Arkansas, a farmer's daughter, my experience as a wife, a mother, a neighbor, to make what I believe is the right decision and one I will have to live with for the rest of my life.

I want to say at the outset this has been one of the hardest decisions I believe I have been called upon to make since I came to the Senate more than 6 years ago. It has been difficult because the consequences of confirming a new Chief Justice are so profound.

Judge Roberts will likely serve on the Court for several decades, and I believe he will have more influence on the future of our Nation than any Member who serves perhaps in this body today.

This decision has also been difficult for me because of the manner in which this administration has handled this nomination, in some respects, and certainly many other nominations that have come before it.

When President Bush first ran for office in 2000, he told the American people he was a uniter, not a divider. He talked about how well he had worked with Democrats as Governor of Texas and that he was going to continue that approach as President to change the tone in Washington. And, oh, how that tone in Washington needed to be changed.

But sadly, that did not happen. President Bush has not followed through on that promise, and judicial nominations, unfortunately, are one of the most glaring examples of where his administration has fallen short. In my opinion, this administration has gone out of its way to divide this Nation and the Senate on judicial nominations, which I think is truly a disservice to our judiciary and to the American people.

When the Senate rejected only a handful of Federal appeals court nominees during the President's first term in office, I expected a uniter who would work with Senators, who expressed concerns, and nominate other qualified candidates who could win confirmation with broad bipartisan support. Instead, after winning reelection, the President renominated many of the same controversial nominees and essentially dared the Senate to challenge him again.

Reflecting on the last 5 years, his administration apparently believes it is better for them politically to pick a fight over judicial nominees than it is to pick sometimes qualified nominees who have earned the support and respect from those on both sides of the aisle in the legal community in which they work and in the Senate.

As a pragmatic Democrat who has always been willing to find common ground and to work in good faith with members of both parties to serve the best interests of my constituents, I am alarmed by the confrontational approach this administration has taken.

We can all be proud of the Founders of this great Nation who created our

system of government, where they wisely divided the power of appointment and confirmation of the Federal court Justices between the executive and legislative branches of our Government. They did this to ensure only the most qualified candidates who had the confidence of the President and the Senate would be confirmed to a lifetime seat on the Federal bench.

I truly worry that the political tug of war over the judiciary, which President Bush has encouraged, threatens to undermine the judicial selection process and with it our framework of checks and balances which has preserved for centuries the rights and freedoms we cherish as Americans, not to mention the sense of pride and comfort or peace of mind it provides the American people to know that in that third coequal branch of Government, they can rest assured that their freedoms, their rights will be justly directed.

To work properly, the process depends on mutual trust and respect between the executive and the legislative branches, and when that trust and respect is strained, our ability to do our very best as a government, to preserve and to protect a fair and independent judiciary for future generations, becomes in jeopardy.

So it is into this atmosphere of political confrontation that Judge Roberts was nominated to the Supreme Court. And it is why, frankly, I have had difficulty separating my profound disappointment with the administration and the distrust it has fostered from my opinion of Judge Roberts as an individual. So to separate that opinion of Judge Roberts that I needed to develop as an individual, as a lawyer, and potentially the next Chief Justice of the United States, ultimately, I concluded it is unfair to hold Judge Roberts accountable for the actions of the President who appointed him.

As I have set aside the history of the last 5 years to take a closer look at this nominee, it has become apparent to me that Judge Roberts does meet the test I believe we should strive to achieve in the judicial selection process. After careful thought and deliberation, I have concluded Judge Roberts is a very smart man who has an enormous respect for the law.

There is no question in my mind that Judge Roberts has the legal skills and the intellect necessary to perform his duties on the Supreme Court. He has impeccable academic credentials and has demonstrated an impressive command of the law and Constitution throughout his professional career and during his recent confirmation hearings.

I also believe that above all else, Judge Roberts is devoted to the Constitution and the institutional integrity of the judiciary and the vital role it plays in our system of Government.

I have no doubt John Roberts is a Republican, like the President who appointed him. But I don't believe his party affiliation will prevent him from

giving both sides in each case before the Court a fair and impartial hearing.

Simply put, I believe John Roberts cares more about following the law and maintaining the respect for the judiciary than he does about politics and ideology.

I base this conclusion on the respect and support he has earned from lawyers and colleagues on both sides of the aisle who know Judge Roberts well—they know him far better than I do—on the evidence in the record from his own comments and those of his colleagues that he has had an abiding respect for the Court's decisions and that he understands the value of continuity in the law, and on his distinguished career as a lawyer and advocate before the Federal judiciary over many years.

I regret Judge Roberts has made this decision more difficult than it needed to be by refusing to be more forthcoming about his views on protections in the Constitution for individuals, especially as those protections and guarantees relate to civil rights and gender equality.

As many of my colleagues have already mentioned, Judge Roberts wrote several memos when he worked in the Reagan administration in which he advocated for a narrow application of Federal antidiscrimination statutes, specifically the Voting Rights Act and title IX. Judge Roberts indicated in his response to questions about these memos during his confirmation hearings that he was representing the views of his client, the administration, without elaborating on whether he held those same views today.

He stated he could not say more regarding his views on those subjects because to do so might undermine his ability, if confirmed, to impartially consider similar cases that are likely to come before the Court.

I believe he could have said more on those and other issues before crossing that line, but I don't believe Judge Roberts is entirely to blame for failing to be more responsive.

The partisan atmosphere which pervades the confirmation process today almost guarantees that Senators are left with no choice but to ask legitimate questions of a Supreme Court nominee they know will not be answered. So the Senate is left to make a decision based on the limited information provided during the confirmation process and from a nominee's previous work and life experience.

My vote for John Roberts is by no means an endorsement of his nomination process, nor is it an endorsement of the decision by the administration to withhold documents from Judge Roberts' tenure in the Solicitor General's Office during the first Bush administration. That would be helpful to Senators in forming an opinion about this nomination. These are the types of documents previous administrations have made available to the Senate during the consideration of Supreme Court nominees in the past. There is no rea-

son to have not made them available in this instance. Future nominees to the Supreme Court, or any lifetime judicial position, may not possess the same outstanding personal qualities and impeccable reputation that helped Judge Roberts overcome his failure, and the failure of the administration, to respond more fully to legitimate requests for information. Indeed, there have been past nominees who have failed to receive Senate confirmation, at least partially because they refused to answer questions or release documents.

I feel that I have done my level best, despite my misgivings about the actions of this administration in the past, to fairly and carefully and in good faith evaluate this nomination, which is my duty as a Senator. I believe I have done that. It is my hope and expectation that, if confirmed, Judge Roberts will do likewise with respect to every litigant who comes before the Court, especially those who have not experienced the same opportunities with which he has been so richly blessed.

I believe Judge Roberts will do that, and therefore I will support his nomination. I join my other colleagues who look to leadership in hopes, in hopes that we can mend many of the fences and the difficulties that have been conjured up by very partisan attitudes in these nomination processes, but to look toward Judge Roberts in a way that understands and takes in full faith his commitment that he will administer the law through the courts in a just way, without regard for his political or personal views but with the kind of sincere devotion to the Constitution and the rule of law and the precedent of the courts that he has expressed to many of us personally; that he will move forward, and deal with every litigant who comes before him in Court in a fair and just way.

In closing, I wish to comment briefly on the future as we move beyond this nomination. When I first ran for office as a young single woman in the early 1990s, I did so because I had hope, hope that I could improve my Government and make it more responsive to the needs of the citizens of my State. Perhaps my greatest attribute was the fact that I was naive. It never occurred to me that I didn't belong here; perhaps that as a young woman, this might have been a place a little bit out of touch for me. But I ran because I believed in my country, I believed in the people of my home State, and I believed in what I had to offer.

