CORRECTION

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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 31, 2006, at noon.

Senate

WEDNESDAY, JANUARY 25, 2006

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

Almighty and merciful God, who has given us grace in times past and hope for the years to come, strengthen us to continue to grow in grace and in our knowledge of You. Quicken our hearts with warmer affection for You and Your creation. Stir up the talents in each of us and give us a desire to serve You and humanity.

Bless the Members of this body and the staffs that serve them. Increase their faith as You increase their years. Give them the moral fitness to live lives of integrity and faithfulness. May they not falter under the burdens they are asked to carry in these uncertain days. Bless them with clear minds and open eyes that they will not seek to solve tomorrow's problems with yesterday's solutions.

We thank You for our new Senate page class. Inspire our pages to trust You passionately so that You will direct their steps. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. President, I welcome everyone back to begin this second session of the 109th Congress.

In a few moments we will begin another historic debate in the Senate Chamber as we consider the nomination of Samuel Alito to be Associate Justice of the Supreme Court of the United States.

We will lock in a debate structure in a few moments so we will be able to alternate hours back and forth between the two sides of the aisle. This will help facilitate the schedule so Members will have a better understanding of when they will have the opportunity to come to the floor to give their statements and to participate in that debate.

We will remain in session all day today and into the night this week to accommodate Senators who wish to make statements. As I mentioned, every Senator will have the opportunity to speak, but it is my hope we will be able to lock in a time certain for a vote on this qualified nominee as soon as possible in order that our fellow Senators will know when that confirmation vote will occur. I would like to be able to do that shortly. I have been in discussion with the Democratic leader, and we will continue that discussion on that particular matter.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. FRIST. Mr. President, at this point, I ask unanimous consent that the Senate proceed to executive session for the consideration of Calendar No. 490, the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

The Senate will proceed to executive session, and the clerk will report.

The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

Mr. MCCAIN. Mr. President, will the majority leader yield to me for 1 minute while I bring up an issue that we were discussing yesterday?

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

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Mr. FRIST Mr. President, I will be happy to yield.

The PRESIDENT pro tempore. The Senator from Arizona.

LOBBYING REFORM

Mr. MCCAIN. Mr. President, I thank the majority leader for his efforts to move the issue of lobbying reform forward. We had a good meeting yesterday amongst other Members, and Senator LIEBERMAN and I and others also, as the majority leader knows, have introduced legislation. There has been input made by other Members, and I know the majority leader joins me in saying we need to put together a bipartisan coalition to address this issue as quickly as possible. We need to sit down with Members of both sides of the aisle in whatever format the majority leader and the Democratic leader decide so we can get to work right away and get legislation done to curb the lobbying excesses that have been brought to light that need to be fixed.

At another time I would like to talk with the majority leader about the issue of earmarks, but I thank the majority leader for urging rapid action on this issue. We do have a basis for negotiation, and I hope we will be able to immediately sit down with Members from the other side of the aisle, come to conclusions and agreements—since it is pretty obvious the majority of the fixes that need to be made—and move forward. I thank the majority leader and the Democratic leader for urging rapid action in addressing this issue which is causing us, our image and our reputation to be hurt very badly in the eyes of the American people.

I thank the majority leader.

Mr. FRIST. Mr. President, just a very short comment. I have been in discussion with the Democratic leader on this issue as well. As our distinguished colleague from Arizona has just said, we on the Republican side have put together a working group in terms of how to address this very important issue. It has to be done in a bipartisan way. America is looking at this body to respond to abuses that we have all seen in our Government today. I think we all need to be committed to address this in a bipartisan way.

We have a great structure to build upon in the legislation that has been introduced in a bipartisan way with Senators MCCAIN and LIEBERMAN. I look forward to working with both sides of the aisle in developing an appropriate response over the coming days.

Mr. President, I now ask unanimous consent that the time from 10 a.m. until 8 p.m. tonight be divided, with the time from 10 to 11 under the control of the majority leader or his designee, the time from 11 to noon under the control of the Democratic leader or his designee, with each hour rotating back and forth in that same manner. I further ask unanimous consent that on Thursday this same division occur, with the first hour from 10 to 11 under the control of the Democratic leader or his designee.

The PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, today, I am honored to open debate on the nomination of Judge Sam Alito to be the 110th Associate Justice of the Supreme Court of the United States.

I enthusiastically support his confirmation.

Judge Alito deserves to become Justice Alito. Those who oppose him are smearing a decent and honorable man and imposing an unfair political standard on all judicial nominees.

I support Judge Alito because he is exceptionally qualified to be a Supreme Court Justice. I support Judge Alito because he is a man of integrity and modest judicial temperament. I support Judge Alito because he has a record that demonstrates a respect for judicial restraint, an aversion to political agendas on the bench, and a commitment to the rule of law and the Constitution.

There is no question that Judge Alito is exceptionally well qualified. He is measured, brilliant, deeply versed in and respectful of the law, and a man of character and integrity. But there is another reason I support Judge Alito. I support Judge Alito because denying him a seat on the Supreme Court could have devastating long-term consequences for our judicial nomination process. Let me address these issues one at a time.

Exceptional qualifications: From the moment President Bush nominated him last October, Judge Alito's exceptional qualifications had a ''wow'' factor that impressed Senators of both parties. In every respect, Judge Alito is a nominee who meets the highest standards of excellence.

He is a graduate of Princeton and Yale Law School. He has dedicated his 30-year legal career to public service as a Federal prosecutor and assistant to the Solicitor General, where he argued 12 cases before the Supreme Court, and for the last 15 years as a Federal judge on the Third Circuit in New Jersey. He has been unanimously confirmed by this body not once but twice. On the Federal bench, he has participated in more than 3,500 cases and has written more than 300 opinions. The American Bar Association gave Judge Alito its highest rating, unanimously ''well qualified.'' He is a man of integrity and modest judicial temperament.

Exceptional qualifications only begin to reveal why Sam Alito should be confirmed to the Supreme Court. Throughout his career as a prosecutor and a judge, Sam Alito earned a reputation as a man of integrity who was fair-minded and evenhanded. He earned the trust and respect of his colleagues, Republicans, Democrats, and Independents. That is one reason seven Federal judges endorsed his nomination and testified on his behalf.

Through the Judiciary Committee hearings, we saw a clear picture emerge of Judge Alito's modest judicial temperament. Despite enduring relentless questioning of his credibility, integrity, and personal and political views, Judge Alito remained unflappable, never once raising his voice or becoming confrontational, focusing clearly and articulately on the facts, the law, and the constitutional questions presented to him. He understands the limited role of a judge—judicial restraint, impartiality, and a commitment to the rule of law.

In addition to all of his exceptional qualifications, integrity, and temperament, Judge Alito deserves confirmation because he understands the limited role of a judge to interpret the law and not legislate from the bench. He practices judicial restraint and refuses to prejudge cases or apply a personal political agenda on the bench. In his hearing before the Judiciary Committee, this philosophy was clear. He said:

> A judge can't have an agenda. A judge can't have any preferred outcome in any particular case. . . . The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

In his 15 years on the bench, Judge Alito has done exactly that. Just listen to the words of one of Judge Alito's former law clerks, a registered Democrat who, by the way, still has a ''Kerry for President'' bumper sticker on his car. His words:

> Until I read [Judge Alito's] 1985 Reagan job application, I could not tell you what his politics were . . . When we worked on cases, we reached the same result about 95 percent of the time . . . It was my experience that Judge Alito was (and is) capable of setting aside any personal biases he may have when he judges. He is the consummate professional.

Long-term consequences for the judicial nominations process: Perhaps the most important reason to support Judge Alito has less to do with Judge Alito himself and more to do with our judicial nominations process. Regardless of their political views, Senators should treat judicial nominees with dignity, respect, and fairness, not just because it is the right thing to do but because a process that politicizes and degrades judicial nominees will drive our very best and our brightest away from the bench. I am profoundly disappointed in the unfair and unseemly treatment of Judge Alito during this process. His judicial record has been distorted and mischaracterized. He has been labeled as nonresponsive during his hearings, despite providing candid and articulate answers to more than 650 questions and over 18 hours of testimony—far more than many, perhaps any Supreme Court nominee in the past—and most sadly, he has been the victim of a calculated but unsuccessful campaign to smear his character, his integrity, and his credibility.

In an editorial in support of Judge Alito, published on January 15, the

Washington Post expressed this concern, even though they would have chosen a different nominee than Judge Alito:

He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set . . . Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal of the rule of law. However one reasonably defines ''mainstream'' of contemporary jurisprudence, Judge Alito's work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No President should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

I ask unanimous consent that the full text of the Washington Post editorial of January 15 entitled ''Confirm Samuel Alito on the Supreme Court'' be printed in the RECORD at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FRIST. Thirteen years ago, a Republican minority in the Senate voted to confirm the qualified nominee of a Democratic President by an overwhelming vote of 96 to 3. Despite a well-documented liberal record, Justice Ruth Bader Ginsburg sits on the Supreme Court today because Republican Senators chose to focus on her qualifications and not to obstruct her nomination based merely on her judicial philosophy or ideology. I urge my colleagues to vote to confirm Judge Alito by applying that same fair standard. As we debate this week, I hope we can put aside partisan rhetoric and the politics of personal destruction and stand on principle. Qualified judicial nominees such as Judge Alito deserve respectful debate and a fair up-or-down vote on the Senate floor. As Senators, it is our fundamental constitutional duty and responsibility.

EXHIBIT 1

[From the Washington Post, Jan. 15, 2006]

CONFIRM SAMUEL ALITO

The Senate's decision concerning the confirmation of Samuel A. Alito Jr. is harder than the case last year of now-Chief Justice John G. Roberts Jr. Judge Alito's record raises concerns across a range of areas. His replacement of Justice Sandra Day O'Connor could alter—for the worse, from our point of view—the Supreme Court's delicate balance in important areas of constitutional law. He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set.

Though some attacks on him by Democratic senators and liberal interest groups have misrepresented his jurisprudence, Judge Alito's record is troubling in areas. His generally laudable tendency to defer to elected representatives at the state and federal levels sometimes goes too far—giving rise to concerns that he will prove too tolerant of claims of executive power in the war on terror. He has tended at times to read civil rights statutes and precedents too narrowly. He has shown excessive tolerance for aggressive police and prosecutorial tactics. There is reason to worry that he would curtail abortion rights. And his approach to the balance of power between the federal government and the states, while murky, seems unpromising. Judge Alito's record is complicated, and one can therefore argue against imputing to him any of these tendencies. Yet he is undeniably a conservative whose presence on the Supreme Court is likely to produce more conservative results than we would like to see.

Which is, of course, just what President Bush promised concerning his judicial appointments. A Supreme Court nomination isn't a forum to refight a presidential election. The president's choice is due deference—the same deference that Democratic senators would expect a Republican Senate to accord the well-qualified nominee of a Democratic president.

And Judge Alito is superbly qualified. His record on the bench is that of a thoughtful conservative, not a raging ideologue. He pays careful attention to the record and doesn't reach for the political outcomes he desires. His colleagues of all stripes speak highly of him. His integrity, notwithstanding efforts to smear him, remains unimpeached.

Humility is called for when predicting how a Supreme Court nominee will vote on key issues, or even what those issues will be, given how people and issues evolve. But it's fair to guess that Judge Alito will favor a judiciary that exercises restraint and does not substitute its judgment for that of the political branches in areas of their competence. That's not all bad. The Supreme Court sports a great range of ideological diversity but less disagreement about the scope of proper judicial power. The institutional self-discipline and modesty that both Judge Alito and Chief Justice Roberts profess could do the court good if taken seriously and applied apolitically.

Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal to the rule of law. However one reasonably defines the ''mainstream'' of contemporary jurisprudence, Judge Alito's work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No president should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

JUDICIARY COMMMITTEE AGENDA

Mr. SPECTER. Mr. President, before proceeding to the nomination of Judge Alito to the Supreme Court of the United States, I think it worthwhile to comment very briefly on some of the scheduling items for the Judiciary Committee.

As we all know, the PATRIOT Act was extended from December 31 until February 3. I circulated a letter today among our colleagues, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SPECTER. It outlines the alternatives which we face at the present time. One is to let the act expire on February 3, which I think no one would like. Second would be to extend the current bill for a period of time. We will be discussing a 4-year extension. Or, third, to have cloture imposed on the filibuster which is in effect and then vote to utilize the conference report and pass the act. It is always possible to take another course of action if there is unanimous consent.

The conference is technically discharged at this point, and the House of Representatives has made it emphatically clear that they have gone as far as they think it reasonable to go on the compromises.

There have been very substantial compromises worked out. At one juncture, there were three additional requests which we took to the House and got all of them, the most important of which was the sunset provision changed from 7 years to 4 years. Then additional changes were requested, and they could not be accommodated.

That is where we stand at the present time. I know there are discussions underway to try to get some additional changes made. My own view is those prospects are somewhere between bleak and nonexistent.

Mr. LEAHY. Mr. President, will the Senator yield on that point for a moment?

Mr. SPECTER. Certainly.

Mr. LEAHY. Mr. President, the distinguished senior Senator from Pennsylvania has worked as hard on this issue as anybody here. As the distinguished Presiding Officer knows, the original PATRIOT Act was written by myself, the distinguished Senator from Pennsylvania, and others. It was the distinguished Republican leader from Texas, Dick Armey, and I who put in the sunset provisions so we would be forced to come back and look at different parts of it. Much of the PATRIOT Act is permanent law, but we should look at certain parts. Those are the parts that are now most in contention because they will expire.

The distinguished Senator from Pennsylvania and I were at the White House on another matter recently and talked briefly about this with the President. I know the distinguished Senator from New Hampshire, Mr. SUNUNU, has been working very hard with us. I think the changes that still need to be made are relatively minor. I urge parties, especially all of us who helped write the original PATRIOT

Act, to make that one last effort. That would include, of course, the White House and the other body to do it.

The chairman of the Judiciary Committee has worked extraordinarily hard on this legislation. I, like so many others, am willing to continue to work with him. I think with a little nudge from the White House—that nudge may have to be a quiet one among the principals in both bodies—that can be done. I commend the Senator from New Hampshire for the work he is doing on this issue.

I thank the chairman of the Judiciary Committee for yielding, even though it is on his time.

Mr. SPECTER. Mr. President, I thank the Senator from Vermont for his comments. I thank him for the hard work he has done in the past year on the Judiciary Committee on many matters, including the PATRIOT Act. I think we have set a tone and have been able to agree on almost all matters. If there can be some modifications made, agreeable on all sides, before February 3, I would be more than willing to be a party to that.

My preference is the bill which passed the Senate, but we have a bicameral system, and the House has its own point of view, and I think they have been reasonable. We have a good bill, certainly a bill in the conference report which is vastly improved with respect to civil rights over the current bill. But I am not in favor of having short-term extensions. If we have another short-term extension, it will beget another short-term extension. I want to fish or cut bait before February 3 on that issue.

The Judiciary Committee, on the second item, is scheduled to hold a hearing on the wartime Executive power and NSA's surveillance authority on February 6. I think my colleagues will be interested in a letter which I have written to the Attorney General dated January 24, yesterday, outlining a series of some 15 questions to be addressed in advance of the hearing or at the time of the Attorney General's opening statement—at least that request—to try to set the parameters and issues of that hearing. I ask unanimous consent that the letter to Attorney General Gonzalez be printed in the RECORD at the conclusion of my statement today.

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

(See exhibit 2.)

Mr. SPECTER. A third item of Judiciary Committee scheduling involves the asbestos reform bill. The leader has stated his intention to bring it up on February 6. As we customarily do, we meet in the afternoon. I intend to absent myself from the Judiciary Committee hearing on NSA to come make an opening statement. Then we will proceed on that bill.

Senator LEAHY and I sent a letter yesterday to our colleagues asking that, if there are amendments to be offered, and I am sure there will be, that they be provided to the managers in advance so we can organize proceeding on the bill and seek time agreements. That has been a very difficult and contentious issue, but it was passed out of the committee last year after numerous executive sessions marking up the bill and extended debate on a variety of amendments. Many were accepted, some were rejected.

The Supreme Court of the United States has called upon Congress to address this issue. It does not lend itself to a solution in the courts on class actions. There are thousands of people who are suffering from the injuries of asbestos—mesothelioma, which is deadly, and asbestosis, and others—who cannot recover because their employers are bankrupt. Over 75 companies have gone bankrupt, and more are threatened with bankruptcy.

The bill which we have reported to the floor is the product of enormous effort and enormous analysis by the Judiciary Committee and beyond. It was voted out of committee 13 to 5. Senator LEAHY and I have convened meetings, along with the assistance of Judge Becker, a senior Federal judge—he had been Chief Judge of the Court of Appeals for the Third Circuit—where we have brought in the so-called stakeholders: the insurers, the trial lawyers, the AFL/CIO, and the manufacturers. They worked through that bill which has festered in the Congress for more than two decades. I first saw it when Gary Hart, then-Senator from Colorado, brought in Johns Manville, which was a key constituent of his, which was having a problem. I believe it is clear that if we are not able to act now, it will be decades before this kind of an effort can be mustered again.

I have one additional comment on the scope of the work. After it was passed out of committee in late July of 2003, I asked Judge Becker to assist as a mediator. We had meetings in his chambers in Philadelphia—two full days in August. We have had about 50 meetings since, attended by sometimes more than 40 or 50 people.

We are still open for business to consider modifications. We know the legislative process is one where, when it comes to the floor, there are amendments. There are more ideas. But this is an issue which is of tremendous urgency. The President has spoken about it. The President wants it enacted. The majority leader is firmly behind legislation by the Senate. The Speaker of the House of Representatives has spoken about it. But candidly and openly, we face very powerful interests who are opposed to any action.

There are very substantial dollars involved. There is very substantial pain and suffering involved. Those of us who have worked on the bill—led by the distinguished Senator from Vermont and myself and others—have gone to the well and gone to the wall. We still are open for business and invite comments. But anybody who has amendments, we would like to hear from you as early as possible so we can consider them, try to work out time agreements, and try to move the bill ahead in a managers' context.

I am glad to yield to Senator LEAHY.

Mr. LEAHY. Mr. President, again I agree with what the distinguished Senator from Pennsylvania has said. This is a bipartisan bill. In fact, to emphasize it, he and I have sent a letter to all of our colleagues, signed jointly, asking them, if they have amendments which they plan to offer, to let us know.

It should be emphasized that not only did we have hours upon hours of hearings, but we had many open meetings in the office of the Senator from Pennsylvania, in my office, and the offices of others. We made sure that the stakeholders, all the stakeholders were able to come to those meetings. We also made sure that the office of every Senator—everybody who expressed any interest, Republican or Democrat—was invited to those meetings. They were wide open. In fact, almost all of the Senators on both sides of the aisle either attended those meetings or had staff attend those meetings.

At these meetings that we had, again, every single stakeholder was involved. It was open. It was bipartisan. That was made clear by the Senator from Pennsylvania from the beginning, that they would have to be open and bipartisan. He, as would be expected, kept his commitment all the way through.

I would highlight two things the Senator from Pennsylvania just said that were of concern to me. One, if we do not do it now, we lose the opportunity. I believe it will be decades before anybody would put together the kind of coalition that it has been possible to put together. The other thing he said was that it is not just some of the powerful financial stakes involved, but it is a powerful amount of suffering that is going on by the people who are suffering from asbestos poisoning in all the different forms. They are the ones who are held in limbo throughout all this time. We can bring some relief to them now; not the possibility of relief 10 years from now after a series of lawsuits go through, but now.

We have had members of the Supreme Court, ranging from the late Chief Justice William Rehnquist to Justice Ruth Bader Ginsburg—certainly two differing philosophies—who have called upon the Congress to bring about a legislative solution because our courts are unable to handle all the cases that might come up. Let's be clear about that. There are some who say we are litigating forever on this, but the fact is our courts are unable to handle it. It cries out for a legislative solution.

I urge people to come to this with an open mind, vote it up or down, vote the amendments up or down. I have heard some opponents quoted as being prepared to demagog this bipartisan bill. This bill did not just suddenly spring

out of nowhere; it was worked on in such a way that it is a bipartisan bill. And I might say there is pain in it for everybody. Everybody has had to give something in this. The Senator from Pennsylvania did not get everything he wanted. I did not get everything I wanted. The stakeholders who came to the table, virtually all of them openly and honestly, they gave up a lot on it. But the people who are suffering from asbestos poisoning in whatever form are the ones waiting for us to act.

The time is right to act. We can pass a bipartisan bill. I believe the other body would be glad to see such a bill. The President has stated publicly and he certainly stated privately to both Senator SPECTER and myself that he is behind taking action. Everybody cries out for some bipartisan action around here. This is one of those cases where Republicans and Democrats could come together, where the Congress and the White House could work together, and actually those who benefit will be the people suffering. We ought to get on with it.

EXHIBIT 1

U.S. SENATE,
Washington, DC, January 25, 2006.

DEAR COLLEAGUE: The Patriot Act is due to expire on February 3, 2006 after being extended from its prior expiration date of December 31, 2005.

The Senate is faced with three options:

1. Invoke cloture on the Conference Report and pass the Conference Report as the House of Representatives has already done;

2. Extend the present Act for a period of time. The current discussion with the House is to extend it for four years; or

3. Let the Act expire.

To my knowledge, no one wants to let the Act expire.

Technically, the House/Senate Conference has been discharged with the filing of the Conference Report. While it is always possible to take another course of action such as changing the Conference Report if there is unanimous agreement, the House has taken the emphatic position that there will be no more concessions from the Conference Report and the House is very firm in this position.

Everyone, including those who are urging further House concessions, agrees that the Conference Report is much more protective of civil rights than the current Patriot Act. I am enclosing a side-by-side comparison. While I would have preferred the Senate bill, we do have a Bicameral System and the Conference Report was hammered out after extensive negotiations with significant concessions by the House. Senate proponents for further House concessions had, at one point, stated their willingness to sign the Conference Report if three conditions were met including a change in the sunset date from seven to four years. Those conditions were met and then there was insistence on further concessions.

I urge the Senate to invoke cloture and pass the Conference Report as the best of the available alternatives.

Sincerely,

ARLEN SPECTER.

SIDE-BY-SIDE COMPARISON

Conference report (2006)	Current law (PATRIOT Act 2001)
Requests for Business Records ("Library Provision") Section 215	
Application to the FISA Court for an order under Section 215 requires a statement of facts	No requirement of any factual showing.
Records can be obtained only if the FISA Judge finds that the statement of facts shows "reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation".	Records can be obtained if the FBI merely "specif[ies] that . . . they are sought for an authorized investigation."
May not be used for threat assessments	May be used for threat assessments.
Encourages the FBI to demonstrate a connection to terrorism or espionage by providing a presumption of relevance if the records sought pertain to: (a) a foreign power or an agent of a foreign power; (b) the activities of a suspected agent of a foreign power who is the subject of the investigation; or (c) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of the investigation.	No analogous incentive for the FBI to demonstrate a connection to terrorism or espionage.
Requires the use of minimization procedures that will limit "the retention, and prohibit the dissemination" of information concerning U.S. persons.	No requirement that minimization procedures be used.
Explicit right of recipients of Section 215 requests to consult legal counsel	No explicit right of recipients of Section 215 requests to consult legal counsel.
Explicit right of recipients of Section 215 requests to challenge their legality in court	No explicit right of recipients of Section 215 requests to challenge their legality in court.
Requirement that the FBI Director, Deputy Directer, or Executive Assistant Director personally approve requests for certain sensitive documents, including library records, medical records, educational records, and gun records.	No special requirements for sensitive documents such as library records.
Limits the scope of Section 215 requests to materials that could be obtained via grand jury subpoena or a similar court order for the production of records.	No specified limitation on the scope of Section 215 requests.
Adds the Senate Judiciary Committee as a recipient of the "fully inform[ed]" reports	"Fully inform[ed]" reports given only to House and Senate Intelligence Committees.
Reporting to Congress on the number of orders granted, modified, or denied for the production of certain records from libraries and bookstores, firearms sales records, tax return records, educational records, and certain medical records.	No reporting to Congress on Section 215 requests for sensitive documents.
Public reporting on the total number of applications under Section 215 and the total number of such orders granted, modified, or denied.	No public reporting.
Two comprehensive audits by the Justice Department's Inspector General regarding the use, including any improper or illegal use, of Section 215. The first report will examine the use of Section 215 in 2002–04; the second report will examine the use of Section 215 in 2005–06. The reports will examine "each instance" in which the government submitted an application under Section 215, and the Conference Report provides detailed specifications of what the investigation should cover.	No requirement that the Justice Department's Inspector General audit the use of Section 215.
Four-year sunset.	
Delayed-Notice Searches ("Sneak and Peek" Searches) Section 213	
Notice to the target of the search must be given "within a reasonable period not to exceed 30 days after the date of its execution," or on a later date certain if the facts justify it.	Notice to the target of the search may be given within a "reasonable" time; no limitation on the maximum period of delay.
Extensions on the period of delay only upon "an updated showing of the need for further delay"	Extensions on the period of delay may be granted upon mere "good cause shown".
Extensions are limited to 90 days or less, unless the facts of the case justify a longer period	No maximum period of extension.
Notice may not be delayed if the only reason for doing so is that the court finds reasonable cause to believe that immediate notification may result in unduly delaying a trial.	Notice may be delayed if the court finds reasonable cause to believe that immediate notification may result in unduly delaying a trial.
Public reporting on the number of applications for delayed-notice warrants and extensions; and the number of such warrants and extensions granted or denied; the duration of delays in giving notice.	No reporting to Congress or the public.
Roving Wiretaps Section 206	
Application requires "the identity, if known, or a description of the specific target" of the surveillance	Application requires "the identity, if known, or a description of the target" of the surveillance.
FISA Court's orders must specify "the identity, if known, of the specific target" of the surveillance	FISA Court's orders must specify "the identity; if known, or a description of the target" of the surveillance.
For so-called John Doe roving wiretaps, requires the FISA Court to "find[], based upon specific facts provided in the application, that the actions of the target of the application may have the effect of thwarting the identification of a specified person".	For so-called John Doe roving wiretaps, requires the FISA Court to "find that the actions of the target of the application may have the effect of thwarting the identification of a specified person".
Requires that within ten days of beginning of surveillance at any new facility or place, the FBI notify the FISA Court of "facts and circumstances" justifying FBI's belief that each new phone is being used or is about to be used by the target.	No requirement that FBI notify the FISA Court when surveillance begins at any new facility or place.
Requires "fully inform[ed]" reporting to Senate Judiciary Committee	No requirement to report to Senate Judiciary Committee.
Existing reports expanded to include the total number of applications for orders and extensions of orders approving electronic surveillance where the nature and location of the facility at which the surveillance will be directed is unknown.	Attorney General to inform the Congress twice per year of all roving wiretaps under 206.
Four-year sunset.	
National Security Letters ("NSLs")	
Explicit right of recipients to consult legal counsel	No explicit right of recipients to consult legal counsel.
Explicit right of recipients to challenge NSL in court and have it set aside if the court finds that compliance would be "unreasonable, oppressive, or otherwise unlawful".	No explicit right of recipients to challenge NSL in court.
Detailed mechanism for recipients to challenge the nondisclosure requirement in court; provision for subsequent challenges in the event that initial challenges are unsuccessful.	No explicit right of recipient to challenge the nondisclosure requirement in court.
Two comprehensive audits by the Justice Department's Inspector General regarding the use, including any improper or illegal use, of NSLs. The first report will examine the use of NSLs in 2003–04; the second report will examine the use of NSLs in 2005–06. The Conference Report provides detailed specifications of what the investigation should cover.	No requirement that the Justice Department's Inspector General audit the use of NSLs.
Report to Congress by the Attorney General and the Director of National Intelligence regarding the feasibility of applying minimization procedures in the context of NSLs.	No requirements with respect to the use of minimization procedures in the context of NSLs.
Annual public reporting on the total number of each type of NSL	No public reporting.
Additional Protections	
Reporting to Congress on the total number of emergency employments of electronic surveillance and the total number of subsequent orders approving or denying such electronic surveillance.	No such reporting.

Conference report (2006)	Current law (PATRIOT Act 2001)
Adds the Senate Judiciary Committee as a recipient of these reports	Reporting to the House and Senate Intelligence Committees of all physical searches conducted pursuant to FISA.
Reporting to Congress on the total number of emergency physical searches authorized by the Attorney General and the total number of subsequent orders approving or denying such physical searches.	No such reporting.
Reporting to Congress on the total number of emergency pen registers and trap and trace devices authorized by the Attorney General and the total number of subsequent orders approving or denying the installation and use of the same.	No such reporting.
Disclosure of the rules of the FISA Court to the Senate and House Committees on Intelligence and the Judiciary	No provision requiring disclosure of the rules of the FISA Court to Congress.
Reporting to the House and Senate Judiciary Committees on good-faith emergency disclosures under Section 212 of the PATRIOT Act.	No such reporting.
Report to Congress on the Justice Department's use of data mining	No specific provisions concerning data mining.

EXHIBIT 2

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, January 24, 2006.

Hon. ALBERTO R. GONZALES,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL GONZALES: I write to let you know some of the subjects which I would like you to address in your opening statement on the Judiciary Committee hearing scheduled for February 6, 2006, on ''Wartime Executive Power and the NSA's Surveillance Authority.''

(1) In interpreting whether Congress intended to amend the Foreign Intelligence Surveillance Act (FISA) by the September 14, 2001 Resolution (Resolution), would it be relevant on the issue of Congressional intent that the Administration did not specifically ask for an expansion for Executive powers under FISA? Was it because you thought you couldn't get such an expansion as when you said: ''That was not something that we could likely get?''

(2) If Congress had intended to amend FISA by the Resolution, wouldn't Congress have specifically acted to as Congress did in passing the Patriot Act giving the Executive expanded powers and greater flexibility in using ''roving'' wiretaps?

(3) In interpreting statutory construction on whether Congress intended to amend FISA by the Resolution, what is the impact of the rule of statutory construction that repeals or changes by implication are disfavored?

(4) In interpreting statutory construction on whether Congress intended to amend FISA by the Resolution, what would be the impact of the rule of statutory construction that specific statutory language, like that in FISA, trumps or takes precedence over more general pronouncements like those of the Resolution?

(5) Why did the Executive not ask for the authority to conduct electronic surveillance when Congress passed the Patriot Act and was predisposed, to the maximum extent likely, to grant the Executive additional powers which the Executive thought necessary?

(6) Wasn't President Carter's signature on FISA in 1978, together with his signing statement, an explicit renunciation of any claim to inherent Executive authority under Article II of the Constitution to conduct warrantless domestic surveillance when the Act provided the exclusive procedures for such surveillance?

(7) Why didn't the President seek a warrant from the Foreign Intelligence Surveillance Court authorizing in advance the electronic surveillance in issue? (The FISA Court has the experience and authority to issue such a warrant. The FISA Court has a record establishing its reliability for nondisclosure or leaking contrasted with concerns that disclosures to many members of Congress involved a high risk of disclosure or leaking. The FISA Court is a least as reliable, if not more so, that the Executive Branch on avoiding disclosure or leaks.)

(8) Why did the Executive Branch not seek after-the-fact authorization from the FISA Court within the 72 hours as provided by the Act? At a minimum, shouldn't the Executive have sought authorization from the FISA Court for law enforcement individuals to listen to a reduced number of conversations which were selected out from a large number of conversations from the mechanical surveillance?

(9) Was consideration given to the dichotomy between conversations by mechanical surveillance from conservations listened to by law enforcement personnel with the contention that the former was non-invasive and only the latter was invasive? Would this distinction have made it practical to obtain Court approval before the conservations were subject to human surveillance or after-the-fact approval within 72 hours.

(10) Would you consider seeking approval from the FISA Court at this time for the ongoing surveillance program at issue?

(11) How can the Executive justify disclosure to only the so-called ''Gang of Eight'' instead of the full intelligence committees when Title V of the National Security Act of 1947 provides:

Sec. 501. [50 U.S.C. 413] (a)(1) The President shall ensure that the congressional intelligence *committees* are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title. (Emphasis added)

(2)(e) Nothing in this Act shall be construed as authority to withhold information from the congressional intelligence *committees* on the grounds that providing the information to the congressional intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods. (Emphasis added)

(12) To the extent that it can be disclosed in a public hearing (or to be provided in a closed executive session), what are the facts upon which the Executive relies to assert Article II wartime authority over Congress' Article I authority to establish public policy on these issues especially where legislation is approved by the President as contrasted to being enacted over a Presidential veto as was the case with the War Powers Act?

(13) What case law does the Executive rely upon in asserting Article II powers to conduct the electronic surveillance at issue?

(14) What academic or export opinions does the Executive rely upon in asserting Article II powers to conduct the electronic surveillance at issue?

(15) When foreign calls (whether between the caller and the recipient both being on foreign soil or one of the callers or recipients being on foreign soil and the other in the U.S.) were routed through switches which were physically located on U.S. soil, would that constitute a violation of law or regulation restricting NSA from conducting surveillance inside the United States, absent a claim of unconstitutionality on encroaching on Executive powers under Article II?

This letter will further confirm our staffs' discussions that the Committee will require, at a minimum, the full day on February 6th for your testimony.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. Mr. President, I thank my distinguished colleague for those comments.

There is no doubt about the suffering of those who are afflicted with mesothelioma and asbestosis and other ailments. There is also no doubt about the tremendous impact it has on the economy of the United States. It has been estimated that there could be a bigger boost than any kind of tax cuts you could have or any sort of economic recovery program you could have to be able to deal with the more than 75 companies that have gone into bankruptcy and others where bankruptcy is threatened.

The amount of work that the Senator from Vermont has specified has been gigantic. It has been 3 years in process. Senator HATCH took the lead with the trust fund concept where the manufacturers and the insurers have agreed to put up some $140 billion into the trust fund with no government payments and not coming out of the pockets of the taxpayers.

The meetings which have been held and the efforts and the momentum which we have had can't be recaptured. I think it is fair to say, certainly during my tenure here of 25 years, that I have never seen legislation worked on to the extent this legislation has been, with the complexity of the problem and the involvement of Senators and staff and so-called stakeholders. If it is not now, it is never.

Mr. SPECTER. Mr. President, I support the nomination by President Bush of Circuit Court Judge Samuel A. Alito, Jr., to the Supreme Court of the United States because he is qualified.

In coming to my conclusion, my staff and I have undertaken an extensive review of Judge Alito's record and of his some 361 opinions in total. We have categorized 238 of those as major decisions while serving on the Third Circuit Court of Appeals. We have reviewed 49 of the cases that Judge Alito handled during his tenure as U.S. attorney. We have made an analysis of 43 speeches and articles Judge Alito authorized and evaluations of 38 formal opinions, petitions, and Supreme Court briefs which Judge Alito wrote while serving in the Department of Justice.

Additionally, the Judiciary Committee heard testimony of some 30 hours and 20 minutes where we had 17 hours and 45 minutes of questioning of Judge Alito and testimony from 33 outside witnesses.

It is on the basis of that voluminous record that it is my personal view that Judge Alito ought to be confirmed.

He has a background from a father who was an immigrant from Italy, not

born with a silver spoon in his mouth, came up the hard way, had the extraordinary academic record at Princeton and the Yale Law School, worked as an Assistant U.S. Attorney, then was U.S. Attorney and worked in the Department of Justice, and for 15 years has been on the Court of Appeals for the Third Circuit.

I think he answered questions put to him more extensively than any other nominee in recent times.

I ask unanimous consent that the full text of the prepared statement be printed in the RECORD at the conclusion of my remarks, which specifies the details of the questions asked and provides analysis of many of his cases.

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

(See exhibit 1).

Mr. SPECTER. Mr. President, Judge Alito came under very extensive questioning on the issue of a woman's right to choose because of his work on a brief on the Thornburgh case where he advocated not reversal of Roe v. Wade but cut back on some of the provisions, and because of a statement which he had made in 1985 when applying for a position with the Federal Government where he expressed the view that the Constitution did not protect the right to an abortion. Judge Alito testified at length that he has an open mind on this subject.

I think it is fair to say that when a comment is made by a lawyer in an advocacy capacity that it represents the view of a client on a position taken and not a personal view. With respect to the statement that he made about his view of the Constitution in 1985, he has since gone to great lengths to analyze the Supreme Court's decisions on the issue of a woman's right to choose and has made assurances that he has an open mind on the subject.

He was questioned extensively on this issue. I led off with it for 20 minutes on my first round of questioning. And Judge Alito expressed his regard for stare decisis, the Latin expression for let the decision stand.

He commented that he agrees with the position of Chief Justice Rehnquist on the Miranda case involving suspects' rights on statements and confessions. Chief Justice Rehnquist, earlier in his career, had been against Miranda and later changed his view to support Miranda once, as the Chief Justice put it, it became embedded in the culture of police practices. And Judge Alito stated that he thought there was weight to be accorded to cultural changes.

I think it is fair to have that statement of principle apply on a woman's right to choose.

Judge Alito later testified that he agreed with Justice Harlan's dissent in the case of Poe v. Ullman, that the constitution is a living document; and that agreed with Justice Carodza in Palko v. Connecticut that it reflects the changing values and mores of our society.

He is not an originalist. He does not look only original intent. He does not look only to the static black letter, but he understands the importance of evolving values and of evolving reliance.

I questioned him at length about the reliance factor in Casey v. Planned Parenthood. I think Judge Alito went as far as he could go on the assurances of maintaining an open mind on this important subject.

When it came to the issue as to whether he reviewed it and regarded it as settled law, his testimony was virtually identical to the testimony of Chief Justice Roberts, who testified that it was settled. As Chief Justice Roberts put it in his confirmation hearings, it is settled beyond that. Chief Justice Roberts left open the unquestionable right and duty of the Court to review all cases on the merits when they are presented and to afford appropriate weight to stare decisis and to precedents, but not to take the position that precedents can never be overturned.

I think a fair reading of the record is that Judge Alito went about as far as he could go without answering the question as to how he would rule on a specific case, which would be beyond the purview of what a nominee ought to do.

In taking up questions of Executive power, Judge Alito could not answer questions posed about the President's authority to go to war with Iran. How could a nominee answer a question of that magnitude in a nomination proceeding without knowing a lot more about the circumstances? And judges make decisions after they have a case and controversy, when they have briefs admitted, when they have arguments prepared, when they have discussions with their colleagues, and they reflect on a matter and come to conclusion, not sitting at a witness table in a Judiciary Committee hearing. Judge Alito answered the questions as to the considerations which would be involved. Again, he went about as far as he could go.

On the question of congressional power, I questioned him at length on concerns I have about what the Supreme Court has had to say about declaring acts of Congress unconstitutional because the Supreme Court disagrees with our ''method of reasoning.'' The columns of the Senate building are lined up exactly with those of the Supreme Court, situated across the green. An interesting historical note, in an early draft of the Constitution, the Senate was to nominate Supreme Court Justices. That would be an interesting process, given the political complexion of the Senate today.

Back to the point. What superior wisdom and what superior method of reasoning comes when a person crosses the green to the Supreme Court of the United States? Our method of reasoning may not be too good, but it is our method of reasoning. To have the Court say that they declare acts unconstitutional because they do not like our method of reasoning is, candidly stated, highly insulting. Judge Alito said the obvious: Our method of reasoning was as good as the Court's.

Then in the decision on the Americans with Disabilities Act, where the Supreme Court has imposed a test of what is proportionate, taking it out of thin air in a 1997 decision, what is ''congruent and proportionate'' is a test which cannot be applied with any consistency. It lends itself to legislation from the bench. Justice Scalia characterized it accurately, calling it ''a flabby test,'' where the Court was functioning as the taskmaster of Congress to see that we had done our homework. Judge Alito's answers showed an appropriate respect for separation of powers and congressional authority.

The decisions of the Supreme Court questioning the constitutionality of statutes has led a number of Senators on the committee to prepare legislation which would give the Congress standing to go to the Supreme Court to argue to uphold our legislation. We thought initially about having a Judiciary Committee observe what the Court had done and from that, thought about seeking to intervene as amicus curiae, as a friend of the court, and took it the final step: Why not go to the Court and argue our cases ourselves, through counsel, which is an appropriate way. Congress has the authority to grant standing. We can grant standing to ourselves to see to it that our views are appropriately presented to the Court.

We respect the Court as the final arbiter of the Constitution. That is our system. But the arguments and the considerations and the record which Congress amasses ought to be considered by the Court. Now the constitutionality of statutes is upheld by the Solicitor General. But in cases where there is a conflict between what the Congress has to say and what the President has to say, we ought to be in a position to make our own submissions to the Court.

The issue of Executive authority and the current surveillance practices came up for discussion in Judge Alito's confirmation hearings. Again, he could not say how he would rule on the case if it came before him. He would have to read the briefs, hear the arguments, consider it. But he responded by giving us the factors and items which he would consider.

Many issues were discussed. Judge Alito approached them with an open mind. One subject of particular concern to this Senator is the issue of televising the Court, which I think ought to be done. The Supreme Court of the United States today makes the final decisions on so many of the cutting-edge questions of our time. The American people ought to know what is going on. A number of the Justices appear on television programs. There is

no reason why the Court proceedings should not be televised. Senator BIDEN and I made that specific request on the case of Bush vs. Gore and got a response from Chief Justice Rehnquist denying it; however, they released an oral transcript of the proceedings at the end of the day and the Court is doing more of that, which is a step forward.

The Congress has the authority to make decisions on the administration of the Court. For example, the Congress decides how many Supreme Court Justices there will be. We established the number at nine. Remember, in the Roosevelt era there was an effort to pack the Court and increase the number to 15. That is a congressional judgment. We decide when the Court starts to function: The third Monday in October. We decide what is a quorum of the Court: Six. We legislate on speedy trial rules. It is within the purview of the Congress to legislate, to call for the televising of their proceedings. I recognize the ultimate decision would rest with the Court if they decided to declare our act unconstitutional. Under separation of powers, that is their prerogative. I respect it. We ought to speak to the subject.

On the subject of television, again, Judge Alito did not give the answer I liked to hear—that he is for television in the Court—but he said he had an open mind and would consider it. Again, that is about as far as he could go.

One panel of particularly impressive witnesses was seven judges from the Court of Appeals from the Third Circuit who had worked with Judge Alito. There is precedence for judges testifying. Retired Chief Justice Warren Burger came in to testify in the nomination proceedings for Judge Bork. That is something for which there is precedent. These judges have unique knowledge of Judge Alito because they have worked with him in many cases.

Judge Becker, for example, former Chief Judge of the Third Circuit, now on senior status, sat with Judge Alito on more than 1,000 cases. Judge Becker has a national reputation as an outstanding jurist. Recently, he received the award as the outstanding Federal judge in the country. He testified about Judge Alito not having an agenda, not being an ideologue and having an open mind.

Judge Becker is regarded very much as a judge's judge, a centrist judge, and pointed out he and Judge Alito have disagreed very few times—about 25 times—during the course of considering more than 1,000 cases.

After the arguments are concluded, the three judges who sit on the panel retire and discuss the case among themselves; no clerks present, no secretaries present, just a candid discussion about what went on. That is where the judges really let their hair down and talk about the cases and get to know what a judge thinks. It is a high testimonial to Judge Alito that these judges sang his praises, in terms of openness and in terms of studiousness and in terms of not having an agenda.

One of the witnesses, former Judge Tim Lewis of the Third Circuit, an African American, testified about his own dedication to choice for a woman's right to choose, his own dedication to civil rights, civil liberties, and testified very forcefully on Judge Alito's behalf. He said very bluntly he would not be there if he did not have total confidence in Judge Alito.

One further comment: That is on the party-line vote which we seem to be coming to. He was voted out of committee, 10 to 8; 10 Republicans voting for Judge Alito; 8 Democrats voting against Judge Alito. It is unfortunate our Senate is so polarized today. I believe this Senate and this body would benefit greatly by more independence in the Senate.

I have not voted in favor of Judge Alito as a matter of party loyalty. If I thought he was not qualified, I would vote no, as I have in the past on nominees of my own party from Presidents of my own party.

But we need to move away from the kind of partisanship, which has ripped this body in recent times. I think it is important the American people have confidence in what the Senate does on the merits and that we avoid projecting the appearance of rank politics.

I believe it is important for Judge Alito to have supporters who favor a woman's right to choose so he does not feel in any way beholden to or confirmed by people who have one or another idea on some of these questions. Without naming names and identifying people, we have more than six Republicans who are pro-choice, who support a woman's right to choose. So the balance of power will be, if confirmed, not only on one side of that issue or another.

But I think we would do well to reexamine the procedures which we utilize in the confirmation process to try to move away from partisanship and towards getting an idea of the judge's temperament, his background, his jurisprudence, where he stands, without pressing him to the wall as to how he stands on any particular issue.

When we had the nomination of White House Counsel Harriet Miers, she was opposed by some because, as one person put it, there was no guarantee she would vote to overturn Roe. Well, you cannot get guarantees from Supreme Court nominees. I have said before, and I think it is worth repeating, guarantees are for used cars and washing machines. They are not for nominees to the Supreme Court of the United States.

I think, when we examine temperament and background, including jurisprudence, those are the appropriate tests. No one knows with certainty how Judge Alito is going to vote. The cases are full of surprises. Justice Sandra Day O'Connor was very much opposed to abortion rights before she came to the Court. And she has been one of the foremost proponents of a woman's right to choose, subject to some limitations. Justice Anthony Kennedy spoke very disparagingly about abortion rights before coming to the Court, and he has supported Roe v. Wade. Justice David Souter, as attorney general for New Hampshire, opposed repealing New Hampshire's law banning abortions, even after it had been declared unconstitutional by the Supreme Court of the United States. The National Organization for Women had a rally on Capitol Hill when David Souter was up for confirmation in 1991—I remember it well; I was there—with big placards ''Stop Souter or Women Will Die.'' Justice Souter, too, has supported Roe v. Wade.

So no one knows what will happen. President Truman was disappointed by his nominees in the famous steel seizure case. Again and again and again, there have been surprises. The rule is, there is no rule. So on the committee and in the Senate we are left to our best judgment as to qualifications without guarantees. The separation of powers entrusts to the President the role of making the nominations. It is up to the Senate to make an evaluation and then to confirm or not confirm. After that, it is up to the Justices to make the decisions on the Court. The separation of powers has served us well.

Those are the facts which have led me to vote Judge Alito out of committee affirmatively. And my vote will be cast when the roll is called later in this floor debate.

EXHIBIT 1

ALITO FLOOR STATEMENT

Mr. President, today the Senate begins the debate on the confirmation of Judge Samuel A. Alito to be an Associate Justice of the United States Supreme Court.

It has been 86 days, nearly three months, since President Bush announced his choice of Judge Samuel Alito to fill the seat being vacated by Justice Sandra Day O'Connor. During this time, my staff and I have undertaken an extensive review of Judge Alito's record, including an examination of his 238 major decisions while serving on the Third Circuit Court of Appeals, a review of 49 of the cases Judge Alito handled during his tenure as a United States Attorney, analyses of 43 speeches and articles Judge Alito authored, and evaluations of the 38 formal opinions, petitions, and Supreme Court briefs which Judge Alito wrote while serving in the Department of Justice. Additionally, the Judiciary Committee held 30 hours and 20 minutes of hearings, which included 17 hours and 45 minutes of questioning of Judge Alito and testimony from 33 outside witnesses.

Based on my thorough review of his record, I intend to vote to confirm Judge Alito as the 110th Justice of the United States Supreme Court. I did not reach this decision lightly. As I have said before, except for a declaration of war or its virtual equivalent, a resolution for the use of force, no Senate vote is as important as the confirmation of a Supreme Court justice. And this vote is one that requires Senators to free themselves from the straight-jacket of party loyalty and exercise independent judgment. Under separation of powers, Senators are separate from

the executive branch and have a full, independent role in staffing the Third Branch of government. I have long adhered to this view, which led me to vote against Judge Bork's confirmation, even though he was nominated by a President of my own party. If I thought Judge Alito should not be confirmed, I would vote no again.

Judge Alito has sterling academic credentials, having excelled at Princeton University and the Yale Law School. Judge Alito began his lifetime commitment to public service with a prestigious clerkship for Judge Leon I. Garth of the United States Court of Appeals of the Third Circuit. For the next thirteen years, Judge Alito served his country as an Assistant to the U.S. Solicitor General, a Deputy Assistant Attorney General in the Office of Legal Counsel, and as both the United States Attorney for New Jersey and an assistant United States Attorney in that same office. When Judge Alito was appointed to his current position on the Third Circuit Court of Appeals, the ABA unanimously voted to award Judge Alito its highest possible rating, and Judge Alito enjoyed broad bipartisan support, as reflected by the fact that he was confirmed by unanimous consent.

Judge Alito's achievements are all the more impressive when one realizes that Judge Alito was not born with a silver spoon in his mouth. Judge Alito's father was brought to this country from Italy as an infant and grew up in poverty. Although his father graduated at the top of his high school class, he had no money for college, and he was set to work in a factory. It was only because at the last minute, a kind person arranged for him to receive a $50 scholarship, that he was able to attend college. Despite the discrimination he faced as an Italian immigrant in 1935, Judge Alito's father eventually became a teacher, served in the Pacific during World War II, and held a nonpartisan position for the New Jersey Legislature. Judge Alito put it best when he said:

''my parents taught me through the stories of their lives . . . and it is the story, as far as I can see it, about the opportunities that our country offers and also about the need for fairness and about hard work and perseverance and the power of a small good deed.''

I have participated in the confirmation hearings for the past eleven nominees to the Supreme Court. Although judgments may differ, I think that Judge Alito went farther in answering questions than most Justices in the past. Indeed, Senator BIDEN commented, ''you have been very gracious. I appreciate you being responsive.'' By one reckoning, Judge Alito was asked 677 questions and answered some 659—97%. That is far more than Justice Ginsburg, who answered only 307 out of 384 questions, or 80%, or Justice Breyer, who answered only 291 out of 355 questions, or 82%. Judge Alito did not refuse to respond because a similar case might come before the Court. He ultimately stopped short of making commitments as to how he would vote, as he should. But for each topic that was raised, Judge Alito discussed the relevant constitutional considerations and his judicial philosophy.

For example, on the topic of a woman's right to choose, Judge Alito agreed that the Constitution creates a right to privacy. I asked Judge Alito whether he agreed with the Supreme Court's holding in Eisenstadt, which established that unmarried women have a constitutional right to contraception and was an underpinning of the Supreme Court's decision in Roe v. Wade. Judge Alito replied directly, ''I do agree with the result in Eisenstadt.'' When Senator FEINSTEIN asked Judge Alito whether the Constitution guarantees a right to privacy, Judge Alito responded: ''The 14th Amendment protects liberty. The Fifth Amendment protects liberty. And I think it is well accepted that this has a substantive component, and that that component includes aspects of privacy that have constitutional protection.''

Judge Alito also discussed whether Roe v. Wade is so well established that it should not be overturned. Judge Alito stated: ''I agree that in every case in which there is a prior precedent, the first issue is the issue of stare decisis, and the presumption is that the Court will follow its prior precedents. There needs to be a special justification for overruling a prior precedent.''

Some Members of the Judiciary Committee have argued that Judge Alito was less forthcoming on this issue than Chief Justice Roberts was during his Supreme Court confirmation hearing, when he called Roe v. Wade ''settled law.'' Comparing the testimony of the two nominees, I cannot see a dime's worth of difference between their responses. I asked Chief Justice Roberts what he meant when, as a nominee for the circuit court, he said Roe was settled law. Specifically, I asked him if he meant it was settled for him as a circuit court judge, or if it was settled beyond that, even as a Supreme Court Justice. He answered: ''beyond that, it's settled as a precedent of the Court, entitled to respect under principles of stare decisis.''

Similarly, Judge Alito testified that ''Roe v. Wade is an important precedent of the Supreme Court'' and that the Court's reaffirmation of that case ''strengthens its value as stare decisis.'' Moreover, both Chief Justice Roberts and Judge Samuel Alito testified that they agreed with the result in Eisenstadt, that unmarried people may not be denied contraception, and with the foundational case of Griswold v. Connecticut, which guaranteed that same right to married couples. Both Chief Justice Roberts and Judge Samuel Alito agreed that with the view that the Constitution's Due Process Clause includes a substantive protection of privacy—the legal view underpinning Roe v. Wade. And both Chief Justice Roberts and Judge Samuel Alito refused to make commitments on how they would vote in abortion cases, including how they would rule if Roe came before the Court again. This is as it should be: no nominee for the Supreme Court or any other Court should be required to commit to how they would rule on a potential case before them.