I see a good bit of that in Judge Roberts as well. I have tried my best each day that I have been privileged to serve in public office to fulfill that commitment, and today I still have great hope for our Nation's future and its government. I also have hope that we can improve the judicial nomination process as we move forward if all people of good will on both sides of the aisle will work together in a spirit of cooperation and good faith. I stand ready to do

my part to overcome our differences as a nation because I believe our country is so much stronger if we are united and not divided.

As we prepare to consider a second Supreme Court nominee in the coming weeks, I hope President Bush will take that opportunity to do the same.

I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. I note the time is under Democratic control.

Mr. GRASSLEY. I was aware of that. I was asking if there are any Democrats who would object to my starting my comments at this point.

The PRESIDING OFFICER. Without objection, the Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, before the Senator from Arkansas goes, I do not have prepared remarks, but to try to put her a little bit at ease about these decisions that we have to make on the Supreme Court because they are very important decisions, I would reflect on some history.

For instance, I probably had the same concerns about President Clinton and Justice Breyer and Justice Ginsburg when I voted for them. Regarding the political positions that Justice Ginsburg stood for in her life before coming to be a judge, I wouldn't agree with many of them. But she was totally qualified to be on the Supreme Court, and I voted for her based upon the proposition that Alexander Hamilton said that the purpose of our activities here of confirming people for the courts is basically two. Maybe there is some historian around who will say GRASSLEY has it all wrong, but I think it was, No. 1, to make sure that people who were not qualified did not get on the courts. In other words, only qualified people get appointed to the courts and that political hacks do not get appointed to the courts.

That is somebody who was around when the Constitution was written, and the Federalist Papers, stating those things about our role. So I have a fairly flexible point of view of how I ought to look at people, even those with whom I disagree.

In regard to what the Senator said about hoping what President Bush would do, or what he has done in the past in regard to these appointments, I would want you to look at that as I looked at President Clinton being elected in 1992. I don't know whether court appointments were an issue in that campaign as they were in 2000 or 2004, but I assume that he had a mandate to appoint whom he wanted appointed, as long as they were not political hacks and as long as they were qualified. So I gave President Clinton that leeway.

I am hoping that even more so with President Bush, since he made very clear to the people of this country that he was going to appoint strict constructionists and people who were not going to legislate from the bench. You may not like what he is doing, but he

is doing exactly what he said he was going to do, and I hope that would enhance credibility to the American people of at least one more politician who keeps his word when he is in office. He appoints whom he said he was going to appoint, and that is what he is doing here. It should not be any surprise, and I hope he would be respected for doing that and have leeway in doing that, as long as they are not political hacks but they are qualified.

The other one is, over a long period of time, to maybe take away some worry about whether or not we have to be concerned about this specific person doing exactly what he said he was going to do. I would refer to Judge Souter. I was thinking Judge Souter was maybe not exactly whom I would want on the Court, but he would be pretty close to it. During that debate—I think it was in committee and not on the floor—there was one of the Senators on your side, who I have named but I will not name him this time, who made this point about Justice Souter—that he didn't have respect for the right to privacy and then was a threat to *Roe v. Wade*.

Here is one Republican who thought maybe Souter would work out OK, from my point of view. There was a Democrat over there who thought Souter would be a threat to *Roe v. Wade*. We were both wrong.

So it is difficult to predict what people are going to do down the road, so you have to look at are they qualified. I don't have any doubt but that Judge Souter is qualified to be on the Court. But I misjudged him and this Democratic Senator also misjudged him.

The other one is, if you worry about Republicans, to look at what they might appoint versus what Democrats might appoint, and you end up getting something from a Republican you don't like. I assume you are more to the liberal end than the conservative, and you have to stop to think that a Republican appointed John Paul Stevens and a Republican appointed Justice Souter, two of the four most liberal people on the Supreme Court.

To some extent, you get what you want from a Republican President as much as you do from a Democratic President because the other two were appointed by President Clinton.

Then, also, from a historical standpoint, time brings a great deal of balance to the Court. Justices change their views sometimes over a period of 25 or 30 years on the Court. Or Presidents that you might be thinking are appointing conservatives end up appointing liberals—they end up being liberals on the Supreme Court.

History is going to bring balance to the Court. Right now, if Justice Roberts is appointed, we will have four liberals. I don't need to name them. Everyone understands who they are. You are going to have three conservatives: Roberts, Scalia and Thomas. And then you are going to have two moderates, Kennedy and O'Connor—O'Connor for a

little while now. So you have some balance, but it is tilted a little bit more toward the liberal side than it is to the conservative side.

Maybe, when President Bush gets done with this next nominee, there will be even more balance, four conservatives and four liberals and one moderate, Justice Kennedy left as a moderate.

Then I keep thinking about what we ought to do if we want to bring balance to the Court, and I hear more about that on your side than I do on this side: Let's just say that Justice Ginsburg, obviously a woman, and Justice O'Connor is obviously a woman; we have two women, so maybe we ought to have a woman appointed to the Supreme Court.

The liberal women of America have Justice Ginsburg as voting the way that they think Justices ought to vote. Maybe the conservative women of America are entitled to a seat on the Supreme Court. We might be fortunate enough to get appointed a very qualified woman who is also a strict constructionist. Then we would have one liberal woman and we would have one conservative woman on the Supreme Court, and we have even more balance brought to the Court.

So you see history kind of takes care of these things. I hope 25 years from now—and you are a lot younger than I am and you will be around here 25 years from now—that you are satisfied that history will take care of all these problems that are brought up about what the Supreme Court might do 10 or 15 years from now.

Mrs. LINCOLN. If the Senator will yield, I want to say how grateful I am to my chairman because he always does provide hopefulness, without a doubt, as well as a bipartisan attitude, in trying to get things done.

I guess you are exactly right. Some of my fear comes from the role that I have in helping to create history and the thoughtfulness that I need to put into it.

Some of it also certainly comes from recognizing that there is a right way and a wrong way to do everything. My hope is, as we go through these processes, that we become a more united body, looking at the right way to go about things and a more unified way.

I am grateful to the chairman. He is always a wonderful Member of this body to work with and he always brings balance and hopefulness and I am glad he is my chairman.

Mr. GRASSLEY. She said she is glad I am her chairman. She means she and I serve on the Finance Committee together. I don't want to mislead the audience, I am not chairman of the Judiciary Committee.

Mr. President, I will proceed, then, with the remarks I wanted to make in regard to my support for Judge John Roberts to be the next Chief Justice of the United States. I do support that nomination. Judge Roberts has earned our vote. He understands the proper

role of a judge in our constitutional democracy. He understands the courts are not superlegislatures.

He understands that I am elected to be a legislator, to make law. If people do not like the law I make, they can vote me out of office. But if Judge Roberts makes law, with a lifetime appointment to the Court, he can never be voted out of office unless he is impeached. He understands that the courts are not responsible for addressing every social ill or injustice that, in fact, ought to be settled through law and public policy. He understands that courts do not create new rights. Rather, courts protect those liberties and rights guaranteed by our Constitution and the laws appropriately enacted by Congress and State legislatures.

He also understands that there are a great deal—infinite—number of unenumerated rights out there for you and me that are reserved under our Constitution to the States and to the people thereof.

Judge Roberts said this to the committee:

Judges and Justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make rules, they apply them.

Judge Roberts underscores that "judges and Justices" make sure everybody plays by the rules. But these rules limiting the power of Government over the people apply to the courts as well. He made it very clear to us. In Judge Roberts' view, "Not everybody went to a ball game to see the umpire."