I was pleased to hear Judge Alito confirm that he does view the Constitution as a living document. Judge Alito stated, ''I think the Constitution is a living thing in the sense that matters, and that is . . . it sets up a framework of Government and a protection of fundamental rights that we have lived under very successfully for 200 years, and the genius of it is that it is not terribly specific on certain things. It sets out some things are very specific, but it sets out some general principles, and then leaves it for each generation to apply those to the particular factual situations that come up. . . . As times change, new factual situations come up, and the principles have to be applied to those situations. The principles don't change. The Constitution itself doesn't change, but the factual situations change, and as new situations come up, the principles and the rights have to be applied to them.''

Judge Alito's record confirms that he is not an ideologue on a crusade to curtail Roe v. Wade. He has upheld a woman's right to choose even when he had the discretion to limit abortion rights. For example, in the 1995 case of Elizabeth Blackwell Medical Center for Women v. Knoll, Judge Alito struck down two abortion restrictions by the State of Pennsylvania. The first provided that a woman who became pregnant due to rape or incest could not obtain Medicaid funding for her abortion unless she reported the crime to the police. The second provided that if a woman needed an abortion to save her life, she had to obtain a second opinion from a doctor who had no financial interest in the abortion. The question was whether these laws conflicted with a federal regulation issued by the Secretary of Health and Human Services. The case did not involve a question of constitutional law. There was no binding Supreme Court precedent on point. Judge Alito easily could have upheld the abortion restrictions if he wished to. Indeed, another Third Circuit judge appointed by President Reagan voted to do just that. But Judge Alito voted to strike down both laws in favor of a woman's right to choose. This is not the behavior of someone bent on chipping away at Roe v. Wade. This is the behavior of a moderate jurist who understands the importance of precedent.

The fact is that, notwithstanding Senators' concerted efforts, it is not possible to predict how Judge Alito will rule on the issue of abortion. If there is a rule on expectations, it is probably one of surprise. Two or three decades ago, no one would have predicted that Justices O'Connor, Kennedy, or Souter would have voted to uphold a woman's right to choose. At her confirmation hearing, Justice O'Connor testified that she personally viewed abortion with ''abhorrence'' and stated, ''my own view in the area of abortion is that I am opposed to it as a matter of birth control or otherwise.'' Yet, roughly 10 years later, she voted to uphold Roe v. Wade and has done so ever since. Justice Kennedy explained that he ''was brought up to think of abortion as a great evil. He once denounced the Roe decision as the Dred Scott of our time, a reference to the infamous 1857 ruling that sanctioned slavery and helped spark the Civil War.'' Yet, in 1992, Justice Kennedy cast the deciding vote in Casey v. Planned Parenthood to uphold Roe v. Wade. When he was New Hampshire Attorney General, Justice Souter filed a brief arguing that tax payer dollars should not be used to fund ''the killing of unborn children'' and defended abortion laws that had already been undermined by Roe v. Wade. During his confirmation hearing, the National Organization for Women organized a rally against his confirmation entitled ''Do or Die Day'' and distributed flyers proclaiming ''Stop Souter or women will die.'' Yet, on the Supreme Court, Justice Souter has consistently voted to uphold a woman's right to choose.

Similarly, there have been dire predictions about Judge Samuel Alito. The National Organization for Women has released another flyer—this one declaring ''Save Women's Lives. Vote No on Alito.'' The rule is that there is no rule.

Judge Alito was also questioned extensively on Executive power and whether the resolution for the authorization of use of force gave the President authority to engage in electronic surveillance. When I asked Judge Alito whether he agreed with Justice O'Connor's statement in Hamdi that ''We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens,'' Judge Alito responded, ''Absolutely. That's a very important principle. Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.'' Judge Alito went somewhat beyond the usual practice of answering just as many questions as he needed to in order to be confirmed. While he would not commit to giving answers to hypothetical situations which may come before the Court, he fully explained his methods of reasoning. For example, when questioned by me and other

Senators about how he would decide questions dealing with the limits of executive power, he responded that he would apply Justice Jackson's framework from the Youngstown Steel case:

''[A]s I said, the President has to follow the Constitution and the laws and, in fact, one of the most solemn responsibilities of the President—and it is set out expressly in the Constitution—is that the President is to take care that the laws are faithfully executed, and that means the Constitution, it means statutes, it means treaties, it means all of the laws of the United States.

''But what I am saying is that sometimes issues of Executive power arise and they have to be analyzed under the framework that Justice Jackson set out. And you do get cases that are in this twilight zone and it is—they have to be decided when they come up based on the specifics of the situation.''

When Judge Alito was similarly questioned about the President's power to control the executive branch, he responded by explaining in full:

''[A]s to the agencies that are headed by commissions, the members of which are appointed for terms, and there are limitations placed on removal, the precedents—the leading precedent is Humphrey's Executor and that is reinforced, and I would say very dramatically reinforced, by the decision in Morrison, which did not involve such an agency. It involved an officer who was carrying out what I think everyone would agree is a core function of the executive branch, which is the enforcement of the law, taking care that the laws are faithfully executed. . . .

''[W]hat I have tried to say is that I regard this as a line of precedent that is very well developed and I have no quarrel with it and it culminates in Morrison, in which the Supreme Court said that even as to an inferior officer who is carrying out the core executive function of taking care that the laws are faithfully executed, it is permissible for Congress to place restrictions on the ability of the President to remove such an officer, provided that in doing so, there is no interference with the President's authority, and they found no interference with that authority there. That is an expression of the Supreme Court's view on an issue where the claim for—where the claim that there should be no removal restrictions imposed is far stronger than it is with respect to an independent agency like the one involved in Humphrey's Executor.''

I have expressed my concern, for some time now, about the case of United States v. Morrison, where the Supreme Court declared part of the Violence Against Women Act unconstitutional. The majority opinion in that case dismissed lengthy Congressional findings because five justices disagreed with our ''method of reasoning.'' The inference was that they believed the Court has a superior method of reasoning to the Congress. I believe that the Constitutional separation of powers rejects that kind of view and I know that many of my colleagues share this concern.

I asked Chief Justice Roberts about this during his confirmation hearings and I raised it again with Judge Alito. Judge Alito said that: ''I would never suggest that judges have superior reasoning power than does Congress . . . I think that Congress' ability to reason is fully equal to that of the judiciary.''

The Judiciary Committee had the rare, but not unprecedented, opportunity to hear from seven of Judge Alito's current and former colleagues on the Third Circuit. These men and women, Democrat and Republican appointees, know his record best. They have heard cases with him and sat in conference with him, they have worked to craft opinions with him. The process that appellate judges go through in rendering decisions is not familiar to many people and it was very instructive to have the insight of these judges.

Judge Edward Becker, the former Chief Judge of the Third Circuit is one of the most acclaimed jurists of our time. He recently won the coveted Devitt Award as the Outstanding Federal Jurist of the year. I know Judge Becker very well since our college and law school days, so, I take his views seriously.

Judge Becker has sat on over a thousand cases with Judge Alito and, as he testified, they only disagreed 27 times. In each of those cases, Judge Becker testified, Judge Alito's ''position was closely reasoned and supportable either by the record or by his interpretation of the law, or both.'' Judge Becker testified that he knows Judge Alito approaches judging with no agenda and was not an ideologue. He said, ''The Sam Alito that I have sat with for 15 years is not an ideologue. He is not a movement person. He is a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants.''

The current Chief Judge of the Third Circuit, Judge Anthony Scirica, confirmed this view of Judge Alito, as did Judge Maryanne Trump Barry, and all the other current and retired judges who testified.

I thought that the testimony of Judge Timothy Lewis was particularly influential, given his background. He is an African American who described himself at the hearing as ''unapologetically pro-choice'' and as ''a committed human rights and civil rights activist.'' He joked that it was no coincidence that he happened to be sitting at the ''far left'' end of the panel of judges.

Still, based on his personal knowledge of the kind of judge Judge Alito is, Judge Lewis spoke enthusiastically in his favor. He said: ''having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular the United States Supreme Court, and first and foremost among these is intellectual honesty.''

He testified that ''I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent. That does not mean that I agreed with him, but he did not come to conference or come to any decision that he made during the time that I worked with him based on what I perceived to be an ideological bent or a result-oriented demeanor or approach. He was intellectually honest, and I would say rigorously so, even with respect to those areas that he and I did not agree.''

In the area of civil rights, Judge Alito has a strong record. In his tenure as the U.S Attorney for New Jersey, he took steps to diversify the office—hiring and promoting women and minorities. Since taking the bench, he has continued to demonstrate a commitment to civil rights. Of course, when a judge has decided over 4,800 cases, as Judge Alito has, it is possible to select a few of his cases to place him at any and every position on the judicial spectrum. But, on balance, Judge Alito's record in this area is more than satisfactory.

Again, Judge Lewis's testimony is instructive. He told the Committee that ''[I]f I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I can guarantee you that I would not be sitting here today.'' Coming from some one with an unquestioned commitment to civil rights who has worked closely with Judge Alito, that testimony is entitled to considerable weight.

Judge Lewis' testimony supported my view of Judge Alito from examining his cases. Indeed, I have found many cases where he has defended civil rights and the interests of African Americans. For example:

In U.S. v. Kithcart, Judge Alito held that the Fourth Amendment does not allow police to target drivers because of the color of their skin. After a police officer received a report that two black men in a black sports car had committed three robberies, she pulled over the first black man in a black sports car she saw. Judge Alito ruled that this violated the Constitution.

In Brinson v. Vaughn, Judge Alito ruled that the Constitution does not allow prosecutors to exclude African Americans from juries. In that case, the prosecutor had used 13 of his 14 ''strikes'' to exclude African-Americans from the jury, but argued that this was not a problem, because he allowed 3 African-Americans onto the jury. Judge Alito explained that the prosecutor could not get around the Constitution by allowing a handful of African-Americans onto the jury.

In Zubi v. AT&T Corp., Judge Alito authored a lone dissent, opposing the establishment of a stringent limitations period in which civil-rights plaintiffs would have to file a claim. The Supreme Court unanimously vindicated Judge Alito's position four years later.

In Reynolds v. USX Corporation, Judge Alito ruled in favor of Deborah Reynolds, an African-American woman who was subjected to racial and sexual harassment at work. Her employer claimed that the company shouldn't be liable because the harassment came from her coworkers, rather than supervisors. Alito concluded that her supervisors were aware of the harassment and the company had a duty to end it.

During Judge Alito's time on the bench he has also demonstrated great sensitivity to the unique challenges faced by people with disabilities. He understands that people with disabilities are still subject to discrimination in our society and that they are entitled to full civil rights. As he testified at his hearing: ''When I have a case involving someone who's been subjected to discrimination because of disability, I have to think of people who I've known and admired very greatly who had disabilities and I've watched them struggle to overcome the barriers that society puts up, often just because it doesn't think of what it's doing, the barriers that it puts up to them.''

He has issued several important decisions vindicating the rights of people with disabilities. Thomas v. Commissioner of Social Security, which Judge Alito discussed at his hearing, is a good example of this. It is also one of the few cases where Judge Alito was reversed by the Supreme Court—in this instance unanimously—because the Court thought that Judge Alito went too far to protect the ''little guy.''

In that case, Judge Alito ruled in favor of a woman with disabilities who sought social security benefits. The Social Security Administration concluded that the plaintiff was not entitled to benefits because she could still perform her former job as an elevator operator—even though such jobs no longer exist. Judge Alito thought that such a rigid application of the law ''sets up an artificial roadblock'' to people seeking disability benefits. He saw ''no plausible reason why Congress might have wanted to deny benefits to an otherwise qualified person simply because that person, although unable to perform any job that actually exists in the national economy, could perform a previous job that no longer exists.''

Thomas is only one example of Judge Alito's strong record on disability rights. He has ruled in favor of numerous workers, students, customers, and disability advocacy groups on disability-related claims. Often times, he has reversed the rulings of lower courts to do so. Other examples include:

Shapiro v. Township of Lakewood, where Judge Alito authored the majority opinion in favor of an EMT technician who became disabled on the job and was denied an interdepartmental transfer to a position as a police dispatcher.

Fiscus v. Wal-Mart Stores, Inc., where Judge Alito ruled in favor of a victim of disability discrimination who suffered from end-stage renal disease and sought permission from her employer to self-administer dialysis every four to six hours during the workday. Judge Alito voted to reverse the lower courts ruling that kidney failure was not covered by the Americans with Disabilities Act.

Mondzelweski v. Pathmark Stores Inc., where Judge Alito ruled in favor of a meat cutter who became injured on the job and could no longer lift heavy objects. He overturned the judgment of a lower court that refused to consider his disability in light of his low education and skill level. Judge Alito believe that the impact of a disability had an individual's inability to work must take into account his particular background and skills.

Shore Regional High School Board of Education v. P.S., where Judge Alito again reversed a lower court to find in favor of a plaintiff with disabilities. The plaintiff in that case was a child with disabilities who had suffered severe harassment from bullies at his school. Because an Administrative Law Judge had found that the student could not get an appropriate education in this environment, Judge Alito ruled that the students' parents should be reimbursed for tuition at a neighboring public high school.

Pennsylvania Protection & Advocacy, Inc. v. Houstoun, where Judge Alito sided with a group advocating for the rights of the mentally ill and ordered a state hospital to release internal reports on the death of a patient who attempted suicide and later died under hospital care. He rejected the state of Pennsylvania's arguments that these documents were protected from release under state law.

Judge Alito has authored a number of other important, progressive, opinions, vindicating the rights of the so-called ''little guy''. For example, in Fatin v. INS, Judge Alito held that an Iranian woman could establish a basis for asylum if she showed that compliance with Iran's gender specific laws would be deeply abhorrent to her or that the Iranian government would persecute her because of her gender. This is a landmark case that established gender-based discrimination as possible grounds for asylum.

In Alexander v. University of Pittsburgh Medical Center System, Judge Alito dissented from the court's ruling in favor of a hospital in a medical malpractice case. A young woman had been hospitalized for a rare illness of the liver. Based on advice from several doctors, her parents waited for one and one-half months before ordering a liver transplant. The young girl died, and the parents sued. The jury ruled for the parents and awarded substantial damages. The majority of the Third Circuit reversed the jury's verdict against the doctors, explaining that the trial court judge should have instructed the jurors to consider whether the parents were partly responsible for the young girl's death. Judge Alito dissented, concluding that the fault for any poor decision rested with the defendant doctors, not the parents. Judge Alito wrote: ''Except perhaps in truly extreme cases, it is not negligent for a patient such as Alyssa or her parents to follow the advice of primary care physicians.''

In Cort v. Director, Judge Alito wrote an opinion ruling for and awarding benefits to a former coal miner under the Black Lung Benefits Act. An Administrative Law Judge had denied the worker's claim, finding that since he was able to obtain work as a wire cutter, he wasn't disabled. Judge Alito found that the statute and associated regulations established a presumption of total disability due to Black Lung when a claimant worked for more than 10 years as a miner and met one of four medical requirements—which the plaintiff satisfied. He reasoned that the statue focused on the source of disability, not its degree.

These cases are just a few examples from Judge Alito's lengthy record. My staff has identified and analyzed scores of cases where Judge Alito has ruled for minorities, immigrants, people with disabilities, prisoners, and other disadvantaged plaintiffs. It is this record that has won him the enthusiastic support of his fellow judges on the Third Circuit.

Judge Alito is anything but a ''stealth'' candidate. Those who opposed Chief Justice Roberts' nomination asked for a nominee with a deeper record to analyze. In Judge Alito, they have such a person. The Committee had the opportunity to review literally thousands of decisions and some 461 written opinions. It also had the opportunity to hear directly from Judge Alito as he gave lengthy testimony. In three days of intense questioning in which he spent over 18 hours in the witness chair, Judge Alito was asked roughly 677 questions. By comparison, Justice Ginsburg was asked 384 questions and Justice Breyer was asked only 355 questions. Clearly, Judge Alito's record has been vetted as thoroughly as any nominee's possibly could be.

It is on the basis of this record that I reached my conclusion to vote aye on the nomination of Judge Alito to be an Associate Justice of the United States Supreme Court.

I thank the Chair and I now yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator SPECTER for his excellent leadership of the Judiciary Committee during both the Roberts and Alito hearings. He squarely addressed the tough issues in the first questioning. He made sure every member of the committee had full and ample opportunity to ask any question they wanted. We had 30-minute rounds. We had opening statements. We had the opportunity to have multiple rounds. Basically, I think the people could have asked questioned theses nominees for as long as they wanted.

Of course, both Roberts and Alito were magnificent in their testimony, superb in their knowledge of the Constitution and the role of a judge in every possible way. That is why they have been favorably received by the American public which is why Chief Justice Roberts was confirmed, and why Alito will be confirmed.

We have the greatest legal system in the world. It is the foundation of our liberties. It is the foundation of our economic prosperity. But the focus and the key ingredient of our legal system is an independent judge who makes decisions every day based on the law and the facts, not on their personal, political, religious, moral or social views. If we descend to that level, if we allow those social, political views to affect or infect the decision-making process, justice has been eroded. That is contrary to every ideal of the American rule of law.

What is important today is Judge Alito's legal philosophy. It is not his political philosophy that is important. What is his legal philosophy? The core of his beliefs as a judge is that a judge should be careful, fair, restrained, and honest in analyzing the facts of the case and applying the relevant law to those facts. For what purpose? To decide that dispute, that discrete issue that is before the Court at that time and not to indulge, as he indicated, in great theories. That is not what a judge is about.

So this is what American judges must do for our entire legal system to work. That is why I am so proud that President Bush has given us two nominees who can explain, articulate that role of a judge in a way every American can understand, relate to, and affirm.

My colleagues, I am afraid, lack a proper understanding of this concept. It goes to the core of our differences over judges. They want judges, I am afraid, who will impose their own views, their personal views, on political issues in the guise of deciding discrete cases before them. Oftentimes, these are views that cannot be passed in the political, legislative process but can only be imposed by a judge who simply redefines or reinterprets the meaning of words in our Constitution, and they declare that the Constitution says that same-sex marriage must be the law of the land. They just declare that to be so. It only takes five unelected, lifetime appointed judges to set that kind of new standard for America.

Is there any wonder people are worried about that? It erodes democracy at its most fundamental level when political decisions are being set by judges with lifetime appointments, unaccountable to the public.

So that is what we are worried about in so many different ways. There has been a trend in that regard, no doubt about it, by our courts. I think they have abused their authority by taking an extremely hostile view toward the expression of religious conviction in public life.

They have struck down Christmas displays. Our courts have declared our Pledge of Allegiance to the Government unconstitutional because it has ''under God'' in it. By the way, for those of you who can see the words over this door, ''In God We Trust,'' it is part of our heritage, written right on the wall of this Chamber.

This is an extreme interpretation of the separation of church and state. It is not consistent with our classical understanding of law in America. We had the Supreme Court, in this past year,

redefining the takings clause. The takings clause says you can take private property for public use.

It does not say you can take it for any purpose, like a private mall. They redefined the meaning because they thought that was smarter, better policy. But we don't appoint judges to set policy. As legislators, we have that responsibility. We are the people who will be voted out of office if we set bad policy. We are the ones meeting people every day and campaigning, trying to understand what the American people care about. That is not what judges do, at 80 years old, sitting over there reading briefs every day.

This is an important issue. They declared that illegal aliens, despite State laws to the contrary, are entitled to benefits. They struck down every partial-birth abortion law. They have declared that morality—this is hard to believe but true in recent years—cannot be a basis for congressional legislation. Yet they contend that they may decide opinions and redefine the meaning of words and the understanding of words over hundreds of years based on what they declare to be evolving standards of decency.

Is that a standard or is that just a license for a judge to do whatever they feel like doing at a given time? Evolving standards of decency, who can define that? Do they have hearings on what these standards are?

These are important issues. The American people are concerned about it. President Bush was concerned about it. He promised he would appoint judges who show restraint, judges of great ability and integrity but who would show restraint and be more modest in the way they handle these cases. That is a fair standard. It is a legitimate issue for the American people to decide. He talked about it in almost every speech he made. That is what he promised to do, and that is what he has done.

If we were to name judges, there is a legitimate concern that we would appoint judges who would promote some conservative agenda. I don't favor that; I oppose that. We don't want a judge to promote a liberal or a conservative agenda, although the plain fact is, if anybody looks at it squarely, they will see that the Court has actually been promoting a more liberal agenda. But we are not asking that a conservative agenda be promoted. We are asking that the courts maintain their role as a neutral umpire to decide cases based on the law passed by the legislative branch or State legislatures or passed by the people through the adoption of the U.S. Constitution.

I don't understand the opposition to Judge Alito. He is such a fabulous nominee. It does appear, according to the New York Times last week, the 19th of January, that our Democratic leader, Senator HARRY REID, has urged his colleagues to vote no so they can, for political reasons, make it a political issue. We need to be careful about that. I am afraid there has been an attempt to change the ground rules of confirmations, to set standards we have never set before for nominees. That knife cuts both ways. If this is affirmed, then there will be more difficulty in the future for Democratic Presidents to have their nominees confirmed.

Judge Alito has a remarkable record. He is the son of immigrants in New Jersey. His father was an immigrant to this country. He goes off to Princeton, gets his degree with honors, declines to accept an invitation to join an eating club that excludes women and others. I guess that was beneath the members of that club. He decided while he was there that he would just dine with everybody else, the scruff and the scrum that you find at Princeton. Then he went to Yale Law School where he finished at the top of his class, served as editor of the Yale Law Journal, participated in the ROTC at a time when that was not an easy thing to do, served in the Army Reserve for 8 years, and was offended that Princeton would kick the ROTC from their campus. I am sure he was not pleased when the rioters bombed the ROTC building at Princeton.

He is an American. He believes in his country. He was prepared to serve his country, go where he was asked to go, if called upon in that fashion.

He was chosen to clerk for the Third Circuit after he graduated, the court on which he now sits with Judge Garth. That is quite an honor. For 3 years he served as assistant U.S. attorney in that great large New Jersey law office for the U.S. attorney where he argued appellate cases. He did the appellate work. That is what he will be as a Supreme Court judge, an appellate judge, not a trial judge. That is what he did when he started out his practice. Then he went to the Solicitor General's Office of the Department of Justice, which is often referred to as the greatest job for an attorney in the world, to be able to stand up in the courts of the United States of America, particularly the Supreme Court, and to represent the United States in that court. He argued 12 cases before the Supreme Court. Not one-half of 1 percent of the lawyers in America have probably argued any case before the Supreme Court. He argued 12. That is a reflection of his strength and capability.

Then he became U.S. attorney in New Jersey, which is one of the largest U.S. attorney offices in America, where he prosecuted the Mafia and drug organizations and was highly successful in that office and won great plaudits for his performance. He then was placed, 15 years ago, on the Third Circuit Court of Appeals. He has served as a circuit judge in the Third Circuit Court of Appeals for 15 years, writing some 350 opinions and participating in many others.

He has had his record exposed to the world. What does it look like? Without question, it is a record of fairness and decency. Some of us on the conservative side have questioned the bar association. They are pro-abortion in their positions. They take liberal positions on a lot of issues, and some people have criticized them for that. They declare their ratings of judges are not based on that. But sometimes they have been accused of allowing their personal views to infect that rating process.

How did the American Bar Association rate Judge Alito? They gave him their highest possible rating. They found that he was well qualified, unanimously, by the 15-member committee that meets to decide that issue. They interviewed 300 people, people who have litigated against Judge Alito as a private lawyer, people who have been his supervisors, people who have worked for him, people who had their cases decided by him.

They go out and talk to these people. They will share with the American Bar Association privately what they might not say publicly. So they interviewed 300 people, and contacted over 2,000. They concluded that Judge Alito has established a record of both proper judicial conduct and evenhanded application in seeking to do what is fundamentally fair.

They declare that Judge Alito was held ''in incredibly high regard.'' That was said by attorney John Payton, an African American who argued the University of Michigan quota case before the U.S. Supreme Court, not a right-winger. He said they found the people they interviewed held Judge Alito in incredibly high regard. I asked him if he chose that word carefully. He said: I did; yes, sir.

Judge Alito represents that neutral magistrate that we look for in our judges in America. His academic record is superb. His proven intelligence is unsurpassed. The experience he brings to the U.S. Supreme Court is extraordinary, including 15 years as an appellate judge doing in a lower court basically the same thing one would do at the Supreme Court level.

This is what he said at the hearing:

The PRESIDING OFFICER (Mr. GRAHAM). The majority's time has expired.

Mr. SESSIONS. Mr. President, I ask unanimous consent for 30 seconds to wrap up.

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

Mr. LEAHY. I understand our side will also get an additional 30 seconds.

Mr. SESSIONS. This is what he said:

> I had the good fortune to begin my legal career as a law clerk for a judge who really epitomized openmindedness and fairness. He read the record in detail in every single case. He insisted on following precedent, both the precedents of the Supreme Court and the decisions of his own court. He taught all of his law clerks that every case had to be decided on an individual basis. He really didn't have much use for grand theories.

That is what we need on the bench today. I think it would restore the public confidence. I am proud to support this nomination.

Mr. President, I respect Senator LEAHY. He is an excellent advocate for the Democratic side. I was pleased he supported Judge Roberts, and I am not as thrilled he is not supporting Judge Alito. It was a process that was a bit rough at times, but fundamentally I think the judge was able to have his day in court.

I yield the floor.

Mr. LEAHY. Mr. President, I ask unanimous consent that we may go a couple of minutes beyond 12 o'clock.

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

Mr. LEAHY. Mr. President, I appreciate the compliment of the Senator from Alabama. I have spent 31 years in the Senate. I take my role in the Senate very seriously. I believe we should be the conscience of the Nation. As I have said many times, only 18 people get to publicly ask questions of the Supreme Court nominees. They are the 18 Members of the Senate Judiciary Committee. We are asking those questions on behalf of almost 300 million Americans, and then 100 of us get a chance to vote on it.

While the Senator from Alabama is still on the floor, I note that there seem to be talking points going around that the Democratic leader, Senator REID, has been lobbying to make this a party-line vote. I don't know where those talking points came from. I have heard them in different places. The Democratic leader was asked about that yesterday by the press in open session. He said it is absolutely not so. I am the ranking member of the Senate Judiciary Committee. Just as nobody from leadership has lobbied me on now-Chief Justice Roberts when I voted for him, nobody has lobbied me on Judge Alito; nor have I lobbied anybody else, and nor have I heard of anybody who has been lobbied.

What the distinguished senior Senator from Nevada, the Democratic leader, has said over and over again is that this is a vote of conscience. Every Senator has to search his or her own conscience. In fact, I was also concerned when the distinguished Republican leader opened the debate on this nomination by complaining that those opposing Judge Alito are smearing a decent and honorable man. Mr. President, again, out of almost 300 million Americans, only 100 of us get a chance to say whether this man will go on the Supreme Court, where he can sit there for years, decades even, and where he is supposed to be the ultimate check and balance and guardian of our rights. To say that by opposing him is smearing him, that is not so.

Senator SPECTER and I held a fair and open hearing on him. Democrats had substantive and probing questions to try to learn more about Judge Alito, and some Republicans did the same. These complaints about the treatment of Judge Alito ring hollow after President Bush was forced by an extreme faction of his own Republican Party to withdraw his first choice for the vacancy, Harriet Miers. It was a humiliation of the President by an extreme faction in his party. Within hours of the time he nominated her, many groups on the far right criticized the nomination, and a number of Republican Senators raised serious concerns calling for a thorough hearing and a probing inquiry in light of their concerns about her record.

The same groups on the right immediately embraced Samuel Alito after they had forced Harriet Miers to be withdrawn. The same Republican Senators who said they needed to learn more about Harriet Miers' judicial philosophy before they could vote to confirm her are now doing an about face and criticizing Democrats for saying they want to do the same type of inquiry for Judge Alito. President Bush buckled to pressure and withdrew the nomination for Harriet Miers because she didn't pass the litmus test and because there were those who said they were not sure how they would vote.

The third nomination—Judge Alito's—people applauded, implying that here we have somebody who we know how he will vote, so he is fine.

Democratic Senators are taking their constitutional duties seriously. We have a single fundamental question: Will the Senate serve its constitutional role and preserve the Supreme Court as a constitutional check on the expansion of presidential power?

A nominee's views on Executive power and the checks and balances built by the Founders into our constitutional framework should always weigh heavily in hearings for those nominated to the Supreme Court. Executive power issues were the first issues I raised with Chief Justice Roberts at his confirmation hearing, and they were the first issues I raised with Judge Alito.

The reason presidential power issues have come to dominate this confirmation process is that we have clearly arrived now at a crucial juncture in our Nation, and on our highest court, over the question of whether a President of the United States is above the law. The Framers knew that unchecked power leads to abuses and corruption, and the Supreme Court is the ultimate check and balance in our system. Vibrant checks and balances are instruments in protecting both the security and the liberty of the American people.

This is a nomination that I fear threatens the fundamental rights and liberties of all Americans, now and for generations to come. One need only look to the White House to see the practical effects of such an erosion of those rights and liberties. This President is prone to unilateralism and assertions of Executive power that extend all the way to illegal spying on Americans.

This President is in the midst of a radical realignment of the powers of the Government and its intrusiveness into the private lives of all Americans, Republicans and Democrats. Frankly, this nomination is part of that plan for the intrusion into our private lives. I am concerned that if we confirm this nominee, it will further erode checks and balances that have protected our constitutional rights for more than 200 years. It is not overstating the case to say this is a critical nomination. It is one that can tip the balance on the Supreme Court radically away from the constitutional checks and balances and the protection of Americans' fundamental rights.

This past week, I introduced a resolution to clarify what we all know, that the congressional authorization for the use of military force against Osama bin Laden did not authorize warrantless spying on Americans, as the administration has now claimed. I thought—we all thought—that when we as Democrats joined in the bipartisan authorization of military action against Osama bin Laden more than 4 years ago, our action would have been more effective and that we would have by now succeeded in ridding the world of that terrorist leader. We gave the President all the authority he needed to go after Osama bin Laden, and we thought with the great power of this country he would have gone out and caught him. He didn't. They averted our special forces out of Afghanistan and into Iraq before we even announced we were going to go to war against Iraq. We lost the opportunity to catch Osama bin Laden, the man who did order the attacks on America.

Now we find the administration, instead of saying sorry we didn't catch Osama bin Laden, even though you gave us the authority, we now want to use that authority as legal justification for a covert, illegal spying program on Americans.

As Justice O'Connor underscored very recently, even war "is not a blank check for the President when it comes to the rights of the Nation's citizens."

Now that the illegal spying on Americans has become public, the Bush administration's lawyers are contending that Congress authorized it. The September 2001 authorization to use military force did no such thing. It did not authorize illegal spying on Americans. Republican Senators know it, and some have been courageous to say so publicly. The fact is, we all know it. The liberties and rights that define us as Americans and the system of checks and balances that serve to preserve them should not be sacrificed to threats of terrorism or to the expanding power of the Government. Security and liberty are not mutually exclusive values in America. We should have both, and we can have both, so long as we have adequate checks and balances and with the extra effort it takes to chart the right course to preserve our liberties as we preserve our security.

We are constantly reminded of what Benjamin Franklin said: People who give up their liberties for security deserve neither. The terrorists win if they frighten us into sacrificing our

freedoms—something I said in the days following 9/11, and I believe it just as strongly today.

Just after 9/11, I joined with Republicans and Democrats—I was at that time chairman of the Judiciary Committee, in round-the-clock efforts to update and adapt our law enforcement powers, and we did. The law became known as the USA PATRIOT Act. It is obvious they missed a lot of the signals that were out there. It is obvious they had ignored the evidence that was before them that might have stopped the terrorists from striking us, but we didn't make those accusations, we didn't say then—let's find out all the things you did wrong that allowed us to be hit on your watch. Instead, during those days, we asked the Bush administration, what do you need, tell us what you need so it doesn't happen again, whether it is on your watch or anybody else's.

In answering that question, they never asked us to amend the Foreign Intelligence Surveillance Act to accommodate spying on Americans they now say they will undertake, even though the law doesn't allow it. The law does contain an expressed reservation for the 15 days following a declaration of war. But neither Attorney General Ashcroft nor anyone else in the Bush administration at that time or any time afterward sought congressional authorization for this illegal NSA spying program.

Actually, Attorney General Gonzales admitted in a recent press conference that the Bush administration did not seek legal authorization for this kind of spying on Americans because ''it was not something we could likely get.'' We don't know; he never asked. But consider that damning admission. It is utterly inconsistent with the Bush administration's current argument that Congress authorized warrantless spying on Americans, when they now are saying they didn't ask for it because they couldn't get it. They can't have it both ways, although Lord knows they are trying as hard as they can to have it both ways.

The Bush administration's after-the-fact claims about the breadth of that 2001 resolution are the latest in a long line of manipulations and another affront to the rule of law, American values, and traditions. We have also seen such overreaching in the Justice Department's twisted interpretation of the torture statute, in the detention of suspects without charges, the denial of access to counsel, and in the misapplication of the material witness statute as a sort of general preventive detention law. Such abuses serve to harm our national security as well as our civil liberties. In fact, sources at the FBI reportedly say that much of what was forwarded to them to investigate from the NSA spying program was worthless and led to dead ends. That is a dangerous diversion of our investigative resources.

When they talk about thousands of al-Qaida conversations they have to monitor going to Americans—thousands? Interesting. So how many people have been arrested because of those thousands? Two thousand people? Fifteen hundred people? One thousand? Five hundred? Four hundred? Three hundred? Thirteen? Seven? Five, three, four, two, one? Or none?

A central question, therefore, during the hearings of this nomination was whether Judge Alito would serve as an effective constitutional check on the Presidency. Preventing Government intrusions into the personal privacy and freedoms of Americans is one of the hallmarks of the Supreme Court. They are not supposed to be in the pocket of any administration. After all, this Senate, when it was overwhelmingly Democrat, under Democratic control—one of the most popular Democrats in my lifetime was President Franklin Roosevelt. When he wanted to pack the Supreme Court, when he wanted to manipulate the Court, it was the Democrats who stood up and said no because they felt the Court should be a check and balance. Here there is no assurance that Judge Alito will serve as an effective check and balance on Government intrusions into the lives of Americans. In fact, his record suggests otherwise.

We know that Samuel Alito sought to justify absolute immunity for President Nixon's Attorney General John Mitchell from lawsuits for wiretapping Americans, among other violations of their privacy. He was asking for immunity even if the Attorney General acted willfully to violate people's rights. This is the man who is going to be a check and balance on our rights?

We know that as a judge, Samuel Alito was willing to go further than even Michael Chertoff, the former head of the Ashcroft Justice Department's Criminal Division and the current Secretary of the Department of Homeland Security, in excusing Government agents for searches not authorized by judicial warrants. This is the man who is going to be a check and balance?

We know Judge Alito would have excused a strip search of a 10-year-old girl, even though the search warrant did not authorize this. This is a man who is going to be a check and balance?

In both Doe v. Groody and Baker v. Monroe Township, Judge Alito dissented and would have allowed invasive searches beyond the scope of warrants. This is a man who is going to be there as a check and balance?

I was a prosecutor for eight years, and I am keenly aware of the difficulties faced by police officers in the course of their duties. I support vigorous law enforcement tools. But I am also mindful of the careful balance that must be struck in order to preserve our individual liberties. One of the most important Fourth Amendment protections we have for our privacy is the requirement that a judicial officer ensure that the Government's intrusion on citizens' privacy is based on probable cause and that it is reasonable. It is the judge who determines whether to authorize the search and the extent of the search to be permitted. The officer's affidavit and the warrant are not mirror images of each other. The magistrate is not a rubber stamp. The role of the magistrate in issuing warrants, a role Judge Alito has too easily cast aside on the bench, is a crucial check in maintaining the right balance so that all Americans can have both security and liberty.

It is worth taking a few moments to recount the facts of these cases, because I am concerned that Judge Alito has too little regard for the consequences arising from allowing these kinds of invasive searches beyond those authorized by warrants.

In the Doe case, the 10-year-old girl and her mother were subjected to what the Third Circuit termed an ''intrusive'' strip search, even though they were not suspected of nor charged with any wrongdoing. The warrant that the Government agents had obtained from a judicial officer authorized a search for a man living at a certain address. Yet when they arrived at the address they encountered only the 10-year-old and her mother and proceeded to strip search them. There was no contention that they posed a risk to the agents.

Similarly, in Baker v. Monroe Township, a mother and her three teen-aged children were detained and searched as they arrived at the home of the mother's adult son. The woman and her teen-aged children did not live at the house, were not suspected of any wrongdoing, were not named in the warrant, and were not even inside the premises when the officers arrived on the scene. They were nevertheless all ordered at gunpoint to lie on the ground. They were subsequently handcuffed, taken into the house, further detained, and their property and persons were searched.

In both cases, the Third Circuit held that the Government agents had acted inappropriately and had violated the Fourth Amendment when they conducted these invasive searches of innocent persons who were not named in the search warrants. When I asked him why he, in contrast, looked beyond the ''four corners'' of the warrant that was actually signed by the magistrate in Doe, Judge Alito replied that the issue was a ''technical'' one. Repeatedly when pressed about this case, Judge Alito insisted that the issue was merely ''technical.''

The illegal strip search was not ''technical'' for the 10-year-old girl. Then-Judge Chertoff understood that this issue is far from technical, but, rather, embedded in the core protections of our individual privacy and dignity from governmental intrusion. In the court's opinion, rejecting the rationale of Judge Alito's dissent, Judge Chertoff wrote: ''This is not an arcane or legalistic distinction, but a difference that goes to the heart of the constitutional requirement that judges, and not police, authorize warrants.''

Judge Alito tried to find ''technical'' ways to excuse the illegality. Judge Alito's dissent relied on the affidavit accompanying the warrant. To the extent the affidavit had requested a search of ''all occupants'' of the home, it did so based on a concern about concealment of drugs by ''frequent visitors that purchase [drugs]'' or by ''persons who do not actually reside or own/rent the premises''—not by a 10-year-old girl living in the home. Judge Alito ignored this language in the affidavit, in order to misconstrue the affidavit more broadly and to then substitute it for the magistrate's warrant.

Judge Alito's rationale was that because the officers' initial request was broad, it could be assumed that the magistrate intended to grant broader search authority than that set forth in the warrant. The Supreme Court had specifically rejected this type of reasoning in the case of Ramirez v. Groh, which was decided a month before Judge Alito dissented in Doe. In Groh, the Supreme Court held a search warrant invalid, citing the sharp distinction the law draws between what is authorized in a warrant, and what was requested. Judge Alito went to great lengths in a futile and hyper-technical attempt to distinguish the Supreme Court's decision in Groh.

Similarly, in Baker v. Monroe Township, Judge Alito saw the facts in the light most favorable to the Government, rather than to the mother and her children. That is directly contrary to the standard that should be used when reviewing an order granting summary judgment against a party. In his dissent, Judge Alito found that although the warrant in question did not describe any persons to be searched, it nevertheless was appropriate for officers to search and handcuff a mother and her three teen-aged children as they approached a relative's home. Judge Alito stated in his dissent that even though the mother and her three children were not named in the warrant and there was no reason to suspect them of any wrongdoing, ''to [his] mind'' the warrant had been intended to authorize a search of ''any persons found on the premises.'' Judge Alito went so far as to excuse the officers' failure to request or obtain a warrant permitting the search of persons on the premises as sloppiness.

The Third Circuit disagreed with Judge Alito, holding that because the search warrant did not authorize the search, it was unlawful and in violation of the Fourth Amendment. The other judges hearing the case found fault with Judge Alito's willingness to look beyond the warrant to excuse the unauthorized and unlawful searches. In Baker, Judge Alito inserted himself into the case in an active attempt to excuse misconduct when the warrant did not authorize the Government intrusion.

Unfortunately, Doe and Baker are not outliers in Judge Alito's record. As troubling as his dissents are in those two cases, they are only part of a broader pattern of deference to the Government that shows far too little concern for individual liberties and rights, which find their ultimate protection in the Supreme Court.

Judge Alito's record on the use of excessive force is also troubling. It goes back at least as far as his time in the Meese Justice Department. I find particularly troubling a 1984 memorandum he wrote to the Solicitor General regarding a case called Tennessee & Memphis Police Department v. Garner. In a long memo in which he repeatedly wrote in the first person proclaiming his own beliefs, Samuel Alito argued that there were no constitutional problems with a police officer shooting and killing an unarmed teenager who was fleeing after apparently stealing $10 from a home. A year later, the Supreme Court ruled 6–3 against Judge Alito's position in that case and reiterated the law against use of ''deadly force'' if a suspect presents no danger. In contrast to Justice O'Connor's dissent on federalism grounds, Samuel Alito's memo makes no mention of the human tragedy of the events nor did he think the Constitution even applied since he argued that the unjustified shooting was not technically a ''seizure.'' Most troubling is Judge Alito's statement in his legal memo endorsing ''the general principle that the state is justified in using whatever force is necessary to enforce its laws.'' I fear that this deference to the Government, which he has continued on the bench, makes him ill-suited to be an effective check on the Government or protector of individual liberties and rights.

The Supreme Court is the ultimate check and balance in our system. The independence of the Court and its members is crucial to our democracy and way of life. The Senate should never be allowed to become a rubberstamp, and neither should the Supreme Court.

And so we owe it to the American people of today, and the Americans of generations to come, to ask and answer several essential questions: Can this President, or any President, order illegal spying on Americans? Can this President, or any President, authorize torture, in defiance of our criminal statutes and our international agreements? Can this President, or any President, defy our laws and Constitution to hold American citizens in custody indefinitely without any court review? Can this President, or any President, choose which laws he will follow and which he will not, by quietly writing a side statement when he signs a bill into law? These are some of the most vital questions of our era, and these are among the most vital questions that confront the Senate in considering this nomination to our highest court. Judge Alito's record, and his responses—and his failure to adequately answer questions about these issues—are deeply troubling.

No President should be allowed to pack the courts, and especially the Supreme Court, with nominees selected to enshrine presidential claims of government power. Our system was designed to ensure a balance and to protect against overreaching by any branch.

A Democratic Senate stood up to one of the most popular and powerful Democratic Presidents of all time when it rejected President Franklin Roosevelt's court packing scheme. The Senate should not be a rubber stamp to this President's effort to pack the court with those who would give him unfettered leeway. I will not lend my support to an effort by this President to move the Supreme Court and the law radically to the right and to remove the final check within our democracy.

I voted for President Reagan's nomination of Justice Sandra Day O'Connor, for President Reagan's nomination of Justice Anthony Kennedy, for President Bush's nomination of Justice Souter, and for this President's recent nomination of Chief Justice Roberts. I cannot vote for this nomination.

At a time when the President is seizing unprecedented power, the Supreme Court needs to act as a check and to provide balance. Based on the hearing and his record, I have no confidence that Judge Alito would provide that crucial check and balance.

I see the distinguished senior Senator from Massachusetts in the Chamber. I am prepared at this point to yield to the distinguished Senator and former chairman of the Judiciary Committee and one whose protection of the civil liberties of all of us is unparalleled in the history of this body.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank my friend and colleague, the Senator from Vermont. Again, we do many important things in the Judiciary Committee, but none are more important than the selection of our Supreme Court Justices. I again thank the Senator from Vermont for his leadership in ensuring we're going to have a fair, open, appropriate, and a prodding, probing hearing and for the leadership he provides for our committee on so many different matters of importance to the American people.

The stakes in this nomination could not be higher. This is the vote of a generation. If confirmed, Judge Alito will have enormous impact on our basic rights and liberties for decades to come. After all, the Supreme Court is the guardian of our most cherished rights and freedoms, and they are symbolized in the four eloquent words inscribed above the entrance of the Supreme Court of the United States: ''Equal justice under law.''

Those words are meant to guarantee our courts will be an independent check on abuses of power by the other two branches of Government. They are a commitment that our courts will always be a place where the poor and the powerless can stand on equal footing with the wealthy and the privileged.

Each of us in the Senate has a constitutional duty to ensure that anyone confirmed to the Court will uphold that clear ideal.

Contrary to what a number of my Republican colleagues have argued, the Senate's role is not limited to ensuring that the nominee is ethical and possesses a certain level of legal skill and professional experience. To end the inquiry there would be a shameful abdication of our historic responsibility. The selection of a Supreme Court Justice is of great importance to every man and woman in America because the decisions rendered by the Court affect their lives every day. Because of the enormous authority a successful nominee to the High Court will have for decades to come, it is the responsibility of the Senate to determine what constitutional values the nominee holds before he or she is confirmed.

Has the nominee learned the great lessons of our Nation's history? Will the nominee be fair and openminded or will his judgments be tainted by rigid ideology? Is he genuinely committed to the principles of equal justice under law?

The American people will have no second chance to decide whether this person should be trusted with such awesome responsibility. As their representatives, it is our responsibility to ask the tough questions and demand meaningful answers.

For the Senate to become a rubberstamp for the judicial nominees of any President would be a betrayal of our sworn duty to the American people. Taking our responsibility seriously and doing the job we were sent here to do is not being partisan, as some Republicans have charged. In fact, it is those Republicans who are being partisan by defending a nominee's right to remain silent when Senators ask him highly relevant questions about his constitutional values. To ask a nominee for a candid statement of his current belief about what a provision of the Constitution means is not asking for a guarantee of how he will rule in the future. It is every bit as appropriate as reading a Law Review article or a case he wrote last year or a speech he gave as a judge.

Unfortunately, on issue after issue, instead of answering candidly, Judge Alito merely recited the existing law but never disclosed his view of major constitutional issues. That is a disservice to the American people, and Senators on both sides of the aisle should find his evasiveness unacceptable. The confirmation process should not be reduced to a game of hide the ball. The stakes for our country are too high.

One of the most important of all responsibilities of the Supreme Court is to enforce constitutional limitations on Presidential power. A Justice must have the courage and the wisdom to speak truth to power, to tell even the President he has gone too far. Chief Justice John Marshall was that kind of Justice when he told President Jefferson he had exceeded his war-making powers under the Constitution. Justice Robert Jackson was that kind of Justice when he told President Truman he could not misuse the Korean war as an excuse to take over the Nation's steel mills. Chief Justice Warren Burger was that kind of Justice when he told President Nixon to turn over the White House tapes on Watergate. Justice Sandra Day O'Connor was that kind of Justice when she told President Bush that ''a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.''

We need that kind of Justice on the Court more than ever. It is our duty to ensure that only that kind of Justice is confirmed.

Today, we have a President who believes torture can be an acceptable practice despite laws and treaties that explicitly prohibit it. We have a President who claims the power to arrest American citizens on American soil and jail them for years without access to counsel or the courts. We have a President who claims he has the authority to spy on Americans without the court order required by law.

The record demonstrates we cannot count on Judge Alito to blow the whistle when the President is out of bounds. He is a longstanding advocate of expanding Executive power even at the expense of core individual liberties.

One thing is clear: Judge Alito's view of the balance of powers is inconsistent with the Supreme Court's historic role of enforcing constitutional limits on Presidential power.

His consistent advocacy of what he calls the gospel of the unitary executive is troubling. As Steven Calabresi, one of the originators of the unitary executive theory, has said, ''The practical consequence of this theory is dramatic: It renders unconstitutional independent agencies and counsels to the extent that they exercise discretionary executive power.''

But this bizarre theory goes much further. Its supporters concede that without the unitary executive as a foundation, the Bush administration cannot even hope to justify its constitutional abuses in the name of fighting terrorism.

Judge Alito refused to discuss his current view of the constitutional limits on Presidential power. But in a speech Judge Alito gave in 2004 to the Federalist Society, he stated that he believed ''the theory of the unitary executive best captures the meaning of the Constitution's text and structure.'' Under this radical view, all current independent agencies would be subject to the President's control. This would destroy the independence of agencies such as the Federal Election Commission, the Securities and Exchange Commission, the Consumer Product Safety Commission, and the Federal Reserve Board.

He strongly criticized the Supreme Court's ruling rejecting the theory of unitary executive and outlined a strategy for bypassing it.

When Judge Alito made that speech, he had already been serving as appellate judge for 10 years, and he was describing his own view of the Constitution.

Similarly, Judge Alito had written earlier that ''the President's understanding of a bill should be just as important as that of Congress,'' and that Presidents should issue signing statements announcing their own legal interpretations in the hope of influencing the way the courts would construe the law.

On Executive power, ''Protective of the Executive Branch, the issuance of interpretative signing statements would have two chief advantages. First, it would increase the power of the executive to shape the law.''

This is his view. But as Justice Hugo Black wrote in the steel seizure case, ''the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.''

This is not just a theoretical case. As we all now know, President Bush issued such signing statements on a bill that contained Senator MCCAIN's ban on torture. In that statement, the President reserved the right to ignore the McCain requirements and even asserted that in certain circumstances his actions are beyond the reach of the courts.

I think many of us remember that meeting Senator MCCAIN had with the President down in the White House, and the Senator from Arizona thanked the President for working out the language that would be included in the Defense appropriations bill and the President thanked him for his help and assistance in working that out. They both shook hands. This picture was on all three networks that night.

Four or five days later, the President signed the bill, and he issued an executive signing statement that said he continued to retain all of his constitutional power, and that he was effectively taking any question of his Executive power out of the hands of any courts in this country. That is a complete reversal to what was agreed to, a complete reversal to what was said, a complete reversal to the understanding of the Senator from Arizona. The Senator from Arizona has spoken about it. That is Executive power.

We learned in high school there are two branches of Government, the House and the Senate. They pass the law, the President signs it. It is the law. If he vetoes it, it is not the law. That is not Judge Alito's view. He believes the President, by signing it, has an independent voice and that voice is a voice that should be listened to and heard, a very bizarre view of Executive authority and Executive power.

In cases involving claims of privacy and freedom from unjustified searches

and seizures under the Bill of Rights, Judge Alito has consistently deferred to the Government at the expense of core individual rights. In the Doe v. Groody case, Judge Alito issued a dissent defending the strip search of a 10-year-old girl without authorization from a warrant. In his majority opinion, Michael Chertoff, former head of the criminal division in the Department of Justice, who is now President Bush's Secretary for Homeland Security, sharply criticized Judge Alito's view as threatening to turn the requirement of a search warrant into little more than a rubberstamp. This is not Democrats saying this; this is President Bush's Secretary of Homeland Security saying this. He was a judge on that circuit, criticizing this kind of action, extension of a search warrant, because of the inclusion of some kind of other document into the search warrant. We understand what Michael Chertoff was saying, and Judge Alito issued the dissent.

In Mellott v. Heemer, Judge Alito reported it was reasonable for marshals to pump a sawed-off shotgun at a family sitting in their living room. The family committed no crime. Seven marshals had detained and terrorized a family and friends, ransacked their home while carrying out an unresisted civil eviction. Yet Judge Alito's decision meant the family never got a trial before a jury of their peers.

Judge Alito's record in cases involving civil and individual rights shows a judge who repeatedly rules against individuals seeking justices for wrongs by the powerful. In Bray v. Marriott Hotels, a hotel worker claimed she was denied a promotion because she was an African American. The Third Circuit held she was entitled to a trial because the employer falsely stated she was unqualified and had evaluated her qualifications differently compared to White applicants. Judge Alito would have denied her the chance to prove her case. His colleagues on the court—not the Democrats on the committee—his colleagues on the court wrote that his dissent would have eviscerated key provisions of the landmark Civil Rights Act of 1964.

His record in other areas of civil rights is also troubling. In the case in which a disabled person sought physical access to a medical school under the Rehabilitation Act of 1973, the court's majority wrote that few, if any, Rehabilitation Act cases would survive if Judge Alito's view prevailed. That is the majority, not Members of the Democratic Party. That is the majority of the court members, looking at his view.

There it is—issues on race, issues on disability, individual rights and liberties, those individuals, farmers, and others in a home involving a civil action, who committed no crime, where marshals used gestapo-like tactics. They were denied an opportunity for a court to give a hearing. Judge Alito said no. That is why many Members wonder what kind of an opportunity the average American is going to have.