That is the right approach to the job of a Supreme Court Justice.

Judge Roberts has demonstrated, particularly to the committee, that he understands the limited nature of judges, and especially the humility and the modesty necessary to be the kind of judge we need on our highest Court. Judge Roberts believes that courts may act only to decide cases and controversies. That is exactly what it says in article III of the Constitution. So judges cannot address every unaddressed and unremedied social problem.

Judge Roberts said:

Judges have to decide hard questions when they come up in the context of a particular case. That is their obligation. But they have to decide those questions according to the rule of law, not their own social preferences, not their policy views, not their personal preferences but according to the rule of law.

That is what he told us in committee.

Judge Roberts also said:

We don't turn a matter over to a judge because we want his view about what the best idea is, what the best solution is. It is because we want him or her to apply the law. Let me say parenthetically, as I would interpret that, not to make law, but to apply the law.

He went on to say:

They—

Meaning judges—

are constrained when they do that. They are constrained by the words that I choose to

enact into law in interpreting that law. They are constrained by the words of the Constitution. They are constrained by the precedents of the other judges that became part of the rule of law that they must apply.

This answer he gave to the committee demonstrates that Judge Roberts believes in and will exercise judicial restraint on the bench. This principle of judicial restraint is a cornerstone of our constitutional system, best defined by the tenth amendment—that that power is not specifically given to the Federal Government or reserved to the States and the people thereof. This is the defining characteristic of the judiciary in our Government of divided powers.

In particular, I was pleased when Judge Roberts told the committee that he has no agenda to bring to the bench. I want to remind you what Judge Roberts said in a very short opening statement. To quote a little bit of it:

I come before the committee with no agenda. I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda but I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record according to the rule of law, without fear or favor, to the best of my ability, and I will remember that it's my job to call the balls and strikes and not to pitch or bat.

I was also pleased when Judge Roberts told the committee that:

I had someone ask me in this process: Are you going to be on the side of the little guy? And you obviously want to give an immediate answer. But as you reflect on it, if the Constitution says that the little guy should win, the little guy is going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy is going to win because my obligation is to the Constitution. That's my oath.

So, obviously, Judge Roberts will strive to uphold the Constitution and the laws of the United States, regardless of his personal beliefs.

I want to take a little time to commend Chairman SPECTER for conducting a fair and respectful hearing. I am pleased we are looking at a timely up-or-down vote on this nominee. Obviously, so many people for so long were inclined to filibuster judges, and to have this important person—this “well-qualified” person—go through in the tradition of the Senate doing what the Constitution says to do, give its advice and consent with a 51-vote margin, is something that surprises me to some extent after the last 2 years. But to have it happen gives me a very warm feeling toward all my colleagues for having that up-or-down vote.

Article II of the Constitution puts the appointment power in the executive, and says the President gets to nominate the person of his choice to the Supreme Court. And President Bush in an unprecedented manner consulted with more than 70 Senators on both sides of the aisle before sending up Judge Roberts' nomination. Presi-

dent Bush didn't have to do that under the Constitution. But it was wise for him to do so.

Even though I have been a member of the Judiciary Committee for my 25th year, I don't remember a President who has talked to me about who I think ought to be appointed. I wouldn't want to say over 25 years that I couldn't have forgotten some Republican or Democrat talking to me about it, but I don't remember. I was consulted by this President on the type of person I thought should be nominated. I was even offered to give names, if I wanted to. And I took advantage of giving my advice to him.

At the hearing which Senator SPECTER conducted, Senators were able to ask numerous questions of the nominee over a period of 3 days. The Judiciary Committee also reviewed thousands of documents, opinions, and other information produced by the White House.

Throughout the process, Judge Roberts was patient; he was candid and forthcoming in his responses.

Judge Roberts clearly has been the most scrutinized judicial nominee to come before the Senate in my years on the committee. No nominee in these years before the committee has testified as thoroughly and comprehensively on his judicial philosophy as Judge Roberts. I have gone through 10 Supreme Court hearings. Judge Roberts' command of the law and the facts of cases was without precedent.

Still, some of my colleagues objected to Judge Roberts' refusal to review the results of cases. But his refusal was absolutely the right thing to do. Judge Roberts wisely resisted the bait to confuse results and reasoning when it comes to the judicial function. No doubt this greatly frustrated some of my colleagues, particularly on the other side of the aisle, who wanted to impose litmus tests on all judicial nominees, who want to extract commitments from nominees to rule in a predetermined way, their political way, regardless of the facts of the law.

If they can't get that, if they can't get allegiance to their personal political predilection, and work with their far-left activist groups, well, then it seems as though that nominee isn't worthy of their vote.

It stymies me why it would be wrong for the President of the United States to ask a nominee if they support *Roe v. Wade* or not—and Judge Roberts under oath answered the question of whether the President discussed it with him, and the President didn't discuss it with him—but a lot of Senators were saying, or at least implying, that it would be wrong for the President to get that sort of litmus test type of commitment from a nominee, but some of those very same Senators found it not in the least bothering their conscience to ask him exactly that same question and expect an answer from him.

Frankly, I have no way of knowing how Judge Roberts will rule on the hot-button issues in the next 25 years.

I acknowledge that he might rule in ways that will disappoint me in some of the same ways that I was disappointed by Justice O'Connor, Justice Kennedy, and Justice Souter in the years since they have been on the Court. These were all nominees I supported through the Supreme Court confirmation process, but no Senator has a right to impose his or her particular litmus test on an otherwise qualified nominee.

I voted, as I said earlier to the Senator from Arkansas, for Ruth Bader Ginsburg, as did almost all of my Republican colleagues, because we acknowledge the President's—that was President Clinton—primacy in the appointments to the Supreme Court, even where we knew this Justice Ginsburg had a different philosophy. I knew then that I shared very little in terms of political, social, or philosophical views of Ruth Bader Ginsburg. As everyone knows now, Judge Ginsburg was then affiliated very closely with extremely liberal views—views a majority of the American public would deem way out of the mainstream. But the Judiciary Committee evaluated her as a fully competent person to serve on the Supreme Court. And then because of that, because we were doing what we should constitutionally be doing, we voted her in 96 to 3.

As I said in committee, it seems there is a whole new ball game out here when we have an individual with the competence, intelligence, and brilliance of Judge Roberts who nonetheless is going to get a lot of Democrats voting against him. This says far more about the Democrats today than it does about the nominee John Roberts.

The truth is that at another time Judge Roberts would have been confirmed 100 to 0, and properly so, as Justice Scalia 20 years ago was approved almost unanimously. Today's Democrats have made the needle's eye for approving so small, so impossibly tiny, even the Supreme Court giants of the past could never pass through it.

The reality is that today's Democrat Party seems to be beholden to far left pressure groups who know their radical agenda for America can only be implemented by judicial fiat. I am sad to say that the other party has expressed an unquestionable loyalty to what is probably their base but a base out of touch with the vast majority of Americans.

When we finally cast our vote on the nomination of Judge Roberts, most Senate Democrats will show they will be voting in lockstep with the demands of their leftwing interest groups regardless of how qualified, brilliant, or worthy the nominee is.

On the other hand, I have to admit since I prepared these remarks, I have heard speeches by two Members of that party within the last hour who I did not think would come to the conclusion of voting for him, who have said within the last hour they were going to vote for Judge Roberts. I am pleased with that.

But we still have a situation that has been demonstrated over the last 3 years, up until May of this year when some judges finally got through for the circuits, that judges were being held up for very partisan reasons. The other party and their outside groups have their own agenda. They want the Supreme Court or courts, generally, to implement it, particularly things they might not be able to get through the Congress of the United States.