Does Judge Alito tip more to the powerful and the entrenched interests and the Executive authority? Does he give those individuals—women, minorities, disabled workers—a fair shake?

Judge Alito said, let's look at the record. We have looked at the record. We looked at primarily the dissents, as pointed out in the previous discussions.

Ruth Bader Ginsburg, who is considered to be a more progressive figure on the Court, Judge Bork, a conservative figure who was proposed for the court, agreed 91 percent of the time. It is in the dissent that we understand whether an individual and individual rights are protected. Those are the indicators. As we have seen from studies—not just from the members of the Judiciary Committee but by independent sources—Knight Ridder, Yale Law School Study Group, even the Washington Post, Cass Sunstein, a distinguished authority and thoughtful individual about constitutional law—all have reached a very similar conclusion that I have outlined here. We will hear on the other side: Well, they are only finding a few cases. We have suggested and included in the record of the Judiciary Committee this happens to be the prevailing position of the nominee.

In another case, a jury ruled a woman had provided enough evidence to show that she had wrongly lost her job because of sex discrimination. Ten members of the Third Circuit who heard the case on appeal agreed. Only Judge Alito argued that she had not provided adequate proof of discrimination. Who is out of step? Who is out of step? Who is out of the mainstream?

In the Riley v. Taylor case, Judge Alito dissented from a ruling prohibiting the removal of African-American jurors because of their race. It is unbelievable in today's America, in a case involving a minority defendant, that he was willing to ignore the overwhelming evidence that the Government insisted on an all-White jury for a Black defendant. He found no problem with that and with their inclusion for the death penalty. Eventually, that case was overturned, as it should have been. What was going on in the mind? We talk of equal justice under law. We see what has happened to individuals. We see what has happened in this extremely important judicial proceeding.

Many of Judge Alito's other decisions demonstrate a similar tendency against the individual. In Rouse v. Plantier, a group of diabetic inmates sued prison officials for being deliberately insensitive to medical needs. The trial court held there was enough evidence for the jury to decide whether the inmates' constitutional rights had been violated. Judge Alito refused to allow the jury to decide whether the Government was responsible for a broad systematic failure to provide the necessary medical group. These inmates had diabetes. We know the dangers of diabetes. One out of four of our Medicare dollars is spent on diabetes. One out of 10 of all health dollars is spent on diabetes. It can be devastating, leading to blindness, or the losing of a limb, more often the leg. They need attention and treatment.

This is a serious problem that is increasing in our society. There was a systematic failure in terms of providing for that. They thought it should go to the jury. Was it or was it not a factual issue? The lower court said they ought to be able to go, but not Judge Alito. He reached a different conclusion.

In case after case, Judge Alito's decisions demonstrate a systematic tilt toward powerful institutions and against individuals attempting to vindicate their rights. He cites instances where he has decided for the little guy, but they are few and far between. We have an independent duty to evaluate Supreme Court nominees to determine whether their confirmation is in the best interests of our Nation. That is the test. It is a test with which Judge Alito himself seems to agree. He said we should look at his record and decide whether he should be confirmed. I have done so. I have compared the challenges the Court will face in the future with Judge Alito's record and I cannot support his nomination.

In this new century, the Court will undoubtedly consider sweeping new claims to expand Executive power at the expense of core individual rights, including detention of Americans on American soil without access to counsel or the court, and eavesdropping on Americans in violation of Federal law.

The Court will decide new issues in America's struggle against prejudice and discrimination. It must remain a fair and impartial decisionmaker for ordinary Americans seeking justice.

Justice Alito's record shows he should not be entrusted with these vital decisions facing our Nation's Court, and I urge my colleagues to join me in opposing Judge Alito's nomination.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President. I thank my colleague from the Commonwealth of Massachusetts for his statement.

Those who are following this debate—my colleagues and those in the audience—should know this is a historic moment in the Senate. It is rare that Members of the Senate are given an opportunity to review a Justice to the Supreme Court. It has been 11 years. Recently, we have had two. Chief Justice John Roberts came before the Senate, and today we consider the nomination of Judge Sam Alito to fill the vacancy of Sandra Day O'Connor on the Supreme Court.

I take this very seriously. As Senator KENNEDY said yesterday in another meeting: Next to a vote on war, there is nothing more serious than this decision. The man or woman whom we choose to serve on the Supreme Court

is there for the rest of their natural life. For 10, 20, or 30 years, that person will be making critical decisions on the highest Court in the land, the Court which is the refuge for our freedoms and our liberties.

That Court, across the street from this Capitol Building, has made momentous and historic decisions which have literally changed America. In the 1950s, nine members of the Supreme Court made the decision that we would no longer have segregated public education in America. It was not the leadership of a President or the Congress, but it was the Court.

Similarly, that same Court, in the 1960s, established a new right under our Constitution, a word which you cannot find within the confines of that document, the right of privacy. That Court—nine Justices across the street—said that when it came to the most personal and basic decisions in our lives, they were reserved to us as individuals, not to the Government. That was not a finding by a President. It was not a law passed by Congress. It was a decision of the Supreme Court.

And time and again, whether we are speaking of the rights of minorities in America, women in America, those who are disabled, that Court and the nine Justices who sit on the bench make decisions which change America for generations to come. That is why the selection of a nominee to the Supreme Court is so important and so historic. It is made even more so by the fact that the vacancy we are filling on the Supreme Court is not another run-of-the-mill vacancy, it is the vacancy of Sandra Day O'Connor, the first woman ever appointed to the U.S. Supreme Court.

As important as her gender is, the fact is, she brought unique leadership to the Court. You see, over the last 10 years, there have been 193 decisions in that Court that were decided 5 to 4. One Justice's vote made the difference. If one Justice had voted the other way, the decision would have been the opposite—193 times in 10 years. And in 148 of 193 cases, Justice Sandra Day O'Connor was the deciding vote.

So we are not only faced with a historic and constitutional challenge in filling this vacancy, we have a special responsibility because the vacancy that is being filled is a vacancy that will tip the scales of justice in America one way or the other way.

What kind of cases did Sandra Day O'Connor provide the decisive vote on? Cases which safeguarded Americans' right to privacy in the area of reproductive freedom, the rights of women; cases that required courtrooms to be accessible to people with disabilities, decided 5 to 4; preserving the rights of universities to use affirmative action programs, decided 5 to 4; affirming the right of State legislatures to protect the voting rights of minorities in America, decided 5 to 4; upholding State laws giving individuals the right to a second doctor's opinion if their HMO denied them treatment, decided 5 to 4; reaffirming the Federal Government's authority to protect the environment that we live in, a 5-to-4 case; and reaffirming America's time-honored principle of the separation of church and State, 5 to 4.

In every single case, the fifth vote was Sandra Day O'Connor. And now she leaves, after many years of service to America, with an extraordinary record of public service. Many of us are listening, watching, and reading to make certain the person replacing her can rise to the challenge, and not only the challenge of serving in the Court but the challenge of fighting for the same values she fought for. Sandra Day O'Connor came to the Supreme Court with the support of Barry Goldwater, the preeminent conservative in American politics in the 1960s and beyond. Many expected her to be of the same stripe, that she would follow his basic philosophy. In many ways, she did because if you measure Barry Goldwater's contribution to American politics, you will find him starting in a very conservative position and, over the years, moving to a more libertarian position, a position that valued personal freedom more.

The same thing happened to Sandra Day O'Connor. Starting as a conservative, over the years she moved toward a more libertarian position, a position which, in many instances, was critical for protecting our basic rights.

It has been said she was the most important woman in America. And it is easy to see why. Time and again, Sandra Day O'Connor was the crucial fifth vote on civil rights, human rights, women's rights, and workers' rights. That is why we have looked so closely and so carefully at Judge Sam Alito.

And there is more. His was not the first name to be suggested by the President for this vacancy. The first name was the President's personal attorney in the White House, Harriet Miers, a person he obviously respects very much. Do you recall what happened to her nomination? Her name was brought forward, and there was a firestorm of criticism about Harriet Miers' nomination. Did it come from the Democrats? Did it come from liberals? No. It came from the other side. Time and again, the most rightwing on the American political scene said Harriet Miers was not acceptable, and they raised questions about whether she could be trusted to be on the Supreme Court to advance their rightwing agenda.

Their opposition to her nomination grew to a level and reached a point people did not think would happen. President Bush withdrew Harriet Miers' name as a nominee. In the wake of withdrawing Harriet Miers' name, in sailed Judge Sam Alito—not the best circumstance for someone who is coming to this position arguing they have no political agenda.

Well, we looked carefully to see what the same rightwing organizations would say about Sam Alito. They had rejected Harriet Miers. They gave Harriet Miers the back of a hand. They gave Sam Alito their blessing. They said: He is fine. We support him. He is the right person for the job.

Now, does that raise a question in your mind as to whether Judge Alito will come to this position without an agenda, without professing some allegiance to extreme views these organizations hold? Will it raise the question in the minds of many of us?

And then, during the course of his nomination, there emerged a document, a document he had personally written. In 1985, Sam Alito wrote a document to the Justice Department of the Reagan administration, then headed by Attorney General Ed Meese, looking for a job. In the course of that document he was supposed to lay out why he, Sam Alito, was in step with the Reagan administration's thinking and philosophy. And, in 1985, that memo was explicit. It went through page after page of the things he felt qualified him to serve in that administration.

Some have said: Wait a minute, that was 20 years ago. People change. And it is true. I have changed my positions on some issues. It is well known and documented. It happens. But to say it was a document given without conviction overlooks the obvious. Sam Alito, at that moment in 1985, was 10 years out of Yale Law School. He had served in the military. He served a year as a clerk to a Federal judge. He had served 4 years as an assistant U.S. attorney, prosecuting cases, and 4 years as an assistant to the Solicitor General of the United States.

So rather than suggesting that document reflected the casual observations of someone looking for a job at a very early age, I think that document told us much more.

What it told us was that he questioned some very fundamental things about law in America. In his essay, he wrote that ''the Constitution does not protect a right to an abortion.'' He said he was proud of his work in the Justice Department, fighting abortion rights and affirmative action. He wrote that he was skeptical of Warren court decisions which embraced the principle of ''one person, one vote'' and the separation of church and state. And he pointed with pride to his membership in two very conservative organizations: The Federalist Society and the Concerned Alumni of Princeton.

His listing of the Concerned Alumni of Princeton, of which he was a graduate, was troubling because that organization was once dedicated to establishing a quota at Princeton that each year they would accept no fewer than 800 men, and the Concerned Alumni of Princeton wanted to stop what they considered to be the infiltration of the Princeton student body by women and minorities. Some of the things they wrote and said were outrageous. In fairness, Judge Alito at the hearing

said he would not associate himself with their remarks, but it is interesting that he would identify this organization as one of his memberships that would qualify him to serve in the Justice Department.

As an examination of Judge Alito's 15-year track record on the U.S. Court of Appeals evidences, there are other elements that suggest a very conservative judge. University of Chicago law professor Cass Sunstein examined his dissenting opinions over 15 years and concluded:

> When they touch on issues that split people along political lines, Alito's dissents show a remarkable pattern: They are almost uniformly conservative.

People say to me: If he was found ''well qualified'' by the American Bar Association, what is wrong with that? Why don't you just go ahead and approve the man? The bar association is an important part of this process, but they only look to three main things. They look to whether he has legal skills. That is important. They look to whether he is an honest person. That is equally important. And they look to his temperament. They said he is well qualified by those three standards. But the American Bar Association doesn't look to his values. It doesn't look to his philosophy, how he is likely to rule in critical cases for America.

I wanted to ask Judge Alito at the hearing: Where is your heart? What do you feel about the power you will have as a Supreme Court Justice? I asked him an obvious question in the lead-up to my inquiry: I asked if he was a fan of Bruce Springsteen. You might wonder why that would come up in this case. Judge Alito is from New Jersey, as is Bruce Springsteen. He said to me in his answer:

> I am—to some degree.

That is a qualified answer, but I took it and went on. The reason I raised it was this: Many people have asked Bruce Springsteen, Where do you come up with the stories in your songs? How do you talk about all these people who are struggling in America? He answered:

> I have a familiarity with the crushing hand of fate.

The reason I asked that question was to go to some specific cases Judge Alito had decided and ask him about the crushing hand of fate. Senator KENNEDY just mentioned one of them.

An African American, charged with murder, facing the possibility of the death penalty, argues on appeal that his verdict was unfair because the prosecutor went out of his way to exclude every African American from the jury so that it was an all-White jury judging a Black man. He presented his evidence that in three other murder trials, one involving an African American, the other two White defendants, the prosecutor had done the same thing—kept the Blacks off the jury systematically. The Third Circuit Court on which Judge Alito served said that defendant was right; that is not something we accept in America; we are going to send this case back to be retried by a jury of this defendant's peers. They saw the importance of a justice system that is blind to race.

But not Judge Alito. He said establishing the fact that four murder trials came before the same prosecutor with all White juries is like establishing that five out of six of the last Presidents were left handed. I thought that was a rather casual dismissal of an important case and an important principle. When I asked Judge Alito about it, he seemed more committed to the principles of statistics than the principles of racial justice which the majority in his court applied.

Another case involved an individual who was the subject of harassment in the workplace. This person had been assaulted by fellow employees. He was a mentally retarded individual. He was so brutally assaulted in a physical manner that I did not read into the record of the hearing, nor will I today, the details. Trust me, they are gruesome and grisly. His case was dismissed by a trial court, and it came before Judge Alito to decide whether to give him a chance to take his case to a jury. Judge Alito said no, the man should not have a day in court. Why? Not because he didn't have a case to argue, but Judge Alito believed that his attorney had written a poorly prepared legal document before his court. Was there justice in that decision? Did the crushing hand of fate come down on an individual who was looking for a day in court who happened to have an attorney without the appropriate skills?

When it came to health and safety questions involving coal mines, a topic we see in the news every day, Judge Alito was the sole dissenter in a case as to whether a coal mining operation would be subject to Federal mine and safety inspection. He argued in the committee hearing that he just read the law a little differently.

What we find in all these cases is a consistent pattern. Time and again, it is the poor person, the dispossessed person, the one who is powerless who has finally made it to his court, who is shown the door. That troubles me. It troubles me because what we are looking for in a Justice is wisdom.

If you are a student of the Bible—and I am not—you know this: The person who embodies the virtue of wisdom was a man named Solomon. In the Bible, the Lord came to Solomon and said: I will give you a gift. What gift would you have? And Solomon said: I want a caring heart. He didn't ask for riches or knowledge; he asked for a caring heart. This wise man wanted that as part of who he was.

That is what I looked for with Judge Alito. Sadly, in case after case, I couldn't find it. I worry that if Judge Alito goes to the Highest Court in the land for a lifetime appointment, he will tip the balance of the scales of justice. He will tip the balance against protecting our basic privacy and personal freedoms. He will tip the balance in favor of Presidential power, even when it violates the law. He will tip the balance when it comes to recognizing the rights of the powerful over the powerless. He will tip the balance on workers' rights and civil rights and human rights and women's rights and protecting the environment. That is why I cannot support his nomination.

I call on the President to send to us a conservative like Sandra Day O'Connor. She was a woman who demonstrated, in a lifetime of service, that she understands the values of this country and committed her life to protecting them. I am sorry that Judge Sam Alito does not live up to her standard.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Texas.

Mr. CORNYN. Madam President, before I make the remarks I have prepared about Judge Alito, I extend my gratitude to members of my staff who, as a member of the Judiciary Committee, have been so instrumental in my ability to prepare for this confirmation process.

In particular, I note the contribution of Brian Fitzpatrick, who has been a member of my staff and worked on both the Roberts and Alito Supreme Court nominations. He is leaving next week after Judge Alito is confirmed to the U.S. Supreme Court, as he will be, to go teach at NYU, New York University. NYU's gain is our loss. I certainly wish Brian well in his new career. I put him on notice that the next vacancy that President Bush gets to the U.S. Supreme Court, I am going to be calling him and asking him to come back for another gig.

Madam President, I rise today to explain why I intend to vote to confirm Judge Alito to the U.S. Supreme Court. Those who were just listening to the eloquent words of the distinguished Democratic whip might wonder how in the world anybody could ever vote for this nominee; how Judge Alito survived for the last 15 years serving as a member of the circuit court of appeals in Philadelphia without getting impeached; how in the world his former law clerks, the people who have worked most closely with the judge, and who happened to be Democrats and have a different political view, a different world view, a different agenda, could come in as they did before the Senate Judiciary Committee and extol the qualifications and temperament of this fine public servant and this fine human being; or how, possibly, in listening to the criticisms we have heard of this nominee and of the President for having the temerity to nominate him, you can reconcile that impression with the fact that we heard on the Senate Judiciary Committee virtually all of the current and former members of the Third Circuit Court of Appeals who have worked closely with Judge Alito day in and day out, who to a person

came in and said this is exactly the kind of judge we would want and we think the American people would have a right to expect, and urged us to favorably vote on his confirmation.

It is clear to me, though, during the course of the confirmation process, that the reason I support Judge Alito his philosophy of judicial restraint is exactly the reason his detractors oppose his nomination. The sad fact is that there are some in this country who don't want judges who respect the legislative choices made by the American people. Rather, they want judges who will substitute their own personal ideological or political agenda for those choices made in the Halls of Congress by the elected representatives of the American people.

There are some in this country who have views that are so out of the mainstream that they don't have any chance to persuade the American people to accept them. For example, there are some who want to end traditional marriage between one man and one woman. There are some who want to continue the barbaric practice of partial-birth abortion. Some even want to abolish the Pledge of Allegiance. But they know if they brought some of those issues to the floor of the Senate and to the floor of the U.S. House of Representatives, these are not the views that would be expressed through the elected representatives of the American people because the American people themselves don't agree with these far left, out-of-the-mainstream views.

For these advocates of these out-of-the-mainstream views, the only way they will ever see their views enacted into law is to circumvent the American people and pack the courts with judges who will impose their agenda on the American people. They believe in judicial activism because judicial activism is all they have.

Of course, Judge Alito's detractors will never say they believe in judicial activism. They know the American people don't favor it. They know the American people believe fervently in democracy and self-determination, and they don't want unelected judges making the laws of this country. So Judge Alito's detractors are forced to oppose his nomination on the basis of certain pretexts. They are forced to grasp for any means they can to try to defeat his nomination. As one of Judge Alito's detractors put it, ''you name it, we will do it'' to defeat Judge Alito.

One of their favorite pretexts—and we have heard some of it this morning—is that Judge Alito embraces this view of an omnipotent executive branch; that he believes the President's powers are without limitation. This pretext is a complete canard. It is based on the claim that Judge Alito once endorsed an academic theory called the unitary executive. But a unitary executive is not the same as an all-powerful executive. It is, after all, a theory that says there are three co-equal branches of Government—executive, legislative, and judicial. And each official within that each branch is accountable to the people for the power they exercise and is delegated to them by the Constitution and laws of the country.

But to show how misplaced this criticism is, according to Judge Alito's opponents, the father of the unitary executive theory is Justice Scalia on the U.S. Supreme Court. The problem they have is that the facts show that Justice Scalia does not favor an all-powerful President. No one does. We know this in particular from the decision he wrote in the Hamdi case 2 years ago. This was a case where the detention status of some of the terrorists who are kept at Guantanamo Bay was being reviewed by the Supreme Court. In that case, in the opinion written by Justice Sandra Day O'Connor, the Supreme Court held that the President had the power as Commander in Chief, during a time of war, to indefinitely detain even American citizens who were suspected of terrorism without filing criminal charges against them. Justice Scalia, perhaps one of the most conservative members of the Court, dissented from that, saying the President had no such power; that it was unconstitutional for him to do so. His views did not carry the day, but indeed of all of the Justices, Justice Scalia, the father of this unitary executive theory, was least deferential to the powers of the President. Judge Alito doesn't believe the President's powers are unlimited any more than Justice Scalia does.

Now, one of the witnesses we had during the course of the hearing—I mentioned several former and current members of the Third Circuit Court of Appeals. One of them who testified interestingly and relevant to the point was Judge John Gibbons who has since left the judiciary and has a law practice where he represents the detainees at Guantanamo Bay. He said:

> The committee members should not think for a moment that I support Judge Alito's nomination because I am a dedicated defender of the Bush administration. On the contrary, I and my firm have been litigating with that administration over its treatment of detainees held at Guantanamo Bay.

He said:

> I am confident that as an able legal scholar and a fair-minded justice, Judge Alito will give the arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

That is another example of how those who know this man best simply believe that he will be a fair-minded judge and he will not be unduly deferential to the President, the executive branch, or anyone else for that matter, and that he will faithfully discharge his responsibilities under the Constitution and laws.

Another favorite pretext of the opponents of this nomination is that as a replacement for Justice O'Connor, this nominee, Judge Alito, will shift the Supreme Court radically to the right. But in order to believe this or support this supposed theory, they have to radically rewrite history. It requires them to paint Justice O'Connor as some sort of liberal.

But the truth is far different. For example, according to the Harvard Law Review, over the last decade, the Justice on the Court with whom Justice O'Connor agreed most frequently—over 80 percent of the time—was former Chief Justice William Rehnquist.

I think we will all acknowledge that Chief Justice Rehnquist was no liberal. Yet Sandra Day O'Connor and Chief Justice William Rehnquist agreed with each other more than 80 percent of the time.

Indeed, in subject matter after subject matter, Justice O'Connor sees eye to eye with what Judge Alito has demonstrated on the bench and said how he will approach his job on the Supreme Court. Both believe in federalism, that Congress is not above the law and its powers are not unlimited but, rather, they are, under the Constitution, limited and enumerated, and that some powers are still reserved to the States and the people.

That is not an out-of-the-mainstream view. Justice O'Connor shares that view. The Founders of this country shared that view, and I believe the American people believe that the people have retained some rights and the States have retained some rights against an all-powerful Federal Government. Judge Alito happens to believe that as well.

Justice O'Connor and Judge Alito both struck down some affirmative action programs that resulted in reverse discrimination based on strict numerical quotas. And yes, both have even criticized Roe v. Wade. The truth is that if Justice O'Connor were the nominee today, she would meet with just as much opposition as Judge Alito has. The confirmation process has simply become a no-win situation.

Another favorite pretext of the opponents of this nominee is that he is somehow biased against the mythical little guy. That he always rules against the little guy in favor of the big guy. The basis for this pretext is a litany of cases his opponents cite where Judge Alito has sided against a sympathetic plaintiff. This pretext suffers from a number of flaws.

The first flaw is a selective reading of Judge Alito's record. Judge Alito has been a judge for 15 years. He has decided plenty of cases in favor of consumers, medical malpractice victims, employment discrimination victims, and other plaintiffs. In other words, he has decided plenty of cases for the little guy. But his opponents ignore all of these cases and focus only on the cases where he has decided against a sympathetic plaintiff. Anyone who has looked at his entire record has found the claim of bias to be completely without merit, indeed, including the Washington Post. The Washington Post did an analysis of

Judge Alito's entire record and found he is no more likely than the average appeals court judge to rule for businesses, for example, over individuals. And, yes, I said the Washington Post and not the Wall Street Journal.

Moreover, any notion that Judge Alito has a special bias against victims of racial discrimination is as false as it is demeaning. The people who know Judge Alito best testified at length that he applies the law in a fair and evenhanded manner without fear or favor. Indeed, perhaps most instructive is the evidence from the late Judge Leon Higginbotham. He has passed on, but his comments are part of the record.

Judge Higginbotham was something of a civil rights hero, as many people know. He was president of the Philadelphia chapter of the NAACP, was awarded the Presidential Medal of Freedom, and was appointed to the U.S. Civil Rights Commission by President Clinton. This is what he had to say about Judge Alito:

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

Judge Higginbotham, a hero to the civil rights movement in this country, would never have made such glowing remarks if he believed for an instant that Sam Alito was guilty of some of the false charges being made against him.

More fundamentally, however, the claims that Judge Alito is biased against the little guy are based on a misconception of how judges are supposed to behave. Judges are not supposed to decide cases on sympathy. Just as we ask jurors when they come into our courtrooms all across this great country to put aside their sympathies, biases, and prejudices and decide the cases based on the evidence they hear in court and the law as given to them by the judges—and they do it, day in and day out, faithfully and to really an exceptional degree—of course, we expect judges not to decide cases on sympathy. The kind of arguments we are hearing suggest that judges ought to pick out the party they like best, the most sympathetic, and rule in their favor without regard to the facts and without regard to the law.

One would not know by listening to some of Judge Alito's opponents that he is a fairminded judge. In the America of his opponents, no plaintiff ever loses a case; no entrepreneur ever wins no matter how frivolous the claim of employment discrimination; police departments never win a case no matter how desperate the claim of a criminal defendant; Government agencies, including the Environmental Protection Agency and the Social Security Administration, could never win a case no matter how outlandish the request for Government benefits. In their utopia, the economy is wrecked by frivolous litigation, criminals run free on technicalities, and the public Treasury is plundered.

This admittedly, and thankfully, is not Judge Alito's America. He believes that no one is above the law—not the President, not the Congress, not even the little guy. That is why Lady Justice has always been blindfolded.

America is a nation of laws, not of men and women, not of little guys, not of big guys, but a nation of laws. It should not matter who you are, how you pronounce your last name, what your country of origin is, your race, or any other extraneous consideration when you enter the halls of justice. We are all guaranteed, under the words that are etched over the marble leading into the Supreme Court, ''equal justice under the law.''

Everything in his record shows that these extraneous considerations don't matter to Judge Alito. This is why people of good faith from all across the political spectrum have testified and given testimonials in support of his work as a judge and on behalf of his nomination to the Supreme Court. This is also why I believe he will be confirmed by the Senate.

Madam President, I could not be happier to throw my support behind this good man, this good judge, and this public servant.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Madam President, I rise to echo and add to the remarks of the Senator from Texas, Mr. CORNYN. On this first day of debate, I rise to express my strong support for the confirmation of Judge Samuel Alito to be a Justice on the Supreme Court of the United States of America.

There has been much discussion, advertising on the radio, in newspapers, and on television. There has been commentary about Judge Alito, and that is fine. That is the way it should be. Federal judges are appointed for life. This is the only time that the people's representatives—those of us in the Senate—have an opportunity to scrutinize an individual who has been nominated for the Federal bench in a lifetime appointment. So that scrutiny is appropriate. I am hopeful that this scrutiny and this discussion will be of a civil nature. Sometimes it has not been, over the last several years in this body.

I do believe, though, that all nominees who are reported out of a committee, whether the Judiciary Committee—for that matter, any committee—Foreign Relations, or other committees, ought to be accorded the fairness of an up-or-down vote at the end of this gauntlet. If you are going to make someone go through all of this, have all these slings and arrows, some relevant, some tangential, and some completely irrelevant. If they are going to go through all of this, they ought to be accorded the fairness of an up-or-down vote.

I believe if the approaches taken over the last several years for certain nominees continue, as a threat or as an actual practical impediment to someone receiving a vote, it will make it much more difficult for any President to be able to recruit from the private sector qualified men and women who have the experience, the personality, the insight, the leadership, and the ability to serve our Government. That might be in a variety of different fields. That is why I think it is important that we as Senators change and stop this practice of holding up nominees and not according them the fairness of an up-or-down vote.

With John Roberts to be Chief Justice of the Supreme Court, we allowed a lot of commentary and a vote. I hope the same will occur for Judge Alito.

There have been indications from those on the other side of the aisle that they are reserving the right to filibuster, or require a 60-vote majority to have a vote on the confirmation of Judge Alito. My reaction is if they move forward with such a filibuster, ''make my day.'' We will enjoy pulling the constitutional trigger to allow Judge Alito a fair or up-or-down vote.

I don't think it is too much to ask Senators to come here when the nomination is called forth to get off these cushy seats, stand up straight, and vote yes or vote no. That is a matter of fairness. It is also our constitutional responsibility in advise and consent.

When analyzing or determining whether I am going to support a particular judicial nominee, what matters most to me for these lifetime appointments is trying to discern that nominee's judicial philosophy. Trying to determine whether they believe what they are saying as to what they think the proper role of a judge will be.

We have seen through the years that certain individuals get appointed for a lifetime appointment, and they end up being completely different than what they have said in the hearings, in interviews with the President, or interviews with the Senators. Past performance is, in my view, usually a reliable indicator of future action.

In my view, regarding this particular nomination of Judge Alito, the best way to determine what kind of Justice Samuel Alito will be on the Supreme Court is to look at his 15 years of services as a circuit court judge. In his years on the bench, he has embodied the philosophy I like to see in judges. I believe the proper role of a judge is to apply the law, not invent the law. Judges are to uphold the Constitution, not amend it by judicial decree.

The proper role of a judge is to protect and indeed defend our God-given rights, not to create or deny rights out of thin air. They are not to act as a legislator.

In Judge Alito's case, no matter the issue, whether or not they are politically charged issues in the realm of electoral politics, he seems, from my reading and review, to have followed a

consistent, thoughtful, deliberative process to decide cases.

This is what judges are supposed to do. They are not supposed to be issuing cases based on predetermined ideology, or an eye toward future confirmation hearings. They should faithfully apply the law. They ought to apply the evidence before the court to the law in that particular case before the court.

As he stated in his opening statement before the Judiciary Committee, Judge Alito recognized a judge's only obligation is to the rule of law. And in every single case, the judge has to do what the law requires. In my opinion, that is the essence of the fair adjudication of disputes. There is credibility, there is reliability, and there is integrity in that approach. Judge Alito has exemplary, scholarly, and experienced qualifications—and especially the proper judicial philosophy—to serve honorably as a Justice on the Supreme Court of the United States.

In Judge Alito's 15 years on the Third Circuit Court of Appeals, he has demonstrated his understanding of the proper role of a judge in our constitutional system of Government, and will apply the law fairly and equally.

Judge Alito, in my view, genuinely respects the rule of law in our representative democracy. In recognition of Judge Alito's outstanding service on the Federal bench, the American Bar Association has given him their highest rating of well qualified. The American Bar Association's criteria for their evaluation are integrity, professionalism, competence, and judicial temperament.

Let me share with my colleagues what Stephen Tober, the chairman of the American Bar Association Standing Committee, had to say.

He said:

> On The Federal Judiciary: ''Needless to say, to merit an evaluation of well-qualified, the nominee must possess professional qualifications and achievements of the highest standing. . . . We are ultimately persuaded that Judge Alito has, throughout his 15 years on the Federal Bench, established a record of both proper judicial conduct and even-handed application in seeking to do what is fundamentally fair. . . . His integrity, his professional competence and his judicial temperament are, indeed, found to be of the highest standard.''

That came from Chairman Tober on January 12 of this year.

Judge Alito also provided to all of us an indication of his temperament and qualifications during his confirmation hearings, which went on for several days and many hours of hearings. He answered over 700 questions, explaining his thought processes, judicial philosophy, and I think very credibly dispelling some of the misstatements about his record of service.

Judge Alito was even forced to defend the statements of others when he was questioned about the Concerned Alumni of Princeton. That is a group that apparently Judge Alito joined when he was a member of the Armed Services because he didn't agree with the way the military was treated on the Princeton campus. As a result, some of the Democratic Senators tried to diminish Judge Alito. The Wall Street Journal had an editorial on January 12 of this year where they said they are trying to find him guilty by ''ancient association.'' Let me quote from the Wall Street Journal editorial page of that date.

> They can't touch him on credentials or his mastery of jurisprudence, so they're trying to get him on guilt by ancient association. Senators TED KENNEDY and CHUCK SCHUMER did their best yesterday to imply that Judge Alito was racist and sexist by linking the nominee with the views of some members of Concerned Alumni of Princeton, which back in the 1970s and 1980s took issue with university policies on coeducation and affirmative action.

Of course, Judge Alito said he didn't agree with any of that. He was concerned about fair access for our military recruiters on campus.

The closing lines in the Wall Street Journal editorial stated:

> As for Judge Alito's prospects, if this irrelevant arcania is the most his opponents have, he can start measuring his new judicial robes.

Another comment made by some members of the Judiciary Committee is they don't have the assurance that the judge firmly believes in precedent. They criticize him for apparently having an open mind.

What some Senators choose to do is not recognize that there are times where precedent should be overturned such as the Court overruling Plessy v. Ferguson and Korematsu v. United States.

Also, as time changes and our country develops, the case law that comes before the Supreme Court also changes, to recognize the advances in technology and science.

In Roe v. Wade, Justice Blackmun recognized that advancements in medical science will impact the trimester standard for when the State's interest in life begins.

As constitutional jurisprudence moves forward, Judge Alito, with his understanding that stare decisis is not an ''inexorable command,'' makes a great deal of sense. We have seen that throughout the history of our country.

There were some comments made during his confirmation process by the groups objecting to the nomination of Judge Alito that they disagree with the conclusion he reached after an independent review of the facts of a particular case. While these groups, and all Americans, have an important role in a free society and deserve to state their view, they also in some cases are distorting the proper role of a judge. On the bench, Judge Alito has not been a partisan activist. To the contrary, there have been no substantive claims that any litigant before Judge Alito did not have a fair and impartial hearing of their case. Factors whether a President should be overturned, or modified—there are many factors, such as the nature of the original decision, whether that precedent has been changed, or there is a desire on the part of the people who are the owners of the Government to change it. Another factor could be whether the precedent has been undermined by subsequent decisions or new facts or new laws.

Court decisions have been changed over the years because they have proven to be unworkable. The Court has overruled many decisions. Of course, Brown v. Board of Education overruling Plessy v. Ferguson is probably the prime example and illustrates that no precedent is untouchable. The Court should not be required to stick to bad law—in that case, separate but equal.

Judges do not run for office. They cannot and should not make campaign promises that are, in fact, prohibited. They are prohibited from doing so by the Code of Judicial Conduct of the American Bar Association. They also should not be judged on the basis of statements they made when working for elected public servants in the legislative or executive branches of Government. They should be judged by their record of service.

Again, with Judge Alito, we see a person with 15 years of judicial experience. We have seen, in too many cases, with the lifetime-appointed Federal judges, a complete disregard for the will of the people and their elected representatives who are supposed to be making the laws reflecting the will and the values of the people in particular States or maybe the Nation in our representative democracy.

People wonder: Why do we care about the activist judges? Why does judicial philosophy matter? I will go through recent decisions by activist judges who forget their role is to apply the law, not invent the law.

In California, certain counties thought it was a good idea to have children in schools say the Pledge of Allegiance. When I was Governor of Virginia, we passed such a law. But someone out there in the Ninth Circuit thought, no, we cannot have the Pledge of Allegiance in public schools in California because of the words ''under God.'' That is an example of judges completely ignoring the will of the people in those regions of California and striking down the Pledge of Allegiance because of the words ''under God.'' This is a ludicrous decision.

We also see judges ignoring the will of the people in a variety of other ways. They struck down some laws in Virginia within the last 2 years because of international standards. Friends, colleagues, we make the laws. We represent the people of this country. It is our Constitution. It is not the U.N. constitution or various conglomerations or what confederations of other countries may think our laws should be. The laws are made by the people of this country.

A continuing debate has to do with parental notification. People in Virginia, when I was Governor, and other

States thought, if an unwed minor daughter is going through the surgery, the trauma of an abortion, and is 17 years old or younger, a parent ought to be involved. After all, if a child is going to get a tattoo or their ears pierced, they need parental consent. So the laws are passed by various States, there is one in contention dealing with New Hampshire. Federal judges, ignoring the will of the people in various States, strike down and allow those laws to be overturned.

Last year, in the summer, the Supreme Court got involved in a case that created a great deal of concern because the city of New London, CT, the city council, acting akin to commissars, decided they were going to take people's homes, the American dream, and condemn those homes, take them not for a school, not for a road or any such public purpose, but rather they wanted to derive more tax revenue off of that property. This is part of the Bill of Rights, the fifth amendment. The Supreme Court, in a very narrow decision, allowed New London, CT, in the Kelo case, to take away people's homes. This is an example of Supreme Court Justices, Federal judges, selected and serving for life, amending our Bill of Rights, the Constitution—the Bill of Rights is the most important part of all the Constitution—by judicial decree. That is wrong. This is why it is important we have men and women serving on the Federal bench that understand their role is to apply the law and not take away our God-given rights enshrined in the Bill of Rights and in our Constitution.

I met with Judge Alito in my office and discussed with him my concerns about this troubling trend of judges who ignore the will of the people and start inventing laws themselves. I was actually very encouraged by his scholarship, his knowledge, and what I feel was a very genuine, sincere understanding that we need a respectful, restrained judiciary. And also his ability to cite examples from his very distinguished career of cases where he was presented with decisions where he put aside his personal view and followed the law.

I asked: What do you do if you do not like a law? He said: You have to apply the law, but it may be appropriate after the decision is made, for a judge or panel of judges to communicate with the legislature and advise them they may wish to revisit a certain issue. However, when it came to issuing a decision, he felt very strongly that judges would follow their duty and should incorporate the law as written.

Another quality of Judge Alito is his deep knowledge of the law and his sincere and deep commitment of being a student of our Constitution. When I asked Judge Alito about his role, his view of the role of the State to pass laws, he gave a thoughtful answer. He had a considered analysis of the dormant commerce clause. It was similar to being back in law school, learning some of these things again. His answer shows most importantly a deep understanding not only of the Constitution but also a commitment to the fundamental principles upon which this country was founded, that Government power should remain closest to the people.

In our system of government, it is essential the people in the States be free to experiment in public policy and that Washington, the Federal Government, should not dictate policy through the use of Federal funds in areas reserved to the States or to the people.

Opponents of this nomination have referenced half a dozen cases out of the more than 1,500 he has been involved in while serving on the Third Circuit Court of Appeals. The fact is, no matter how Judge Alito answered the questions posed to him, his detractors would continue to oppose his nomination. On the particularly important charge that he favors an expansive view of the Executive power, Judge Alito reiterated his view that no branch of Government has more power and that no person in this country, no matter how high or powerful, is above the law; no person in this country is beneath the law.

Aside from this very unambiguous answer, one can point to a litany of cases where Judge Alito came down against the authority of the Government, or for the little guy as some people like to call it.

Another criticism of this nomination has been that Judge Alito, if confirmed, will replace a moderate on the Court, retiring Justice Sandra Day O'Connor. Sandra Day O'Connor by the way, in Kelo v. New London, CT, ''commissar taking of homes'' case, ruled on the side of the Constitution, so there will be no change there. We will need to get another Justice if the States are not able to rein in such takings of homes.

Justice O'Connor is a person for whom I have a great deal of respect. She served with great distinction on the Court for many years and has a compelling, interesting life story. The fact that President Reagan appointed her as the first woman on the Supreme Court of the United States as a pioneer in so many ways has been an inspiration to many young people, regardless of gender. Particularly many young women who think, There is a future for me in the law. We have seen a great increase in the number of young women interested in studying in our law schools.

They will say that we have to have someone who has the exact same philosophy as whoever was being replaced. We ought to remember the Founders, in drafting article III of the Constitution that creates the Supreme Court, provides no requirement there must be an ideological balance on the Court. For over 200 years, the Senate has respected the prerogative of the President and performed their advice-and-consent function and ultimately voted for qualified judges, despite their political orientation.

So, therefore, let me conclude in this statement to my colleagues that if you look at Judge Alito's 15 years of exemplary judicial experience, his incredible, well-reasoned answers in the confirmation hearings. If you look at this individual, who has the qualifications, the judicial philosophy, the knowledge of the law, the respect for the law and, indeed, the respect for the people, the owners of this Government, and those of us in the Senate and the House of Representatives, and other bodies, Judge Alito is a perfect person to be an Associate Justice on the Supreme Court of the United States. I respectfully urge my colleagues to vote affirmatively for Judge Alito to serve this country on the Supreme Court.

I thank you for your attention, Madam President. I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Madam President, I also rise today to express my support for the confirmation of Judge Samuel Alito as an Associate Justice of the U.S. Supreme Court.

The Constitution demands that the President's nominees to the Supreme Court receive the advice and consent of a majority of Senators. The standard to be used is not spelled out in the Constitution, but 200 years of tradition offers a guide. That guide, that standard, applied to nominees throughout our history, is the very same standard we should apply today to Judge Samuel Alito. By that standard, Judge Alito is well qualified.

Since graduating from Yale Law School in 1975, Judge Alito has had an exemplary legal career, serving as U.S. attorney, Assistant U.S. Solicitor General, and 15 years as a member of the Third Circuit Court of Appeals. During that lengthy tenure in court, we have had the benefit of seeing Judge Alito's commitment to the rule of law and his commitment to an impartial review of the law and the facts of any given case.

As Alexander Hamilton noted in Federalist No. 78, if the courts are to be truly independent, judges cannot substitute their own preferences to the ''constitutional intentions of the [legislative branch].''

Judge Alito clearly expressed during his confirmation hearings, and his judicial career attests to the fact, that he would not impose his personal views over the demands of the law and precedent. I find that refreshing, I find that encouraging, and I find that a strong reason for supporting the nomination of Judge Alito.

I take great comfort in the fact that Judge Alito has received the unanimous approval of the American Bar Association's committee that reviews judicial candidates. This is a committee that is greatly respected by the legal profession, as well as the general public, for their impartiality and demand and insistence on and careful watch over a quality judiciary. The American

Bar Association's committee that reviews judicial candidates is interested and committed to a quality judiciary.

Judge Alito not only received their unanimous approval, but he received their most qualified rating. That means each and every one of the members of that committee gave Judge Alito their highest, most qualified rating. This should weigh heavily in favor of the confirmation of Judge Alito.

What we know—after the confirmation hearings, after extensive interaction with Members of the Senate, after 3 days of testimony before the Judiciary Committee, and responses to a wide range of written questions by Senators after the hearings—is that Judge Alito is a humble and dispassionate judge, with a deep understanding and modest view of his judicial role in the governance of our Nation and respect for the limitations of precedent.

He has an awareness of the dangers of looking to foreign jurisdictions for guidance in shaping the laws of our land and a commitment to respecting the proper role of the courts in the interpretation of the law.

I am persuaded that Judge Alito will look to establish precedents, be respectful of the doctrine of stare decisis, and will use the Constitution and the law as his guideposts as opposed to any personal whim or political agenda.

There are those who would say they are troubled by what they perceive, that Judge Alito would not side with the ''little guy'' when deciding cases. Let my tell you, I am someone who, for 25 years, took clients' matters to court, more often than not representing the little guy. But even with that experience, I am more committed than ever to the belief I had when I took a client to court, whether a little guy or a big guy. My hope, my prayer, was that my client would find an impartial judge.

It is unthinkable to me to suggest this standard today should be that we should look for whether a judge will purposely lean in favor of one side of the litigation or another before selecting who our judges ought to be. Our judges must be impartial. Our judges must not be there for the little guy or for the big guy. Judges need to take the facts and the law, interpret them and utilize them to reach a fair and just verdict, as dictated by the laws of our Nation, not because they favor a little guy, not because they favor a big guy. If the law and the facts happen to be on the side of the little guy, the little guy should prevail. If the law and the facts happen to be on the side of the big guy, then our system of justice demands that the big guy should prevail.

I love the analogy that Chief Justice Roberts used during the course of his confirmation. In selecting a Justice to the Supreme Court, he said we are looking for an umpire. We are not looking for a pitcher. We are not looking for a batter. We are looking for the umpire—the guy who will call the balls and the strikes fairly and impartially to all litigants before the Court.

Our long-held traditions in our system of justice demand fairness, demand integrity, demand judicial temperament. Judge Alito fulfills all of those requirements amply, and I am satisfied he will make an exceptional Justice of the Supreme Court.

Judge Alito has made it abundantly clear that his personal views have absolutely no place in performing his judicial role in our constitutional structure. Rather, the Constitution, statutes, and controlling prior decisions, as applied to the facts of the case at hand, are the sole basis for his judicial determinations. I find that, as it should be, the correct standard to apply to a judicial nominee for determining his fitness for this high office.

At the end of the day, we know that elections have consequences. The fact that the voters have placed President Bush in the office of President now for a second term has also been an indication that President Bush deserves and should be allowed to have his pick for the Court.

It is our tradition that Presidents nominate, select, and fill vacancies to the Court, while the Senate's role is one of advice and consent. We simply do not have the prerogative of deciding who it is we would prefer to see on the Court or who it is we might find more philosophically suitable to us or more to our liking. Our role as Senators is to provide the President with the advice and consent on the qualifications of those he seeks to put in this high office.

I see an evolving new standard before us. I heard from the members of the Judiciary Committee who did not support this nominee the setting of a brand new standard, and it is no longer qualifications, but it is now whether they philosophically will judge this person to be the kind of person they would want based on their political philosophy. That, I would suggest, is wrong. It has never been the standard applied or utilized by our Nation as we have sought to confirm Justices to our Court for over 200 years. I would say it is absolutely wrong to begin that new standard and leave it unchallenged as we seek the confirmation of one more Justice to the Supreme Court.

My advice and consent is that Judge Alito is one of the select few Hamilton had in mind as having the character, intelligence, and temperament to guard the liberties secured by our Constitution. I strongly urge my colleagues to support his nomination to the Supreme Court.

Thank you, Madam 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.

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

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

COAL MINING TRAGEDIES IN WEST VIRGINIA

Mr. BYRD. Madam President, while the Senate was in recess, the State of West Virginia lost 14 proud sons.

On January 2, 13 hard-working, God-fearing men were simply earning their daily bread at the Sago coal mine in Upshur County, WV, when an explosion killed 1 man and trapped 12 others 260 feet below its surface. For 41 long hours, these men waited for help. They waited, they waited, they waited, and they prayed. They wrote farewell messages to their loved ones. How gripping. They waited as the air they breathed gave out and their lungs filled with toxic gases.

Above the ground, we all prayed for a miracle such as we had enjoyed with the nine miners who had been trapped at the mine at Quecreek, PA, in 2002 and were found alive. But this time, there was only one miracle. My wife Erma and I, like many others in my great State of West Virginia, continue to pray for the recovery of the sole survivor of the Sago explosion, Mr. Randal McCloy, Jr. But tragically, there were no miracles for Tom Anderson, Alva Bennett, Jim Bennett, Jerry Groves, George ''Junior'' Hammer, Terry Helms, Jesse Jones, David Lewis, Martin Toler, Jr., Fred Ware, Jr., Jackie Weaver, and Marshall Winans. Once again, a small coal-mining town in West Virginia went into deep mourning, and an entire State wept with them.

And then, incredibly, 17 days later, a mine fire broke out on a conveyor belt at the Aracoma Alma Mine No. 1 in Logan County, WV, trapping two miners underground. In shock and disbelief, the State once again fell to its knees and prayed and pleaded for a miracle. Forty hours later, we learned that two more miners—Don Bragg and Ellery Hatfield—had perished. Another small coal-mining town in West Virginia went into deep mourning, and again an entire State wept with them.

Once again, the national media rushed in to report the disaster to the world. Once again, editorials filled newspapers across the country decrying the dangers of mining coal, denouncing the callousness of coal companies, and questioning the commitment of State and Federal officials to mine safety.

Madam President, as a child of the Appalachian coalfields, as the son of a West Virginia coal miner, as a U.S. Senator representing one of the most important coal-producing States in the Nation, let me say I have seen it all before. Yes, I have seen it all before.

First, the disaster. Then the weeping. Then the outrage. And we are all too familiar with what comes next. After a few weeks, when the cameras are gone, when the ink on the editorials has dried, everything returns to business as usual. The health and the safety of America's coal miners, the men and women upon whom the Nation depends so much, is once again forgotten until the next disaster. But not this time.

Let me say that this U.S. Senator and the West Virginia delegation in the House and in the Senate will do all that we can to prevent that. There is blame to be assessed in the wake of these tragedies and plenty of it to go around.

Let us begin with the coal company that operated the Sago mine, which had been issued 276 safety and health violations in 2004 and 2005. Let me try to put that into perspective. Could any automobile driver or any truckdriver rack up 276 tickets for reckless driving and still keep a license? What if someone had 276 mistakes on a tax return? One can bet that taxpayer would be looking at serious penalties and possibly time in a Federal prison. But here was a coal company with 276 Federal mine safety violations still operating. While some of these were minor transgressions, too many of them were ''significant and substantial'' or, simply put, very serious, and yet business went on as usual. It is quite possible that not one of these specific violations contributed to the explosion at Sago. But 276 violations is certainly indicative of a company's sloppy attention toward the well-being of its employees. That should be obvious on its face.

What about the agency that is responsible for making sure that coal operators comply with the spirit and the letter of the law—the Mine Safety and Health Administration. Let me be clear that I have nothing but praise for the brave rescue teams that went into the Sago and Alma mines. Anybody who has been around a mine explosion knows the dangers that still lurk not just hours but days after such an accident. To go into a mine after a disaster, after an explosion, and to risk one's own life in an effort to save other lives, as these rescuers do, takes guts. It takes a love for one's fellow man.

Coal miners are a special breed. I have seen these miners go into a mine after an explosion, risking their own lives, realizing that another explosion might occur and another tragedy would follow in the wake of the first tragedy.

Yes, MSHA is filled with good, well-intentioned, and dedicated professionals, but something is terribly wrong with the leadership at MSHA.

Consider that for 4 straight years, President Bush has proposed to cut the budget for coal safety enforcement below the level enacted by Congress the previous year, and for 4 straight years the Congress has had to struggle to partially restore those cuts. Some 190 coal enforcement personnel have been lost over the last 4 years through attrition, and they have not been replaced. The priorities reflected by the Bush administration through MSHA's budget certainly are not indicative of a proper concern for the health and safety of miners.

On the day of the Sago disaster, 2 hours went by—2 hours, with 60 golden minutes each, went by—before MSHA even knew about the explosion. It took another 2 hours before MSHA personnel arrived at the scene. It took 1½ hours before the rescue teams arrived. Another 5 hours passed before the first team entered the mine. The Mine Act requires that rescue teams be available to mines in the event of an emergency, and yet it took 10½ hours before the first rescue team began its effort at Sago.

A short 2 weeks later, similar horrors emerged from a second tragedy at the Aracoma Alma mine and, again, MSHA did not know of the incident for 2½ hours. Something is incredibly wrong. It is obvious something is very, very wrong at MSHA. The rescue procedures for miners are woefully inadequate.

The Sago mine had been cited for 276 violations over the past 2 years, and yet the mine operator never paid a fine larger than $440 and often only paid a minimal $60 fine. Few people realize that even when a fine is assessed, the coal operator can negotiate the fine to a piddling amount.

Congress recognized a long time ago that mine safety and health depends on financial penalties that ''make it more economical for an operator to comply'' with the law ''than it is to pay the penalties assessed and continue to operate while not in compliance.'' Clearly, the 276 penalties assessed—whatever the amount of the fine—weren't enough to convince this company to take a hard look at safety for its employees.

The Sago mine was a habitual violator—a habitual violator. It was being assessed only the minimum penalties allowed by the law. The maximum penalty could be $220,000 or $1 million, but it makes no difference unless MSHA is willing to impose and collect that maximum amount. Habitual violators must be brought to a state of fearing the consequences of a heavy fine to be paid when assessed. We have to get tough about enforcing the law.

At MSHA, complacent attitudes and arrogance rule at the top. At the Senate Appropriations Labor-HHS Subcommittee hearing on Monday, Acting MSHA Secretary David Dye was asked directly about the issue of communications technology: Why are the miners trapped underground not able to communicate with the rescue teams, and can rescue teams better locate trapped miners? Dye was asked directly if technology exists to correct these problems, and he stated for the record that such technology did not exist.

Now get that. Let me say that again. At this hearing, conducted by one of the finest Senators on either side of the aisle here, Republican Senator SPECTER of Pennsylvania, at that record hearing, Acting MSHA Secretary David Dye was asked directly about the issue of communications technology: Why are the miners trapped underground not able to communicate with the rescue teams, and can rescue teams better locate trapped miners? Dye was asked directly if technology exists to correct these problems, and he stated for the record that such technology did not exist.

How about that. That statement proved to be utterly, utterly, utterly false. Minutes later, after Dye was asked if such technology existed, the subcommittee heard from a former MSHA Secretary, Davitt McAteer, who verified that such communications technology certainly does exist, and Mr. McAteer put tracking and communications devices on the table—on the table—right in front of the subcommittee.