My colleagues like to say they voted for more judges appointed by Republican Presidents than judges appointed by Democrat Presidents. But my friends on the other side of the aisle who say this, are not telling the whole picture. Sure, they voted for a lot of Republican nominees during my time in the Senate. More Republican nominees have been sent up for consideration than Democrat nominees. The point is, the Democrats have stuck like glue to their outside interest groups through thick and thin and voted in lockstep against more Republican-appointed judges than Republicans have voted against Democrat-appointed judges. That has been by a landslide margin.

The fact is, a majority of the Democrats voted in lockstep against Judge Bork and Justice Thomas. A majority of Democrats voted in lockstep against Justice Rehnquist when he was elevated to Chief Justice.

On the other hand, Republicans voted overwhelmingly for President Clinton's two liberal nominees, Justices Ginsburg and Breyer. So I think my party has shown it is not wedded to the single-issue interest groups.

My friends on the other side of the aisle are weaving revisionist history saying the more conservative Justices of the Court, such as Scalia and Thomas, are the ones who are really the judicial activists on the bench. But we all know this is just not true.

The American people know what is really going on. The liberal leftwing interest groups and Senate enablers, as my friend, Senator HATCH, has sometimes called them, want to win in the courtroom what they cannot win in the ballot box. The Democrats have taken this to a new level. They are already talking about filibustering the next nominee, and we do not even know who that is yet. They are really the ones who are judicial activists.

We should take care because the independence of the Federal judiciary is at stake. Our entire framework of government as we know it and was intended by the Framers is at stake.

We are told the Democrats are laying the groundwork for the next Supreme Court nominee by sending a message, I presume, to the President and those of this party. These messages are an argument that Justice O'Connor must be replaced by a liberal or moderate, and that individual should be a woman or another minority, claiming the balance of the Court must be maintained at all costs.

I hope I made this clear in my comments that Senator LINCOLN listened to so closely, and that was that history takes care of a lot of this. Of the four liberals on the Supreme Court today, two were appointed by Republicans, President Ford and President Bush 1. The moderates, O'Connor and Kennedy, were appointed by a Republican President. So we do not know what we get. I wish we did. I wish we could predict 25 years from now, but we can't.

The Democrats did not expect President Clinton to appoint a moderate judge to replace Justice Byron White. I remind my colleagues that Justice White was one of the two Justices who dissented in *Roe v. Wade*. We Republicans did not say: Well, Justice White is retiring so we need to make sure we appoint another person like Justice White to the Supreme Court. President Clinton wasn't elected to appoint people the Republicans wanted.

The PRESIDING OFFICER. Under the previous order, the time from 6:20 to 7:20 is under the control of the Democrat side, if the Senator would like to ask unanimous consent to finish his remarks.

Mr. GRASSLEY. I ask unanimous consent for 3 or 4 more minutes.

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

Mr. GRASSLEY. So we get appointments such as Ruth Bader Ginsburg, totally qualified to be on the Court. I voted for her; Justice Breyer, totally qualified to be on the Court, I voted for him. We did not try to second-guess President Clinton.

Clearly, Justice Ginsburg does not share Justice White's philosophy. Yet Senate Republicans overwhelmingly confirmed her, with only three "nay" votes. The fact is, the President picked people they thought would be good Justices.

The bottom line is we should not be thinking of liberal, conservative, or moderate judges—men or women for that matter. We ought to think of who is qualified. If you are qualified for the job, you ought to get the vote of the Senate. Someone who has the right temperament and integrity on the job is also a requirement. But these liberals I voted for have had that as well.

Judge Roberts recognized this problem, politicizing the Federal bench, and in particular the Supreme Court, when some of my colleagues on the other side of the aisle attempted to pin him down on certain litmus test questions at his nomination hearings. Judge Roberts said:

[I]t is a very serious threat to the independence and integrity of the court to politicize them. I think that is not a good development to regard the courts as simply an extension of the political process. That's not what they are.

Judge Roberts went on to say:

Judges go on the bench and they apply and decide cases according to judicial process, not on the basis of promises made earlier to get elected and promises made earlier to get confirmed. That's inconsistent with the independence and integrity of the Supreme Court.

I am in total agreement with that statement. So when Judge Roberts testifies his oath is to uphold the Constitution and the laws of the United States and that he won't impose a political or social agenda in his decision-making, that is what we need to hear. That is because the bottom line is, irrespective of Judge Roberts' impressive resume, brilliant intellect, and personal integrity, he would not be qualified to be a Supreme Court Justice unless he was truly willing and able to subject himself to that judicial restraint.

Judge Roberts says his obligation is to the Constitution and that is his oath. He says he will not impose his personal views on the people but will make decisions in an impartial manner in accordance with the Constitution, the laws enacted by Congress. He says he will be modest in his judging and exercise judicial restraint. He says he will respect the limited role of a judge in society. That is the kind of Justice we need to see on the Supreme Court. That is the kind of Justice the Senate should support.

I yield the floor.

Mr. JEFFORDS. Mr. President, generally when we vote, the decisions we make can be revisited within a few months or years. This year's appropriations policy can be replaced by a new one next year. Unintended consequences can be rectified, legislation fine tuned.

But the consequences of confirming a Supreme Court Justice last well beyond a Senator's term and maybe even his or her life. Given Judge John Roberts' age, he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

Not surprisingly then, I consider voting on the confirmation of a Supreme Court Justice, and especially the Chief Justice, one of the most important responsibilities of a Senator.

While I have considered and voted on four Supreme Court nominees during my tenure in the Senate, the nomination of Judge Roberts to be the 17th Chief Justice of the U.S. Supreme Court is my first chance to consider the nomination of an individual to be the Chief Justice.

I have spent a great deal of time the last few weeks considering this nomination. I looked at Judge Roberts' decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandums he wrote while working in the Reagan administration, watched the nomination hearing, and listened to what my Senate colleagues have said on this nomination. After considering all of this, I have decided to support Judge Roberts' nomination to be Chief Justice of the U.S. Supreme Court.

My decision to support Judge Roberts did not come easily. As my father, who served as the Chief Justice of the Vermont Supreme Court, first taught me, the law trumps any personal beliefs when a judge is working to reach

a decision on a case. A fair, equal application of the law is what Olin Jeffords was known for, which is a reflection of Vermont's view of the judiciary.

As the former attorney general in Vermont, and as a lawyer, I have always been deeply devoted to the Framers' concept of an independent judiciary filled with intelligent, capable individuals serving the law and the public. As a Senator, I have watched in dismay as this independence has increasingly been threatened and demeaned by partisan bickering.

It has been my general policy while in the Senate to support the executive branch nominations made by a President, provided the individual is appropriately qualified and capable of performing the duties required of the position. However, while a position in the executive branch lasts only as long as the President remains in office, an appointment to the Federal bench is for the life of the nominee.

I believe it would be illogical to assume that our Founding Fathers used the phrase, ". . . with the Advice and Consent of the Senate . . ." in the Constitution to mean the Senate can only look at the legal experience and character of a judicial nominee. So in addition to those factors I also look at a nominee's judicial temperament and ideology and whether these factors will influence the decisions they make.

This higher standard is especially appropriate for a nominee to the U.S. Supreme Court. This Court is the final authority on the meaning of laws and the U.S. Constitution. The Supreme Court gives meaning to what is the scope of the right of privacy; whether Vermont's limits on campaign contributions and spending are constitutional; what is an unreasonable search and seizure; how expansive the power of the president can be; or whether Congress exceeded its power in passing a law. These are issues that affect everyone, and it is the responsibility of the Senate to closely and carefully review every nominee to the Supreme Court.

There are clearly many stances Judge Roberts took as a lawyer in the Reagan administration that I do not agree with. Here it is unfortunate the Senate has been denied access to the memorandums Judge Roberts wrote while part of the Solicitor General's office. These documents would have provided a more complete picture.

From the record we have, nobody has raised a question on whether Judge Roberts has the proper legal experience or character to be the next Chief Justice of the U.S. Supreme Court. It also appears to me from a review of his judicial decisions that Judge Roberts has not allowed his judicial temperament or ideology to influence his decision-making process.

This belief was reinforced by Judge Roberts himself in sworn statements he made to the Senate Judiciary Committee. In his opening statement Judge Roberts stated, "I have no platform."

He also said, that he would "confront every case with an open mind . . . And I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability." Near the end of 3 days of testimony Judge Roberts reiterated this view when he said, "I set those personal views aside."

With the information and sworn testimony on the record it is clear Judge Roberts has the necessary legal experience and character to be the Chief Justice of the U.S. Supreme Court. It also appears that Judge Roberts will use the law and the Constitution to make his judicial decisions, not his ideological or personal beliefs. Judge Roberts gave this pledge at the conclusion of his opening remarks, "I will be vigilant to protect the independence and integrity of the Supreme Court, and I will work to ensure that it upholds the rule of law and safeguards those liberties that make this land one of endless possibilities for all Americans." I trust he will stay true to these words during his tenure as Chief Justice. History will be the judge.

Finally, let me acknowledge and thank the Senate Judiciary Committee. Senators SPECTER and LEAHY led a dignified, bipartisan and thorough hearing on Judge Roberts. For all this hard work they deserve our thanks and appreciation.

Mr. GREGG. Mr. President, I rise today to speak on the nomination of Judge John Roberts to become Chief Justice of the United States. If confirmed, which is widely expected, Judge Roberts would be the seventeenth Chief Justice in Nation's history. As such, this nomination is historically significant, both in its relative rarity and its potentially lasting impact on our judiciary. The confirmation process therefore warrants serious, meaningful, and dignified consideration by the Senate. I believe that the Senate has met this responsibility over the past weeks, in spite of the efforts by outside groups and the urgings of some members to turn the process into something much different. After closely following the confirmation hearings and careful review of the nominee, I strongly support President Bush's nomination of Judge Roberts to be the next Chief Justice.

Let me first start by saying the obvious, Judge Roberts is an incredibly talented and gifted attorney. Armed with a sharp legal mind and extensive experience making arguments before the Supreme Court, this man is truly one of the best in a very select group of legal superstars—namely, the exclusive club of Supreme Court appellate specialists. Judge Roberts has therefore rightfully received broad praise from coworkers and from all corners of the legal community. He also is respected by the very Justices whom he may soon be sitting alongside, and he has served our Nation ably on the D.C. Circuit Court of Appeals. We are all familiar with these facts, and even my col-

leagues who somehow oppose this nomination have not questioned Judge Roberts' intellect or legal skills.

Judge Roberts has testified, under oath, about his views regarding the proper constitutional role of a Supreme Court Justice and the judiciary branch overall. Consistently and repeatedly, he has said that Justices and judges should approach each case with an open mind and decide cases according to the rule of law—and not based on their own personal preferences or policy views. Judge Roberts has testified, again under oath, that he would fully and fairly analyze the legal arguments that come before the Court. He has made it clear that judges are not politicians or legislators, and that he is committed to upholding the cherished liberties and rights that are enshrined in our constitution. Roberts also has stated, under oath, that he is mindful of precedent, recognizes constitutional protections for the right to privacy, and strongly believes in protecting the judiciary's independence.

During 20 hours of oral testimony and after responding to approximately 500 questions, Judge Roberts made it clear—consistent with past precedent for other nominees—that he is not going to comment on unsettled areas of law that may come before the Supreme Court. Although some outside groups and some of my colleagues chafe at such comments, it is wholly appropriate and, in fact, ethically required to protect the Court's integrity. Moreover, many of these same individuals seeking a change in precedent did not complain when previous judicial nominees invoked this requirement, such as now Justice Ruth Bader Ginsburg, whom I supported back in 1993 during her confirmation proceedings. But now, sadly, it appears that some of my colleagues want judicial nominees, or at least those nominated by President Bush, to start issuing opinions on future cases even before the nominees are confirmed, before the facts of the cases are ascertained, and before both sides present their legal arguments before the Court.

This focus on litmus tests and political, even religious, ideology during the confirmation process not only undermines the Supreme Court's role—namely, that of an impartial arbiter of the most important cases—but also represents a potentially dangerous evolution in the history of the confirmation process. Throughout the history of the Senate, Supreme Court nominees have not been expected to swear under oath what their opinions will be on unsettled areas of law. I believe that this is a good thing. If the confirmation process were to become a series of litmus tests and ideological hurdles, the Senate would be politicizing the one branch of government that the Founding Fathers intended to be above politics. The men and women who serve on the Federal bench would no longer be determined on the basis of their legal qualifications and dedication to uphold

the rule of law, but mainly based on who wins at the ballot box and on certain hot button issues. Is this what we or the American people want?

I am hopeful that the Senate will not go down this path and establish a precedent that we will someday look back on with regret. Fortunately, most of my colleagues, led by the majority leader, share this same hope and have done an admirable job throughout the Senate's review of the Roberts nomination. They have stayed true to the Senate's proper role under the Constitution and to what truly matters when confirming a judicial nominee. I would never want to come before a court knowing that the judge already has made up his mind based on certain personal views and therefore I will never get a fair hearing. Rather, I want someone who is bright, considerate of different viewpoints, experienced, and dedicated to upholding the rule of law with the Constitution as his guide. In his life, career, and under oath, Judge Roberts already has shown that he would be precisely this type of Chief Justice. In fact, I cannot recall a judicial nominee in recent memory that lives up to this ideal as much as Judge Roberts. As a result, I am pleased to support this nomination and applaud President Bush for making such an outstanding choice.

Mr. INOUE. Mr. President, I had the privilege and honor of meeting with Judge Roberts. I was impressed by his legal scholarship, but expressed a hope that he would be forthright and open with the American people as he progressed through the Senate confirmation process. Although I must regretfully conclude that there are still questions outstanding on Judge Roberts' record, in light of the urgency of ensuring that our Nation's Supreme Court has its full complement of Justices, I agree with my Democratic and Republican colleagues that his nomination should be given an up-or-down vote.

I have studied the development of the Supreme Court by our Founding Fathers, and it is apparent to me that our Nation's leaders did not want this group of citizens to be subjected to the political pressures of the day, so they provided for lifetime appointments, with no termination date. Further, candidates were not required to be lawyers, perhaps as a reminder that legal brilliance alone does not qualify a man or woman to sit on the bench of our highest court. Integrity, compassion, and wisdom are also required in equal—or perhaps greater—measure.

Reconciling lifetime appointments with the demands of democratic elections, created understandable consternation. After much debate, our Founding Fathers provided that the executive and legislative branches of our Federal Government would employ every means available to them to make certain that the selection is a wise one, and one that a nation could live with for the lifetime of the judge. Today, we walk again the careful path laid out by

the Founding Fathers to ensure for the American people that Judge Roberts is a man worthy of their trust.

Fully realizing that Judge Roberts will most certainly receive substantial support from the Senate, I will cast my vote against this appointment. I do not object to Judge Roberts' politics, nor do I object to his personal beliefs. Our democracy guarantees him both the freedom to think and speak as he chooses, and the opportunity to ascend to any position in our government for which he is qualified.