What does that say about the people leading this agency when they don't even know about the existence of lifesaving technology that ought to be in the mines? What does that say? Shame, shame on them. I am talking about the people leading the agency when they testified that they don't even know about the existence of lifesaving technology that ought to be in the mines. Why is the Acting Administrator of MSHA, charged with protecting the health and safety of coal miners, so abysmally ignorant of these technologies? The families of these miners and the Members of this Congress are owed an explanation.

In this day and age of cell phones, BlackBerrys, and text messaging, it is absolutely unacceptable that safe telecommunications technology was not available to the Sago and Alma miners. These weaknesses in mine emergency preparedness are unacceptable. Where is MSHA? Repeating the first question that was ever asked in the history of mankind when God sought Adam in the Garden of Eden in the cool of the day. God said: Adam, where art thou? Well, where was MSHA? Where was MSHA? What is that agency waiting for?

Ask the leadership at MSHA. At Sago and Alma, we have seen the disastrous results of complacent attitudes at the top—at the top. A quick look at the list of rules approved and scuttled at MSHA in recent years—from regulations governing mine rescue teams to the use of belt entries for ventilation to inspection procedures to emergency breathing equipment to escape routes, any one of which might figure into the deaths and disasters at the Sago and Alma mines—suggest that something, something, something is terribly wrong. Something is terribly, terribly, terribly wrong, and it ought to be fixed.

In 1995, labor and industry jointly proposed a number of initiatives on mine emergency preparedness to improve mine rescue technology and communications. Perhaps one of the most important was to address the dwindling number of mine rescue teams. MSHA has ignored the report and its recommendations. In 2003, the General Accountability Office made a list of recommendations to the Secretary of Labor to help MSHA protect the safety and health of the miners. What happened? MSHA ignored the recommendation. Shame, shame.

Our Nation's coal miners are vital to our national economy. During World War I, coal miners put in long, brutal

hours to make sure that the Nation had coal to heat our homes, power our factories, and fuel our battleships. In World War II, American coal miners again provided the energy to replace the oil that was lost with the outbreak of that global conflict. During the oil boycott-induced energy crisis of the 1970s, our Nation once again called upon—yes, our Nation once again turned, yes, to the coal miners to bail the Nation out of trouble, and the coal miners did.

Coal produces over half of the electricity we use every day in these United States. Here is an example of it all around the ceiling here, the lights that are burning making it bright as day right here in this Chamber. That is coal. That is energy that comes from coal, burning coal—coal that is produced by hard, backbreaking labor in the dangerous mines. Coal is dug out, scratched out by the coal miner.

So today America's coal miners provide the electricity—the electricity right here—the electricity that lights the streets of Washington, New York City, Sacramento, and all over this country, and it heats our homes in winter, lights our homes in summer.

Those coal miners could provide the key to our Nation's future energy security. You can bet on those coal miners—and they are of a different breed, a special breed. If we made better use of this abundant natural resource, coal, we could reduce our country's dangerous dependency on foreign oil.

We could make ourselves less dependent on the rule of despots, and less of a target for the fanatics and the terrorists of the Middle East.

God blessed our country. Yes, the Almighty who was there at the beginning blessed our Nation, especially West Virginia with an abundance of coal, and God provided us with the good, the brave, the hard-working coal miners to dig that coal and bring it from the Earth, the bowels, the dark, the black, the darkness. The coal miners have never failed our Nation.

I know. I grew up in a coal miner's home. I married a coal miner's daughter. Her brother-in-law died from black lung. His father was killed under a slate fall.

We have lived—my family has lived—with coal miners. We have coal miners in our families. We have lost loved ones.

The test of a great country such as ours is how serious we are about protecting those among us who are most at risk, whether it be innocent children who need guarding from hunger and disease or our elderly and sick who cannot afford medication. Those men and women who bravely labor in such dangerous occupations as coal mining to provide our country with critical energy should be protected from exploitation by private companies with callous attitudes about health and safety. That is why MSHA exists. That is why we created MSHA. That is why I was here when that agency was created. But MSHA is just a paper tiger without aggressive leadership. If we are truly a moral nation, and I believe that we should be, moral values must be reflected in government agencies that are charged with protecting the lives of our citizens. The last thing that we need is ho hum, arrogant attitudes from this administration and its officials. Such calumny abuses the public trust and results in the kind of loss of life that so grieves families today in Upshur and Logan Counties and all across my home State of West Virginia.

Madam President, in memory of the Sago and Alma Miners, and all those who labor and have labored in our nation's coal mines, I ask unanimous consent that the eulogy of Homer Hickam, from the Sago Memorial Service on January 15, 2006, be printed in the CONGRESSIONAL RECORD.

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

Families of the Sago miners, Governor Manchin, Mrs. Manchin, Senator BYRD, Senator ROCKEFELLER, West Virginians, friends, neighbors, all who have come here today to remember those brave men who have gone on before us, who ventured into the darkness but instead showed us the light, a light that shines on all West Virginians and the nation today:

It is a great honor to be here. I am accompanied by three men I grew up with, the rocket boys of Coalwood: Roy Lee Cooke, Jimmie O'Dell Carroll, and Billy Rose. My wife Linda, an Alabama girl, is here with me as well.

As this tragedy unfolded, the national media kept asking me: Who are these men? And why are they coal miners? And what kind of men would still mine the deep coal?

One answer came early after the miners were recovered. It was revealed that, as his life dwindled, Martin Toler had written this: It wasn't bad. I just went to sleep. Tell all I'll see them on the other side. I love you.

In all the books I have written, I have never captured in so few words a message so powerful or eloquent: It wasn't bad. I just went to sleep. Tell all I'll see them on the other side. I love you.

I believe Mr. Toler was writing for all of the men who were with him that day. These were obviously not ordinary men.

But what made these men so extraordinary? And how did they become the men they were? Men of honor. Men you could trust. Men who practiced a dangerous profession. Men who dug coal from beneath a jealous mountain.

Part of the answer is where they lived. Look around you. This is a place where many lessons are learned, of true things that shape people as surely as rivers carve valleys, or rain melts mountains, or currents push apart the sea. Here, miners still walk with a trudging grace to and from vast, deep mines. And in the schools, the children still learn and the teachers teach, and, in snowy white churches built on hillside cuts, the preachers still preach, and God, who we have no doubt is also a West Virginian, still does his work, too. The people endure here as they always have for they understand that God has determined that there is no joy greater than hard work, and that there is no water holier than the sweat off a man's brow.

In such a place as this, a dozen men may die, but death can never destroy how they lived their lives, or why.

As I watched the events of this tragedy unfold, I kept being reminded of Coalwood, the mining town where I grew up. Back then, I thought life in that little town was pretty ordinary, even though nearly all the men who lived there worked in the mine and, all too often, some of them died or was hurt. My grandfather lost both his legs in the Coalwood mine and lived in pain until the day he died. My father lost the sight in an eye while trying to rescue trapped miners. After that he worked in the mine for fifteen more years. He died of black lung.

When I began to write my books about growing up in West Virginia, I was surprised to discover, upon reflection, that maybe it wasn't such an ordinary place at all. I realized that in a place where maybe everybody should be afraid after all, every day the men went off to work in a deep, dark, and dangerous coal mine instead they had adopted a philosophy of life that consisted of these basic attitudes:

We are proud of who we are. We stand up for what we believe. We keep our families together. We trust in God but rely on ourselves.

By adhering to these simple approaches to life, they became a people who were not afraid to do what had to be done, to mine the deep coal, and to do it with integrity and honor.

The first time my dad ever took me in the mine was when I was in high school. He wanted to show me where he worked, what he did for a living. I have to confess I was pretty impressed. But what I recall most of all was what he said to me while we were down there. He put his spot of light in my face and explained to me what mining meant to him. He said, ''Every day, I ride the mantrip down the main line, get out and walk back into the gob and feel the air pressure on my face. I know the mine like I know a man, can sense things about it that aren't right even when everything on paper says it is. Every day there's something that needs to be done, because men will be hurt if it isn't done, or the coal the company's promised to load won't get loaded. Coal is the life blood of this country. If we fail, the country fails.''

And then he said, ''There's no men in the world like miners, Sonny. They're good men, strong men. The best there is. I think no matter what you do with your life, no matter where you go or who you know, you will never know such good and strong men.''

Over time, though I would meet many famous people from astronauts to actors to Presidents, I came to realize my father was right. There are no better men than coal miners. And he was right about something else, too:

If coal fails, our country fails.

The American economy rests on the back of the coal miner. We could not prosper without him. God in His wisdom provided this country with an abundance of coal, and he also gave us the American coal miner who glories in his work. A television interviewer asked me to describe work in a coal mine and I called it ''beautiful.'' He was astonished that I would say such a thing so I went on to explain that, yes, it's hard work but, when it all comes together, it's like watching and listening to a great symphony: the continuous mining machines, the shuttle cars, the roof bolters, the ventilation brattices, the conveyor belts, all in concert, all accomplishing their great task. Yes, it is a beautiful thing to see.

There is a beauty in anything well done, and that goes for a life well lived.

How and why these men died will be studied now and in the future. Many lessons will be learned. And many other miners will live because of what is learned. This is right and proper.

But how and why these men lived, that is perhaps the more important thing to be studied. We know this much for certain: They were men who loved their families. They were men who worked hard. They were men of integrity, and honor. And they were also men who laughed and knew how to tell a good story. Of course they could. They were West Virginians!

And so we come together on this day to recall these men, and to glory in their presence among us, if only for a little while. We also come in hope that this service will help the families with their great loss and to know the honor we wish to accord them.

No matter what else might be said or done concerning these events, let us forever be reminded of who these men really were and what they believed, and who their families are, and who West Virginians are, and what we believe, too.

There are those now in the world who would turn our nation into a land of fear and the frightened. It's laughable, really. How little they understand who we are, that we are still the home of the brave. They need look no further than right here in this state for proof.

For in this place, this old place, this ancient place, this glorious and beautiful and sometimes fearsome place of mountains and mines, there still lives a people like the miners of Sago and their families, people who yet believe in the old ways, the old virtues, the old truths; who still lift their heads from the darkness to the light, and say for the nation and all the world to hear:

We are proud of who we are.
We stand up for what we believe.
We keep our families together.
We trust in God.
We do what needs to be done.
We are not afraid.

Mr. BYRD. Mr. President, I yield the floor. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. KERRY. Mr. President, could we have an agreement on the time? I apologize, I was supposed to have the time between 1:30 and 2. Since the Senator from Kentucky is waiting—I wanted, obviously, to be able to complete my statement—we have agreed to switch times. He will speak for 15 minutes, with the agreement that I would then speak after.

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

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I rise to speak in support of Samuel Alito's nomination to the United States Supreme Court.

Judge Alito is supremely qualified.

He has a record of fairness and judicial restraint. He will do a fine job on the Supreme Court.

I will vote for his nomination and any procedural measures necessary to confirm him on the Senate floor.

Confirmation of a Supreme Court Justice is one of the most import jobs we have as Senators.

This will be the second Supreme Court nominee I will have considered since coming to the Senate.

I take this responsibility very seriously.

I have spent time with Judge Alito and I have studied his background and record.

I closely followed his confirmation hearings in the Judiciary Committee. I can say without question that he should be confirmed.

I don't find myself agreeing with the Washington Post or the Louisville Courier-Journal newspapers very often.

But even those papers agree that Judge Alito should be confirmed.

I first met Judge Alito this past fall.

I did not know much about him when his nomination was announced by President Bush.

I reserved judgment about his nomination until I had a chance to meet with him.

From that meeting it became clear that I could support his nomination.

And his performance at his confirmation hearing further solidified my support for his nomination.

We are all familiar with the basics of Judge Alito's background.

He has been on the Third Circuit Court of Appeals for 15 years.

He has participated in several thousand cases and written several hundred opinions.

He attended top schools for both college and law school—Princeton and Yale.

I gather all of my colleagues would agree that those things are important and impressive—but they do not alone qualify him for the job.

There is a lot more to being qualified for the Supreme Court than pedigree and judicial experience.

Judicial philosophy and one's approach to judging and the law are most important.

All these factors and more must be looked at and weighed before deciding if a nominee is qualified.

I have done so and it is clear to me that Judge Alito should be confirmed.

A good place to begin is with Judge Alito's record on the Third Circuit Court of Appeals.

He has participated in over 3,000 cases and written over 300 opinions.

His record in those cases shows that he is fair and impartial. And that he understands the law and the judicial process.

His opinions are written clearly and provide clear guidance to the lower courts.

Clarity is something we certainly need on the Supreme Court.

The clarity and fairness of Judge Alito's opinions speak well to his qualifications.

But what speaks volumes is that his critics have been unable to find a single case he participated in to show that he is unqualified as a judge.

That is not to say that his critics have not tried. But to use any case against him—critics have had to distort the record or confuse the issue.

Judge Alito's opponents are trying to stop his nomination.

They are concerned he will be a vote for the rule of law and the Constitution. And not a judicial activist to their liking on the Supreme Court.

The framers of the Constitution created a system of government where the peoples' voices are to be expressed through their elected representatives.

All Senators and Representatives stand for election and are responsible to the people of their States or districts.

The President is accountable to the entire Nation and must face the people in every State.

The Justices of the Supreme Court never have to face voters.

That is why the framers gave the legislative powers to the Congress.

And that is why they gave the administrative powers to the President.

We—who make policy decisions—are accountable to the voters.

The Justices of the Supreme Court are not.

At its simplest—that is what is meant by the rule of law. We are a Nation of laws—starting with the most basic law, the Constitution.

The Constitution spells out the roles of the branches of Government.

It sets out the role to the courts—which is to settle legal disputes between parties, and not to set national policy.

The Supreme Court is also to be a last check on the legislative and executive branches when they clearly violate the Constitution—but not to override policy decisions when the Constitution is silent.

Judge Alito has a demonstrated record of respecting the rule of law and the will of the people through their elected representatives.

That disturbs some who belong to this body.

It bothers them to know that if Judge Alito and others like him are on the Supreme Court—then the steady advance of courts acting as a policy-making branch of government will be halted.

Judge Alito has shown respect for the rule of law throughout his career on the bench—and even before that when serving in the Reagan Administration.

He understands that each branch of government has a unique role to play.

And he understands that only two are accountable to the people.

I take great comfort in Judge Alito's understanding that there is a place in our system of government for policy making—and that the place is not the courts.

Many of Judge Alito's opponents view the courts as just another policy making branch of government.

In other countries that may be true. But in the United States it is not.

Our judges are insulated from public pressure.

It is this way so that they can make impartial and fair judgments on cases—no matter how popular or unpopular the result.

They are also insulated from the political process to prevent undue influence from Congress or the President.

Does anyone here actually believe the framers of our Constitution insulated judges so they could enact policies without any political consequence?

In fact, the framers rejected proposals to give the courts any policymaking powers.

But that is not good enough for some who oppose Judge Alito.

They want judges who will make broad policy decrees from the bench.

They want liberal judges who will rule by dictating policies that fail at the ballot box.

They want activist judges. And Judge Alito is not an activist judge.

Judge Alito will stand up to the activists on the Supreme Court and help make sure the Court follows its proper and vital role.

The confidence of the citizens in the courts is harmed when the courts overstep their bounds.

Like Chief Justice Roberts, I am confident Judge Alito will only act within the Supreme Court's proper role.

And I am confident he will help restore the American people's faith in our court system.

I press upon my colleagues to support this nomination.

I will vote for Judge Alito and whatever measures and procedures necessary to ensure he gets a final vote up or down.

I am proud to support him.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. HUTCHISON. 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. HUTCHISON. Mr. President, I rise today to support Judge Samuel Alito's confirmation to the Supreme Court of the United States. Judge Alito's 15 years of experience on the Third Circuit Court of Appeals and his 15 years serving the Justice Department, including his position as U.S. attorney for the District of New Jersey, make him well prepared to be an Associate Justice on our Highest Court.

One of the best insights into Judge Alito's judicial ability is gained from listening to his colleagues on the Third Circuit. Colleagues from both sides of the political aisle praise him for his judicial excellence. Judge Aldisert, a nominee of President Lyndon Johnson, stated before the committee:

> We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed first hand his approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great Justice.

Moreover, after an exhaustive investigation, Mr. Steve Tober, chairman of the ABA Standing Committee on the Federal Judiciary, declared that Judge Alito's ''integrity, his professional competence and his judicial temperament are indeed found to be of the highest standard.''

Mr. President, I have to say that anyone who watched Judge Alito at his Senate hearing would agree that his professional competence and judicial temperament were certainly on display. I believe that showed very well why he will be confirmed as a Supreme Court Justice.

The American Bar Association gave Judge Alito its highest rating. Most important, Judge Alito has a firm belief in the rule of law upon which our country is based. As he stated on the first day of his hearings, ''No person in this country, no matter how high or how powerful, is above the law, and no person is beneath the law.'' Judge Alito recognizes that, in our system, judges interpret the law, but should not create policy. They should not decide what they would like to have the law be; rather, they simply should determine what the law states.

He said on his second day of hearings:

> . . . it is not our job to try to produce particular results. We are not policymakers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have.

During the 2004 Presidential campaign, President Bush made clear that he planned to nominate to the bench judges who would respect the rule of law, judges who would interpret but not legislate. In particular, he drew attention to his desire to nominate people who would strictly interpret the Constitution. Knowing Supreme Court nominations were on the horizon and knowing the President's views, the American people re-elected President Bush.

With the previous nomination of Chief Justice John Roberts and now with the nomination of Judge Alito, the President is fulfilling his promise to the American people. Now it is time for the Senate to play its constitutional role in the nomination process to ensure the President's nominee meets the high standards we set for members of the Supreme Court of our land. Judge Alito is extremely capable, he is highly qualified, and he deserves the support of this body.

I wish to also rebut one statement that was made earlier today. I believe Judge Alito was unfairly criticized for his opinion in Pirolli v. World Flavors, Inc. This was a case involving a mentally disabled man who claimed he was sexually harassed at work. They have alleged that by ruling against the plaintiff in the appellate court, Judge Alito showed he is ''results-oriented.'' Their criticisms are unfair and misleading. Judge Alito was not even able to form an opinion on the merits of the case because the plaintiff's lawyer presented an incomplete brief.

Judge Alito made clear in his dissent that had the plaintiff's lawyer raised the argument in a minimally adequate fashion, he might well agree and join the majority in voting to reverse. He continued to say:

> I would overlook many technical violations of the Federal Rules of Appellate Procedure and our local rules, but I do not think it is too much to insist that Pirolli's brief at least state the ground on which reversal is sought.

It is very important to understand that an appellate judge cannot create the facts. The appellate judge cannot argue the lawyer's case when he is not equipped with the facts or the reason for the request for a reversal. So I believe it is important that we set the record straight on that.

Judge Alito has shown by his manner during the hearing and his 15 years on the bench that he is fully qualified under the constitutional requirements and from every neutral observer with whom I have talked for this position. I hope there will not be further delay.

I am so hopeful that the people who would vote against him would at least let us have the vote. He has been thoroughly vetted. He has been thoroughly questioned. The Senate has fulfilled its constitutional responsibility, and I think by the end of this week we should allow Judge Alito to be able to start preparing for the very important cases that are going to come before the Court right away. Let him have the chance to be fully prepared and do the job we are asking him to do. It is the least we should expect of the Senate. It is the responsible approach for the U.S. Senate. The Supreme Court and the people of America deserve no less.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I thank the Senator from Texas for her remarks and her strong support of this very decent American and the continued leadership she exercises in our party and in our caucus.

We know that elections have consequences. When President Bush ran for reelection, he stated plainly and often that if given the opportunity, he would nominate judges to the U.S. Supreme Court who strictly interpret the Constitution of the United States. True to his promise, the President nominated John Roberts to become the 18th Chief Justice of the United States. Just as true to his promise, he nominated Samuel Alito to serve as Associate Justice of the Supreme Court.

I was pleased that President Bush nominated Judge Alito, as were many other Members of this body. I reserved final judgment, as most of us did, until we saw the confirmation process proceed. I don't take the Senate's advice and consent role lightly. I didn't want to encourage a rush to judgment.

The hearings have occurred, and I believe Judge Alito has performed admirably. There were 18 hours and 700 questions, and there probably would have been a lot more questions if there

had not been the length of the questions, sometimes lasting as long as a half hour.

Anyway, I believe he is worthy of our support. As has been stated time after time on the floor, he earned the highest ratings of the American Bar Association.

Let me tell you what impresses me, Mr. President, probably as much as anything else. It is the strong endorsement Judge Alito got from the people who used to work for him. There is nobody who knows people better than those who work for you. There is a very impressive list of former law clerks of Judge Alito writing to urge the Senate to confirm him. As they state in their letter:

> Our party affiliations and views on policy matters span the political spectrum. We have worked for Members of Congress on both sides of the aisle and have actively supported and worked on behalf of Democratic, Republican, and Independent candidates.

And they go on to say in their letter:

> What unites us is our strong support for Judge Alito and our deep belief that he will be an outstanding Supreme Court Justice.

That impresses me, when the clerks, the people who work alongside these judges every single day—and it is a very long list; it looks to me like there are 60 to 75 names on there—are all supporting him. As they state, they are of all beliefs and party affiliations. There is no person or persons who know a judge better than those who clerked for him.

Finally, they go on to say:

> It never once appeared to us that Judge Alito had prejudged a case or ruled based on political ideology. To the contrary, Judge Alito meticulously and diligently applied controlling legal authority to the facts of each case after a full and careful consideration of all relevant legal arguments. It is our uniform experience that Judge Alito was guided by his profound respect for the Constitution and the limited role of the judicial branch.

That is what Judge Alito is all about from the people who know him best, other than his family. Frankly, that has a significant effect on my view of him.

I will make one other comment. We are dragging out this process for no good reason. We all know what the outcome of the vote is going to be. We have other pressing business, including lobbying reform, which needs to be taken up by this body. We have pending the issue of the PATRIOT Act. There are many issues we should be addressing and at least beginning to work on, rather than dragging out this process. I wish my colleagues on the other side of the aisle would see fit to bring this process to a close and let us vote on Judge Alito and move on to other pressing issues.

The fact that there will probably be a large number of votes on that side of the aisle against Judge Alito doesn't upset me as much as it saddens me. I didn't agree with the judicial philosophy of Justice Breyer or Justice Ginsburg. I knew that Justice Ginsburg worked for the ACLU and held liberal views. But I also believe that elections have consequences. The President of the United States—at that time, President Clinton—nominated them as his selection. There were very few—a handful of votes against either Justice Breyer or Justice Ginsburg.

When there is a large number of votes against this highly qualified individual, it is a symptom of the rather bitter partisanship that exists in this body today, and I regret that very much. There are pressing issues, such as Iran and their rapid acquisition of nuclear weapons, which spring to mind. We have to sit down in an atmosphere of mutual trust and respect and work on these things. I will be very sad when I see this large vote against this good and decent American, but, more importantly, I will be upset because we continue to engage in the kind of partisanship which has even been ratcheted up lately on lobbying reform, when we should be working out a common approach and a common cure for a significant illness that afflicts this body and the Capitol today.

I hope we can finish this debate as soon as possible, vote on Judge Alito, and then move forward.

I thank my colleagues, and I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM. 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.

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

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

Mr. GRAHAM. Mr. President, I would like to pick up where Senator MCCAIN left off about the Alito nomination and what has changed between the Clinton administration and the President Bush 2 administration regarding judges.

The question I ask the body and really the country is, have the qualifications changed or are the people President Bush has chosen to nominate for the Supreme Court more inferior in terms of qualifications, temperament, and character than the people President Clinton nominated? As individuals, is there a major difference in their legal experience? Are there any character flaws with these two nominees that did not exist with President Clinton's nominees? If you can find an answer to the question other than no, I would like to hear about it. I would like someone to come to the floor and talk about how Justice Roberts and Judge Alito are not in the ball park as to qualifications, character, and disposition with Justice Breyer and Justice Ginsburg.

It is clear to me that President Bush picked two very well qualified people to serve on the Supreme Court when it came his time to choose a Supreme Court nominee. You don't have to take my word for it. Seven judges testified before the committee who served on the Third Circuit with Judge Alito. They were nominated by Lyndon Johnson, Richard Nixon, Ronald Reagan, George H.W. Bush, and Bill Clinton, really a hodgepodge of nominees in terms of their source. These judges had a universal belief regarding Judge Alito, and that belief was that he is a great colleague, a good man, a judge's judge. They came before our committee to his defense.

I ask unanimous consent to print in the RECORD excerpts of these judges' comments.

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

LOG JUDGES TESTIMONY TALKERS

Five sitting and two former judges from the U.S. Court of Appeals for the 3rd Circuit testified on behalf of Judge Samuel Alito's nomination to the Supreme Court.

The judges included nominees of Presidents Lyndon Johnson, Richard Nixon, Ronald Reagan, George H.W. Bush, and Bill Clinton. Collectively they have served with Judge Alito for more than 75 years, watching him work and evaluating his intellect, character, independence, and judgment.

Judge Becker on working with Judge Alito up close: "There is an aspect of appellate judging that no one gets to see—no one but the judges themselves: how they behave in conference after oral argument, at which point the case is decided, and which, I submit, is the most critically important phase of the appellate judicial process. In hundreds of conferences, I had never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize. Rather, he expresses his views in measured and temperate tones."

Judge Becker on Judge Alito's intellect and open-mindedness: "Judge Alito's intellect is of a very high order. He's brilliant, he's highly analytical and meticulous and careful in his comments and his written work. He's a wonderful partner in dialogue. He will think of things that his colleagues have missed. He's not doctrinaire, but rather is open to differing views and will often change his mind in light of the views of a colleague."

Judge Becker on whether Judge Alito is an ideologue: "The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person, He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants. . . . His credo has always been fairness."

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

Chief Judge Scirica on Judge Alito's open-mindedness: "Like a good judge, he considers

and deliberates before drawing a conclusion. I have never seen signs of a predetermined outcome or view, nor have I seen him express impatience with litigants or with colleagues with whom he may ultimately disagree. He is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives.''

Judge Barry on Judge Alito's service as U.S. Attorney: ''The tone of a United States Attorney's Office comes from the top. The standard of excellence is set at the top. Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency.''

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

Judge Aldisert on working with Judge Alito for 15 years: We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great Justice.

Judge Garth on Judge Alito's lack of an agenda: ''I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.''