My concerns lie instead with the failure of the Department of Justice and the White House to honor the request of members of the Senate Judiciary Committee to make available certain documents relating to 16 cases Judge Roberts worked on when he served as Principal Deputy Solicitor General. These documents, written during Judge Roberts' tenure in his most senior executive branch position, are relevant to the Senate's evaluation of his fitness to serve as the Chief Justice of the highest court of this land.

I am not suggesting that these documents might contain dark shadows—far from it. The refusal of the White House to allow the American people to see this corner of Judge Roberts' record, however, deviates from the careful road our Founding Fathers paved for us so many years ago, and leaves Americans wondering, "Do those papers hide something I should know?"

Many groups have questioned Judge Roberts' position on civil rights. His early writings outline defiance toward review of civil rights violations by Federal courts, and many have asked how his views have evolved over the years. As one who has spent his life fighting against baseless prejudice and discrimination, I share these concerns. Would the papers withheld from our sight have answered these questions? We will never know.

Throughout my career I have supported a woman's right to choose. I have supported *Roe v. Wade*. I have also supported stem cell research. The responses Judge Roberts provided when questioned about these issues did not assure me that these questions would be seriously considered. I hope I am wrong. Perhaps the papers hidden from our sight would have allayed my fears.

Similarly, my questions on Judge Roberts' thoughts on the death penalty, and habeas corpus review by the Federal courts will never be answered.

I am not against the person. As I noted, I am impressed by his legal scholarship. Although we seem to differ on the fundamental issues of the day, I respect his right to freely form and hold his own opinions. I do, however, object to the failure of the White House, the Department of Justice, and ultimately Judge Roberts himself, to make available documents from his past. The American people deserve a nominee unclouded by needless secrecy—and our democratic heritage demands that the President and the Con-

gress work together to confirm the worthiness of any man or woman to sit as a Supreme Court Justice. To affirm my allegiance to these most American of principles, I will vote, "no."

Mr. CHAFEE. Mr. President, after careful consideration, I will support the nomination of Judge John Roberts to be Chief Justice of the Supreme Court.

When he was nominated by President Bush in July, it was clear that Judge Roberts had the necessary professional qualifications to sit on the Supreme Court. He graduated from Harvard College, *summa cum laude*, in 1976, and received his law degree, *magna cum laude*, in 1979 from the Harvard Law School where he was managing editor of the *Harvard Law Review*.

Mr. Roberts clerked for Judge Henry J. Friendly of the U.S. Court of Appeals for the Second Circuit and for then-Associate Justice William H. Rehnquist.

John Roberts has served his country twice, working for the President. First, he served as Special Assistant to United States Attorney General William French Smith. He returned to government service in the first Bush administration, serving as Principal Deputy Solicitor General of the United States.

As a lawyer, Roberts has presented 39 oral arguments before the Supreme Court covering the full range of the Court's jurisdiction, including admiralty, antitrust, arbitration, environmental law, first amendment, health care law, Indian law, bankruptcy, tax, regulation of financial institutions, administrative law, labor law, federal jurisdiction and procedure, interstate commerce, civil rights, and criminal law.

During the hearings before the Senate Judiciary Committee, Senators extensively probed the judicial philosophy of Judge Roberts. I think our colleagues Senator SPECTER and Senator LEAHY did an excellent job and conducted a fair and thorough hearing.

We do not know how Judge Roberts will rule in many cases. What we do know is that he was nominated by a President who, in the glare of the lights of a campaign, clearly indicated the type of Supreme Court nominee that he would favor. We also know that Judge Roberts is an extraordinarily accomplished man with the right temperament.

I have long noted that I believe we must retain an appropriate balance on the Supreme Court. I was pleased that during the hearings, Judge Roberts unequivocally acknowledged that the Constitution contains a right to privacy. He further testified that the right to privacy is not a narrow right. He explained his belief that the right to privacy was sufficiently broad to allow the courts to apply it to changing circumstances. It was important to hear Judge Roberts state that as a Supreme Court justice, he would strive to follow precedent in order to ensure stability in the law.

I wish Judge Roberts well as he takes his seat as Chief Justice of the United States Supreme Court.

Mr. HAGEL. Mr. President, 25 years from now most of the events and personalities of September 2005 will have passed into the pages of history. New Orleans will once again stand proudly as one of America's most vibrant cities; America will have been forced to address our need for energy independence; and the legacies of today's politicians will be the work of tomorrow's history professors. However, the confirmation of John Roberts as the 17th Chief Justice of the United States Supreme Court could well be even more significant in 2030 than it is today. The Roberts Court will have a profound and historic impact on the preservation of liberty for decades to come.

I first met John Roberts when we both served in the Reagan administration in the early 1980s. He is a person of enormous intelligence, character and judgement. His performance in his Senate confirmation hearings earlier this month transcended television ads, internet blogs, television talking heads, and the million dollar industry that reduces the judicial nominations process to caricatures and buzz words across the political spectrum. As many of my colleagues have noted, the Roberts confirmation hearings forced a serious examination of the role of the Supreme Court and the Federal Government in our society.

My beliefs about the role of Government were shaped and molded when I served on the staff of Nebraska Congressman John Y. McCollister in the 1970s. I remember him warning America about the wholesale disregard of the 10th Amendment to the Constitution which states:

The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.

In the late 1930s and early 1940s, the Supreme Court used Article I, Section 8 of the Constitution which gives the Federal Government the power to "regulate commerce," as a crowbar to pry open the lid of federalism and more fully insert the Federal Government into the lives of the American people. By the 1970s, we saw an expansion of the Federal Government's power our Founders could not have imagined.

At the same time that Congressman McCollister was invoking the 10th Amendment in the House of Representatives, Justice William Rehnquist was frequently the lone voice on the Supreme Court for the discretion of States and the integrity of the 10th Amendment. Much has been said about William Rehnquist in the last month. He was a giant of our time. As history considers his legacy, I believe his ability to move the Court back to a responsible position concerning federalism will be his greatest accomplishment. In this, he had a strong ally in Justice Sandra Day O'Connor.

The Founders did not arrive at the 10th Amendment by accident. It was a

necessary compromise in order to get the Constitution ratified. The Founders believed that the Constitution must protect the citizens of the United States from the consolidation of the Federal Government's power. History has proven them wise. Well meaning politicians never have enough power to do all the good things they believe are essential to the Nation's well-being. History shows that the growth of central governments is no substitute for the ingenuity and energy of individual citizens.

It was President Woodrow Wilson who said:

The history of liberty is a history of the limitation of governmental power, not the increase of it.

As we work to address 21st century challenges like terrorism, the proliferation of weapons of mass destruction and incredible advances in technology, we will constantly be confronted with the need to balance the expansion of the Federal Government's power with States rights, individual liberties and national security. As we act to secure our Nation, we must also guard against Federal overreaching. That is why measures like the sunset provisions in laws like the Patriot Act are so important.

In years to come, Congress will be under great pressure to reach into areas of law historically reserved for State and local governments, including land use, education, economic development, law enforcement and contract law, including marriage. A wise and judicious Supreme Court will be as critical as it has ever been to see America through this volatile time.

Decades from now, if John Roberts can look back upon a legacy of having protected the rights of States and individuals while helping strengthen America from within, and constraining the power of the Federal Government, then it will be a legacy worthy of succeeding William Rehnquist.

Mr. VOINOVICH. Mr. President, I rise today to urge my colleagues to vote to confirm Judge John G. Roberts as the next Chief Justice of the United States Supreme Court.

Before I discuss my reasons for supporting Judge Roberts, however, I would like to make a few remarks about the judicial confirmation process. Judge Roberts is the first nominee to the Supreme Court since I have been a Senator. I have been very pleased with how his nomination has been handled by both the White House and the Judiciary Committee and hope that this confirmation process will be a model for future confirmations.

I want to compliment the President, and in particular the President's Counsel Harriet Miers, for doing an excellent job in reaching out to Senators prior to Judge Roberts' nomination. Ms. Miers called me prior to Judge Roberts' nomination and asked me what qualities I thought the President's nominee should possess. Our conversation gave me confidence that

the President wanted to work with Senators to make sure that he nominated an excellent candidate—which I believe he succeeded in doing. I hope the White House undertakes the same outreach to the Senate prior to the President's nomination of the next nominee to the Supreme Court.

I also want to compliment Senator SPECTER and Senator LEAHY for the superb job they have done in handling the confirmation hearings for Judge Roberts. The hearings were fair and orderly and did not significantly interfere with the Senate's other business. I was very pleased that the questioning and debate on Judge Roberts was largely devoid of personal attacks. Indeed, I think the hearings gave the country an opportunity to see what type of judge and person Judge Roberts is. They also gave the country a wonderful lesson in constitutional law. I hope that Judge Roberts' confirmation hearing will serve as a model for future confirmation hearings for nominees to the Supreme Court.

Turning now to Judge Roberts' nomination, I believe that Judge Roberts is among the finest candidates to the Supreme Court in our Nation's history. I believe history will look back on the nomination of Judge Roberts as one of the most important legacies of the Bush administration.

When I spoke with White House Counsel Harriet Miers on the qualities I looked for in a Supreme Court nominee, I told her there were two qualities I valued most. First, a nominee must have outstanding professional credentials. Second, a nominee must be committed to the rule of law. I am very pleased to say that Judge Roberts is extraordinarily qualified on both of these counts.

It is difficult to see how Judge Roberts could have more impressive professional credentials. From his academic record to his Government service to his law practice, Judge Roberts has accumulated a remarkable record of achievement.

As my colleagues have previously noted, he graduated from Harvard College *summa cum laude* in 3 years, and graduated from Harvard Law School *magna cum laude*, where he served as the managing editor of the Harvard Law Review. During his time at Harvard, he was awarded numerous academic accolades, including being inducted into Phi Beta Kappa.

He has excellent Government experience, having served as a law clerk to then Justice William Rehnquist and in several top positions in the Reagan and Bush administrations, including as Associate Counsel to President Reagan and as Principal Deputy Solicitor General for the first President Bush.

Prior to his unanimous confirmation to the U.S. Court of Appeals for the D.C. Circuit, Judge Roberts was widely regarded as the best Supreme Court litigator in the Nation. Throughout his distinguished career, he argued an impressive 39 cases before the Supreme Court.

He has now served for 3 years as a judge on the D.C. Circuit, which is regarded as among the most important appellate courts in the Nation. As a judge, he has developed a reputation for fairness and producing well-written and well-reasoned opinions.

This impressive background has made Judge Roberts well prepared to be Chief 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 real world experience in Government and in how law interacts with the actual day-to-day operation of Government. Judge Roberts has the perfect balance of academic and practical experience.

Judge Roberts also has an impeccable ethical record. No question has been raised regarding his integrity or professionalism. On the contrary, the record is full of testimony praising his honesty and propriety from friends and former colleagues. Moreover, during his confirmation hearings he properly resisted the temptation to discuss cases and legal disputes that could come before him as Chief Justice so he would not bias his consideration of those cases and debates. While some would like to hear how Judge Roberts would decide future cases, it is clear that legal ethics prevent him from doing so. Furthermore, knowing how a nominee is going to decide future cases is not necessary to select good judges. When I was Governor, I appointed scores of judges and never—not once—did I ask how they would decide a case. Instead, I examined their credentials, reviewed their writings and past decisions and, on several occasions, personally interviewed them.

Given his professional achievements and ethical record, it is not surprising that the American Bar Association has given him a unanimous well-qualified rating, its highest rating.

I also believe that Judge Roberts 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 every statute. I may not agree with all of Judge Roberts' future decisions. However, I think that 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 Roberts' confirmation hearings, I was struck by how dedicated he is to the law and to correctly applying the law as a judge. As he stated during his testimony, "Judges and Justices are servants of the law, not the other way around." He also revealed his dedication to the law by recognizing that the judiciary has a limited role in our government. This means that judges are, to use Judge Roberts' words, "constrained by the words of the Constitution" and "by the precedents of other judges." Judges must interpret the law based on the text of the Constitution or statute, as

the case may be, and based on precedent, rather than on their own personal beliefs about how the case should be resolved. It is the role of Congress to pass legislation and the role of the courts to apply that legislation to particular cases. I believe Judge Roberts not only understands this distinction, but also will prove to be both a skilled practitioner and an eloquent advocate of judicial restraint.

Accordingly, I have every confidence that parties who appear before Judge Roberts will see a fair and brilliant judge who will decide their case according to the dictates of the law, not his own personal preferences.

When I initially spoke to Ms. Miers about the qualities I was looking for in a nominee, we were discussing a replacement for Justice O'Connor. Now that Judge Roberts has been re-nominated to be Chief Justice, I believe that Judge Roberts' management skills are an important aspect to consider. The Chief Justice is the top administrator of the Federal Courts, so any nominee to Chief Justice must possess management skills. Former Chief Justice Rehnquist was an excellent administrator, so Judge Roberts has some shoes to fill.

I had an opportunity to sit down with Judge Roberts, and I asked him about his management experience. We discussed his management responsibilities while he was at his law firm where he helped manage the firm's litigation group. While Judge Roberts has never managed anything as large as the Federal court system, our conversation convinced me that he has the management skills necessary to be Chief Justice. He clearly has already thought about how he will undertake his management responsibilities and what he needs to do in order to effectively carry out those responsibilities.

Finally, I want to offer some personal observations about Judge Roberts. Too often we view executive and judicial nominees through political or ideological glasses 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 as being a follower of a particular thinker or politician. This is unfortunate, as each nominee's own personality gets overlooked and we fail to see the most important aspect of a nominee. It is, however, a nominee's character that can have the biggest impact on his or her work.

In Judge Roberts, I believe the Senate has before it not only a nominee who has the capability to be a great Chief Justice, but also a nominee who is simply a wonderful person. During my meeting with him, I was struck by his gracious manner and humble attitude. He is clearly very smart and engaging, and it is a pleasure to hear him explain Supreme Court cases. But, he is also a very open minded person, who listens to others with sincerity and a willingness to hear their views. Yet

what struck me most about him was his humility. For such a brilliant and successful person, I did not detect a hint of arrogance. He is a dedicated family man with a good sense of humor whom I believe all Americans will be able to respect and admire.

I have been struck by how my regard for Judge Roberts has been echoed by so many others, including many whose politics may differ from his. I would like to encourage my colleagues to get a hold of an interview C-SPAN recently aired of Professor Richard Lazarus and Patricia Brannan, two longtime friends of Judge Roberts. Both Professor Lazarus and Ms. Brannan are Democrats, but they both expressed the highest respect for Judge Roberts and supported his nomination. Now, such testimonials may concern some of my Republican friends, but to me they are further signs that Judge Roberts has the ability to persuade people across the spectrum about the importance of judicial restraint.

In short, I believe Judge Roberts displays the openmindedness and humility that should serve as the paradigm of judicial temperament for members of the Federal bench.

In reviewing Judge Roberts' impeccable academic and professional record, his firm commitment to the rule of law, and his strong character, I believe that Judge Roberts is a nominee of the highest caliber. Indeed, I wonder if a stronger nominee could be found.

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

Mrs. CLINTON. Mr. President, the nomination of Judge John Roberts to be Chief Justice of the United States is a matter of tremendous consequence for future generations of Americans. It requires thoughtful inquiry and debate, and I commend my colleagues on the Senate Judiciary Committee for their dedication to making sure that all questions were presented and that those outside of the Senate had the opportunity to make their voices heard. After serious and careful consideration of the committee proceedings and Judge Roberts' writings, I believe I must vote against his confirmation. I do not believe that the judge has presented his views with enough clarity and specificity for me to in good conscience cast a vote on his behalf.

The Constitution commands that the Senate provide meaningful advice and consent to the President on judicial nominations, and I have an obligation to my constituents to make sure that I cast my vote for Chief Justice of the United States for someone I am convinced will be steadfast in protecting fundamental women's rights, civil rights, privacy rights, and who will respect the appropriate separation of powers among the three branches. After the Judiciary hearings, I believe the record on these matters has been left unclear. That uncertainly means as a matter of conscience, I cannot

vote to confirm despite Judge Roberts's long history of public service.

In one memo, for example, Judge Roberts argued that Congress has the power to deny the Supreme Court the right to hear appeals from lower courts of constitutional claims involving flag burning, abortion, and other matters. He wrote that the United States would be far better off with 50 different interpretations on the right to choose than with what he called the "judicial excesses embodied in *Roe v. Wade*." The idea that the Supreme Court could be denied the right to rule on constitutional claims had been so long decided that even the most conservative of Judge Roberts's Justice Department colleagues strongly disagreed with him.

When questioned about his legal memoranda, Judge Roberts claimed they did not necessarily reflect his views and that he was merely making the best possible case for his clients or responding to a superior's request that he make a particular argument. But he did not clearly disavow the strong and clear views he expressed, but only shrouded them in further mystery. Was he just being an advocate for a client or was he using his position to advocate for positions he believed in? The record is unclear.

It is hard to believe he has no opinion on so many critical issues after years as a Justice Department and White House lawyer, appellate advocate and judge. His supporters remind us that Chief Justice Rehnquist supported the constitutionality of legal segregation before his elevation to the high court but never sought to bring it back while serving the court system as its Chief Justice. But I would also remind them of Justice Thomas's assertion in his confirmation hearing that he had never even discussed *Roe v. Wade*, much less formed an opinion on it. Shortly after he ascended to the Court, Justice Thomas made it clear that he wanted to repeal *Roe*.

Adding to testimony that clouded more than clarified is that we in the Senate have been denied the full record of Judge Roberts's writings despite our repeated requests. Combined, these two events have left a question mark on what Judge Roberts's views are and how he might rule on critical questions of the day. It is telling that President Bush has said the Justices he most admires are the two most conservative Justices, Justices Thomas and Scalia. It is not unreasonable to believe that the President has picked someone in Judge Roberts whom he believes holds a similarly conservative philosophy, and that voting as a bloc they could further limit the power of the Congress, expand the purview of the Executive, and overturn key rulings like *Roe v. Wade*.

Since I expect Judge Roberts to be confirmed, I hope that my concerns are unfounded and that he will be the kind of judge he said he would be during his confirmation hearing. If so, I will be

the first to acknowledge it. However, because I think he is far more likely to vote the views he expressed in his legal writings, I cannot give my consent to his confirmation and will, therefore, vote against his confirmation. My desire to maintain the already fragile Supreme Court majority for civil rights, voting rights and women's rights outweigh the respect I have for Judge Roberts's intellect, character, and legal skills.

Mr. McCAIN. Mr. President, this Thursday the Senate will have the opportunity to vote on the nomination of Justice John Roberts to be Chief Justice of the United States. Few decisions made by this body are as consequential as this one. If Judge Roberts is confirmed by the Senate—and I believe he will be confirmed—he will be the youngest Chief Justice in more than 200 years. With the blessing of a long tenure on the Court, his influence as Chief Justice will not just affect us and our children but also several generations to come.

In nominating Judge Roberts, the President clearly was mindful of the serious and lasting nature of the vote before us. He respected the Senate's advice and consent role and engaged in a thorough, deliberate, and fair nomination process. The President and his staff consulted with more than 70 Members of the Senate, and the President reviewed the credentials of many well-qualified candidates. The President also met personally with a number of potential nominees. I believe that this is the process envisioned by the so-called Gang of 14, and that it resulted in an excellent nominee.

Judge Roberts has impeccable legal credentials and a strong reputation and record as a fair- and sharp-minded lawyer and jurist. The American Bar Association and many others of all political stripes agree that his distinguished career as a lawyer and a jurist makes him very well qualified for the position of Chief Justice. Indeed, some observers have pointed out that if one were to imagine the perfect training to be a Supreme Court Justice, Judge Roberts's career would be the model. I could not agree more.

As an appellate judge, Judge Roberts has built a record of measure, control, and fair-mindedness—all crucial characteristics for a member of our Nation's highest court.

Prior to his tenure as a Federal judge, John Roberts was a widely respected appellate lawyer. The Washington Post recently characterized him as "among the country's best-regarded appellate lawyers, both in private practice and as deputy solicitor general during the administration of George H.W. Bush."

The Senate Judiciary Committee has engaged in an extensive review of Judge Roberts' record. During his nomination hearings, the judge acquitted himself with dignity and honesty, answering directly questions that he believed he could address without hin-

dering his ability to carry out his functions on the Supreme Court or in his current position on the DC Court of Appeals. The editorial board of the San Francisco Chronicle wrote some days ago that Judge Roberts "passed the key tests before the Senate Judiciary Committee. His command of the law is impressive. He carries no trace of ethical taint. His ability to stay calm and on point in the face of exhaustive questioning from a panel of highly inquisitive—and occasionally posturing—U.S. senators was indicative of judicial temperament."

The committee has voted to recommend that the full Senate confirm Judge Roberts as the Chief Justice of the United States. Several Democratic members of the committee joined in that recommendation, and rightly so—this nominee's exceptional credentials and temperament should place him well above the fray of partisanship.

I agree wholeheartedly with the nomination of the President and the recommendation of the Judiciary Committee. I will vote for John Roberts, a man who has proven to be an extraordinarily talented lawyer and judge who approaches the law with modesty and a deep respect for the Constitution and our Nation's laws.

#### EMERGENCY HEALTH CARE RELIEF ACT OF 2005

Mr. McCAIN. Mr. President, I am in the Senate to mention that there is ongoing discussions between the Senator from Iowa, Mr. GRASSLEY, the distinguished chairman of the Committee on Finance, and a number of Members who have been concerned about S. 1716, the Emergency Health Care Relief Act of 2005. I fully support the desire of the Senator and members of the Committee on Finance to provide health care relief for the victims of Hurricane Katrina. We have noted that it has about a \$9 billion price tag, and we have been in ongoing discussions which I believe will bear fruit with the Senator from Iowa.

It is important to know that the administration also objects to S. 1716, and I ask unanimous consent the letter from Secretary Leavitt be printed in the RECORD.

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

THE SECRETARY OF HEALTH  
AND HUMAN SERVICES,  
*Washington, DC, September 27, 2005.*

Hon. WILLIAM H. FRIST,  
*Majority Leader, U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR FRIST: I am writing to express the views of the Department of Health and Human Services (HHS) with respect to S. 1716, the "Emergency Health Care Relief Act of 2005".

We understand and appreciate that the intent of S. 1716 is to help provide, in the most timely manner possible, emergency health care relief to the victims of Hurricane Katrina. The Department is strongly committed to this same objective, and we have