Judge Garth on Judge Alito's personality: ''Sam is and always has been reserved, soft spoken and thoughtful. He is also modest, and I would even say self-effacing. And these are the characteristics I think of when I think of Sam's personality. It is rare to find humility such as his in someone of such extraordinary ability.''

Judge Gibbons on Judge Alito's independence from the executive: ''The committee members should not think for a moment that I support Judge Alito' s nomination because I'm a dedicated defender of [the Bush] administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere. And we are certainly chagrined at the position that is being taken by the administration with respect to those detainees.

''It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. I would not ask him. And if I did, he would not tell me. I'm confident, however, that, as an able legal scholar and a fair-minded Justice, he will give the arguments—legal and factual—that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.''

Judge Lewis on his own liberal politics: ''I am openly and unapologetically pro-choice and always have been. I am openly—and it's very well known—a committed human rights and civil rights activist and am actively engaged in that process as my time permits. . . . I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—'Well, why are you here today saying positive things about his prospects as a Justice on the Supreme Court?' And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular, the United States Supreme Court.''

Judge Lewis on Judge Alito's honesty and integrity: ''As Judge Becker and others have alluded to, it is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues. And I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.''

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

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

Mr. GRAHAM. Mr. President, I have limited time, so I am not going to read them all. But I ask each Member of the body to look, if they can, at these short quotes, or if they want to listen to the whole testimony, they can certainly retrieve it and ask the question of themselves: Why would these judges from a variety of different philosophies be coming before our committee and testifying on behalf of Judge Alito if he truly was an ideologue or out of the mainstream, if he held positions on abortion or any other line of cases that were extreme in nature or outside the judicial mainstream of what a judge should do?

Why would the American Bar Association, after looking at hundreds of opinions and thousands of cases in which Judge Alito participated, come to the conclusion that he is a judge's judge, that he has the temperament, the disposition, and that there is no bias when you look at all the cases where he favors one class of Americans over another? Why would so many law clerks, as Senator MCCAIN mentioned, come to the judge's aid if he was a person who exhibited a hard heart, for lack of a better way of saying it, a person who took the law and applied it to individuals in this country coming before him in a statistical manner, not a human manner?

I would argue that of all the records that have ever been amassed for a nominee Judge Alito's record is on par with Ginsburg, Breyer, and anyone else who has ever been nominated, in terms of being highly qualified—15 years on the bench and a good person.

Those who know him best, those who work with him when the cameras are not on and when nobody else is around all have the same view of Judge Alito: He is a good person who takes his job seriously. He follows the law, and he is conservative, but he is mainstream in terms of what we expect a judge to be.

Who is in the mainstream in America when it comes to judging? And who is to determine what the mainstream is? If you would ask me to judge a Democratic nominee as to whether they were in the mainstream of legal thought I would try to give you an honest answer. But if you wanted to ask someone other than me—I am a Republican—I would probably understand why you want to ask somebody other than me.

How do we determine if a person is in the mainstream of being a judge? Rather than asking a politician, maybe we should go to a source outside the political moment, outside a political body, who believes that this is a hugely important decision not only for the country but has political consequences.

The reason this is an important political decision is because special interest groups are watching our every move. Millions of dollars have been spent on advertising for and against Judge Alito. There are groups out there that have made it their reason for existing to deny this man a vote or to defeat him. There are groups out there that are bent on supporting him.

What do nonpolitical people say? What do people who have no political ax to grind say? What do the people who have sat with him a decade plus say, his fellow judges, African-American judges? They say he is not an ideologue, that he is a good judge.

What does the American Bar Association say? That he has a temperament—over 2,000 people were interviewed, I think it was; some amazing amount of interviews conducted—a temperament beyond question; that he approaches each case without a bias, but he tries to find the best he can, looking through his philosophy of judging, to get the right answer. Those who worked with him as a prosecutor, who have been his clerks, all have nothing but admiration for this man.

So why will he get, at best, five or six Democratic votes? Why did Justice Ginsburg get 96 votes? I would argue she deserved 96 votes, but she was no better qualified than Judge Alito. The same things that were said about Justice Ginsburg, in terms of her temperament and her legal abilities, are being said about Judge Alito.

Politics has changed. Some members of our committee openly said things are different now than they were then. This is replacing Justice O'Connor. The

country is more divided. All I can say is, don't start down a road that you will regret because Justice Ginsburg replaced Justice White, and if we are going to base our vote on Roe v. Wade, what somebody might do, then a pro-life Senator would have a very difficult time casting a vote for Justice Ginsburg because she openly embraced a constitutional right to abortion and supported public funding of abortion. That is a view held by many Americans. It is a legitimate view to have. But from a pro-life point of view, it was clear that she was going to probably be different than Justice White because Justice White dissented in Roe v. Wade.

If that is the only reason you were voting for Justice Ginsburg, you knew with a high degree of certainty the balance of power on the Court would change when it came to that one issue.

Somehow back then people of a pro-life persuasion set that aside and looked at her qualifications. She was never attacked, that I can find in the RECORD, for being the general counsel for the American Civil Liberties Union, a left of center organization, from a conservative's point of view, that embraces many causes with which I personally disagree. But people understood there was a difference between lawyering and judging.

I would argue forcefully that the unpopular cause needs the best lawyer. Instead of holding it against her for representing politically unpopular causes, causes with which I completely disagree, I would give her credit as a lawyer because the unpopular cause needs the best lawyers in the country. The more popular it is, the worse lawyer you can have because you are likely to win.

Something has changed, and I would argue that change is being driven by the political moment, not by the record, and it has huge consequences for this country.

The Presidency is a political office. To become President, you have to go through a lot—a lot of commercials are run and a lot of scrutiny. To become a Senator, you have to go through a lot—a lot of commercials are run against you, and you go through a lot of scrutiny. We sign up for the process knowing what we are getting into.

Traditionally, judges who come before the Senate, recommended by the President to the body, do not have to mount political campaigns and have traditionally not been subject to political campaigns. The reason being there has to be one place in America where politics is parked at the door. How many people want their case decided by a political judge? I don't; even if they agree with me I don't because that is dangerous. We are running with warp speed toward a day when the judiciary is politics in another form. There is plenty of blame to go around. I am not saying the Republican Party is blameless, but when it comes to evaluating Supreme Court nominees, I would argue there has been a change from President Clinton's term to the current time and that the model that Senator HATCH used with Justices Breyer and Ginsburg would be a good model for your vote on qualifications and where you do not take dissents and political attacks as the way to try to undermine the nominee.

I honestly challenge anyone in this body to say that in terms of legal ability, legal experience, and personal character, there is a dime's worth of difference between Roberts, Alito, Ginsburg, and Breyer. There is not. The record in Judge Alito's case and in Judge Roberts' case shows beyond any doubt they are well-qualified lawyers who have practiced before the Supreme Court, who have the admiration of their colleagues, their associates, and those they have opposed in court, and that they are without any doubt historically well-qualified nominees.

You can take a record and make it what you want to make it for political reasons. You can take anyone's life and snip and cut and cut and paste and make that life anything you want it to be in a 30-second commercial. It can happen to me, it can happen to you, Mr. President, it can happen to any American because if you have been involved in the law as long as Judge Alito, you can cut and paste his life as a lawyer, as a judge, and as a person. I just ask that we reject the politics of cut and paste and we look at the entire record and the complete person.

If we look at the complete person, we find a good father, a good husband, a good man who comes from a humble background and who has ascended to the highest levels of the law known in our country. If we look at his time as a judge, we will find someone respected by his colleagues who is serious as a judge, who is analytical in his thought process, who is, by no means, an ideologue. If we step back, we see in Judge Alito one of the most qualified conservative judges in the land.

I end with this thought. Elections do matter. President Clinton earned the right from the American people to make two selections. He picked people of known liberal philosophy and inclination to be on the Court. These are legitimate philosophies to embrace and to have. He picked extremely well-qualified people to be on the Court. They are on the Court now with an overwhelming vote.

President Bush and his nominees have been treated differently. I worry more about the future of the judiciary than I worry about President Bush because his time will come and it will go. He may have another pick. But what we are doing on his watch is going to forever change the way the Senate relates to the judicial confirmation process if we don't watch it.

For someone such as Judge Alito to be rejected by 80 percent of the Democratic caucus is not healthy for the country because, quite frankly, he has earned a better showing than that. He has lived his life well.

He has been a good judge. He is a good man. His record, his colleagues, his associates, and everything he has done as a lawyer, judge, and person needs to be considered in its entirety—not for political ends for the moment.

This vote we are about to take in the next few days is going to change the way the Senate works for a long time to come. My belief is it is going to change it for the worse.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, on behalf of the Democratic leader, I ask unanimous consent that the hour of Democratic time be controlled as follows: MIKULSKI, CLINTON, and KERRY up to 20 minutes each, and Senator NELSON of Florida up to 5 minutes.

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

Ms. MIKULSKI. Mr. President, I rise to voice my opinion on the nomination of Judge Alito. I view this process with enormous seriousness. It is not like a political campaign because the Supreme Court is a lifetime appointment.

Senators are called upon to make two decisions that are irrevocable and irretrievable. One is the decision to go to war and put our troops in harm's way. A very serious decision. You can't say the next day, Whoops, I made a mistake. The other is the confirmation of a Justice of the Supreme Court. When that person goes on the Court, he or she is there for a lifetime unless they commit an impeachable offense.

This vote will have an immense impact on future generations. Judge Alito is 55 years old. We can presume that he will be blessed with good health and will serve if confirmed for at least another 20 years. He will rule on thousands of cases, which themselves will be around for decades after he has left the court. His decisions will affect the lives of virtually all Americans for generations.

This vote will have an immense impact because of who the judge is replacing, Justice Sandra Day O'Connor, the very first female ever appointed to the Supreme Court. Wow. She has been a terrific Justice of the Supreme Court, a historical figure indeed. She broke the glass ceiling of the highest Court in our land to become the first female justice on the United States Supreme Court. She has been a true pioneer in helping to pave the way for women in the legal profession. Justice O'Connor's impact on women in America reached beyond being a mentor and a role model. Because it is not only what she did for women—it was the outstanding Justice she was. She brought new perspectives to the Court, a great intellectual ability, and she brought a strong sense of independence. That is why I think she was picked by Ronald Reagan. She has been squarely in the mainstream, and often a critical swing vote, which determined which way a key case was decided. She brought the

''i'' word to the Court—not ego but intellectual rigor and integrity and independence. That is why she was such a key vote, and often her vote determined whether fundamental rights were protected or not often depended on Justice O'Connor's vote.

When we pick the nominee to replace Justice Sandra Day O'Connor, I hoped the President would have picked another woman. When he nominated Harriet Miers, I was shocked, stunned, and even repulsed by the vitriolic, vicious attack on Harriet Miers.

After Harriet Miers was withdrawn, who did they give us? Certainly, I think in all of the United States of America there was a qualified woman who could have been nominated to serve on the Court. It would have been nice if we had taken the time to find one, but I don't know if they were really looking because if you seek you shall find.

Who did the President nominate? Judge Alito.

I want to be very clear at the outset: I am going to vote to oppose the confirmation of Judge Alito, and I do so for a variety of reasons.

One, I don't know who the real Judge Alito is. Is he the Judge Alito who, when he applied for a job at the Reagan Justice Department, pandered to every right-wing cliche, message-driven focus group identified cause, attack affirmative action, one person, one vote, and all of that? Is that the Judge Alito we will have serving on the Supreme Court? He says, No, I wrote that because I was applying for a job. Hey, what is he doing here right now in the confirmation process? He is applying for a job.

The process has occurred in the public and transparent arena.

But who is he? Is he a so-called new, moderate, mainstream, ''Gee, I have always been in the middle'' kind of guy or is he the person who applied to work at Reagan Justice Department whose writings validate his pattern of thinking?

Judge Alito failed to answer too many questions during the confirmation hearing. Judge Alito refused to clarify his views and his philosophy. He has written many, many decisions as a Circuit Court Judge which are clearly out of the mainstream. He failed to clarify his positions on the constitutional right to privacy, other fundamental rights and settled law. It is also unclear if he will be able to keep his strong personal views from influencing his decisions on the highest court of the land. In the end, Judge Alito failed to answer too many questions; he appears to be out of the mainstream.

Let me tell you my criteria for deciding on a Justice—actually on any judge.

First, is the nominee competent? Judge Alito is competent. He has the highest rating of the American Bar Association. I listen to them very carefully because we consider them an important advisory group that weighs in to the Senate. I hope that same standard of looking to the American Bar is applied to other nominees in the future.

Second, does he have the highest personal and professional integrity? Personal integrity: I would say yes. By all accounts, he is an honest man. He pays his bills. His wife is devoted to him. He seems to have wonderful children.

Professional integrity: I have some flashing yellow lights here. One is the concern about how he says he is this fairminded person, always open, doesn't believe in discrimination.

I am troubled by his past membership in that very conservative Concerned Alumni for Princeton which Senator FRIST and other prominent Princeton alumni repudiated. But Alito didn't. He boasted about his membership when he applied with the Reagan administration. That was the same group that didn't want women in Princeton; women weren't their kind. There are a lot of other decisions he ruled on as a judge against people who ''just weren't our kind.'' He claims he doesn't remember that he was a member of this group, but he used it to get a job. Now he doesn't want to use it to get this job.

The third criterion I have is will the nominee protect core constitutional values and guarantees that are central to our system of government?

Based on his own statements and testimony at the hearings, I have serious doubts about safeguarding civil rights, the right to privacy, and equal protection of the law for all Americans. That is the bedrock of our democracy. We are left to wonder if he will protect fundamental rights—the right to be free from unnecessary Government intrusion. In the hearings, he had many opportunities to let us know whether he would secure those rights.

Then he didn't clear up uncertainties. He didn't clarify his record. He didn't candidly and completely answer the key questions that would tell the American people where he stands on critical issues. With the hearings over I am still asking who is the real Judge Alito?

First, let's take the issue of civil rights. One of the most important civil rights is the right to vote. Yet Alito left me with serious doubts on what his true views are. When applying for a job in the Reagan administration, Alito said he strongly disagreed with the Warren Court on legislative reapportionment which became the bedrock principle of one person, one vote. That Supreme Court decision changed the face of America. It changed the face of how districts were drawn up, and made sure, therefore, that people truly could be represented in legislative bodies.

He later said in the judiciary hearings that the one person, one vote doctrine is settled law. But he couldn't explain why he wrote the other statement on his job application or why his opposition to the Warren Court's decisions inspired him to go to law school.

Another fundamental principle is the ability for an individual to go to court when his or her rights are violated. An open courthouse door is fundamental to our democracy. Yet Judge Alito's record is troubling. In one case involving race discrimination, a woman sued her employer for racial discrimination. Yet Judge Alito argued that the woman shouldn't be allowed to present her case to the jury. The majority disagreed with Alito and allowed the woman to have her trial. In fact, the majority stated if they had applied Alito's analysis Title VII of the Civil Rights Act would have been eviscerated.

There are many other cases in the area of civil rights and race relations I find troubling, that show Judge Alito is not a moderate or a mainstream judge as he seem to suggest he was at the hearings.

Then there is this issue of unchecked Executive power. The Supreme Court is the critical check on the other branches of government by making sure that the checks and balances in the Constitution are maintained. Increasing Presidential power has been a hallmark of this administration—not just the recent discovery about spying on Americans without warrants but also secret meetings with energy company CEOs, preventing disclosure of how executive decisions are made and so on.

When asked about whether or not this President could ignore laws passed by Congress, Alito would only say no one is above the law. That was not an answer—that is an empty slogan. We want to know how he would interpret the scope of executive branch power.

During his time on the bench, Judge Alito has been very deferential to the executive branch. His answers suggest he will continue to be. We need a member of the Supreme Court who is part of the Court and not part of the executive branch. We can't afford to have the Supreme Court duck its responsibility to check the executive branch.

So I am troubled about his position. We are at a benchmark in our society and this is the time when we have to be very clear on the executive powers and prerogatives.

Then there is the right to privacy. In the area of the constitutionally protected right of privacy, it is unclear what Judge Alito believes the Constitution protects. Again, I go back to the statements he made when he applied to work in the Reagan administration. He was 35 years old, so he wasn't some kid who wasn't sure about himself. He was exploring big theories and big ideas. He was 35 years old. He was applying for a job at the Justice Department. You have to be a pretty experienced professional to even think you are qualified to apply for a job at the Justice Department. He was seasoned, and he was experienced, but he also wrote in that application that he was proud he would have argued that the Constitution does not protect the right to an abortion.

Let me say these are his words, not Senator MIKULSKI's. Not only did he take the position to eliminate the rights in Roe v. Wade, he thought it was important that he emphasized it in his job application.

Now at the hearings he presents a different view. The key question for Judge Alito on the constitutionally protected right to privacy was whether he considered Roe to be settled law.

Judge Roberts at his confirmation hearing said he believed Roe was settled law. Repeatedly, Alito was also asked at the hearings if he considered Roe to be settled law and if he agreed with Judge Roberts. Alito refused to say. He repeatedly refused to answer how he would protect the fundamental and explicit right of privacy—implicit right of privacy—in our Constitution. He himself refused to clarify his previous dismissal of Roe v. Wade.

He refused to clarify also his position on why a woman should have to notify her husband in order to get an abortion, a requirement Justice O'Connor ruled was clearly unconstitutional. Nor would he elaborate on what the right of privacy actually includes over and above reproductive rights.

What does it mean in general? Our Constitution is a living and breathing document. Twenty years ago when we talked about the rights of privacy, we didn't know about the Internet, we didn't know about data mining, we didn't know about the fact that we would have to have a national debate on national security and the right to privacy. Was it overreaching? When does the U.S. Government become the Grim Reaper, or what do they need to do to protect us? These are real issues. They require real debate. They require independence in the judiciary to help set the boundaries and the parameters on what other branches of government can and can't do.

Don't you as a citizen want to be protected, when going to a library to borrow a book, from somebody snooping on you? If a citizen checks out a paper or a book because you want to know what the enemies of the United States think about our way of life or philosophy, for example, you check out books like ''Mein Kampf'' or ''Das Kapital'' because you want to know what our enemies thought, so you could be prepared to refute them with your own ideas on democracy, you don't want the government spying on you. Yet, what happens if something gets triggered and something is sent over to the peepers at a Government agency about what you are reading.

Sure, we have to look out for terrorists, but should every book checked out of a library trigger the government spying on you? Do you want them listening while you talk to your girlfriend? Do you want them monitoring you and what church you go to?

These are big questions we are facing as a nation. We need to have mindful judges who help set the appropriate parameters to protect citizens against the predators in our society, to be sure our Government itself does not become a predator on the ordinary citizen's privacy. These are big issues.

So we are left to ask, Where was Alito on the right to privacy? We do not know. His answers and non-answers clearly suggest that he will not protect this fundamental right. Issue after issue leaves me with great concern.

One last area of concern I want to talk about is Judge Alito's apparent predisposition to rule against ordinary Americans. I look at the seat Judge Alito has been nominated to replace. It is a seat of moderation. Justice O'Connor represented mainstream America. She understood as a justice for the highest court in the land that her decisions impacted real people and their lives. Her decisions were not made in the abstract. Judge Alito has stated he looks at the facts of each case. Yet time and time again his decisions show support for big business, for the executive branch but not so much for everyday Americans. A justice of the Supreme Court must be able see through abstractions and understand the role of the law in the lives of all Americans not just the powerful and influential. A justice must make the marble motto over the Supreme Court ''Equal Justice Under the Law'' a reality for all Americans. That is also an important role for every Supreme Court justice. Judge Alito's opinions, writings and answers suggest to me that he does not understand this role either.

I have given careful consideration to this nomination. I have carefully watched the Judiciary Committee hearings. I may not be a member of the Judiciary Committee, but I have paid close attention to the hearings and watched them on C–SPAN. I went over his past writings, his decisions as a judge and the testimony of others.

In the end, I have too many doubts about what Judge Alito will mean on the Supreme Court, what he will mean for civil rights, our civil liberties, checks and balances on executive power, caused by what he said—and even more by what he refused to say. I am concerned he is out of the mainstream, that he is willing to say what he needs to say to get a job, that he is an ideologue and that his personal views will influence his decisions. It is not acceptable that Judge Alito has explained that he either forgot why he wrote something or that his early writings were simply for a job application. What he believes is what he is. It will shape the Supreme Court for the next 20 years.

After careful review of the record before the Senate, I have too many doubts, too many unanswered questions. Doubts about his commitment to providing access to courts for Americans, ensuring appropriate checks and balances among the three branches of government and the fundamental right to privacy. The Supreme Court nomination is too important a decision to roll the dice; I am afraid I will come up with snake eyes. Therefore, when my name is called in the United States Senate for his nomination, I will vote no.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. CLINTON. 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. CLINTON. Mr. President, I associate myself with the eloquent remarks of the Senator from Maryland. Once again, she evidences the rare combination of high intellect, quick wit, and a savvy understanding of what is important to the people she represents.

The nomination of Judge Samuel A. Alito, Jr., to the Supreme Court of the United States is a matter of great, even monumental, importance to all—to our children and to future generations of Americans.

I have spent a lot of time in my State over the last 2 weeks. I have traveled from one end of it to the other, from Long Island to Buffalo. I have to say, Judge Alito's name is not on the lips of most of my constituents. They want to talk to me about the complex and confusing Medicare prescription drug benefit. They want to ask about the culture of corruption that seems to have taken over Washington under the Republican leadership. They have questions about their health care which is at risk, even if you are employed, or the pensions which seem to disappear with regularity these days. They are concerned about the day-to-day, bread-and-butter, table-top issues that we all live with.

I say this vote we are going to take in the Senate will end up having a great deal to do with how they live their lives, with the balance of power within our country, with the quality of life and liberty and pursuit of happiness available to Americans.

The Constitution commands the Senate provide the President with meaningful advice and consent on judicial nominations. I take this constitutional charge very seriously. I have carefully reviewed the committee's hearings and Judge Alito's extensive record. I have met with the judge. I have spoken with people who have strong opinions on both sides of this nomination. I have concluded I cannot give my consent to his nomination to the Supreme Court.

The way I read American history is that the key to American progress has been the ever-expanding circle of freedom and opportunity. That has been the common thread through all periods of our history—greater rights and greater responsibilities of citizenship and equality.

Each time we have made strides forward, there have been vocal voices of opposition. There have been those who have wanted to go back. At those moments of profound importance to our

country, the Federal courts have been the guardians of our liberties, have stood on the side of greater freedom and opportunity.

We all know the famous cases cited as representing this forward march of progress: Brown v. Board of Education, which struck down the notion of separate but equal; Baker v. Carr, which invalidated discriminatory State voting apportionment schemes and paved the way for the concept of one man, one vote; Griswold v. Connecticut, which recognized a right to privacy in the Constitution; Roe v. Wade, which established that women have a right to choose.

We need judges who will maintain that forward progress. Despite his distinguished academic credentials, Judge Alito has not shown himself to be that kind of judge. He does not have the dedication to civil rights or women's rights or the right to privacy that I believe we need in the next Supreme Court Justice.

Time and again, when given the choice, he has voted to narrow the circle, to restrict the rights Americans hold dear. Now is not the time to go backward.

Without the progress we have made in the past 230 years, without that expansion of the circle of equality and freedom and opportunity, I certainly would not be standing here, nor would a number of my colleagues. There would be no opportunities for women in public life.

But mine is hardly the only example. Voting rights would be restricted. Equal opportunities in education and in the workplace would not exist. And none of us would have a constitutional right to privacy. Simply put, our Nation would not be what it is today.

Our greatest strength has always been our commitment, generation after generation, with some fits and starts, to enlarging the circle of rights and equality. That great American commitment has made us a beacon of freedom around the world. This nomination could well be the tipping point against constitutionally based freedoms and protections we cherish as individuals and as a nation. I fear Judge Alito will roll back decades of progress and roll over when confronted with an administration too willing to flaunt the rules and looking for a rubberstamp. The stakes could not be higher.

To be sure, Roe v. Wade is at risk, the privacy of Americans is at risk, environmental safeguards, laws that protect workers from abuse or negligence, laws even that keep machine guns off the streets—all these and many others are in peril.

I don't believe millions of Americans are aware of that yet. This debate is carried on in Washington. It is at a high level of legalisms and debates about jurisprudence and the meaning of the Constitution. But I am confident the Supreme Court will have a dramatic effect on our Nation and on what we believe America stands for.

When I ran for the Senate, I told New Yorkers that I would only vote for judges who would affirm constitutional precedents, such as Roe and Brown and other landmark achievements and expanding rights and the reach of equality for all Americans. This is about more than rhetoric. This is very real. The American people are counting on us not to be a rubberstamp but counting on us to make sure the President's nominee will not take us backward.

I also view this nomination through the prism of the Justice that Judge Alito will replace. I have not always agreed with Justice Sandra Day O'Connor. But she has shown, throughout her career of distinguished service to the Court that one Justice makes a big difference. One Justice can protect our constitutional rights. Justice O'Connor is a true conservative, a mainstream jurist. She appreciated the advancements we have made as a society because she lived them. Anyone who has ever read her autobiography about this little cowgirl growing up on a ranch in Arizona, going off to school, eventually going to Stanford Law School, graduating near the top of her class and being unable to find a job simply because she was a woman does not only intellectually understand why our history is about moving forward and removing the obstacles to God-given human potential, she feels it. She understands it.

Time and time again, she showed she appreciated the advancements we have made as a society. She has fought to ensure they continue. Her vote was often the defining vote on which key civil liberties and rights rested. She exercised it with care and independent judgment.

Any fair reading, in my view, of Judge Alito's record does not demonstrate that same independence of judgment, nor does it illustrate a grasp, either intellectual or emotional, of the day-to-day struggles that tens of millions of Americans face. On the contrary, Judge Alito proudly announced his personal opposition to a woman's right to choose early in his career in the now infamous 1985 job application for a position in the Reagan administration. Although he has tried to distance himself from the comments he made in that document, his time on the bench shows an unapologetic effort to undermine the right to privacy and a woman's right to choose.

I believe, and I have said so for many years, abortion should be safe, it should be rare, but it should be legal. I understand it is a difficult and even tragic choice for many women. It is a decision of conscience. Therefore, it should be a constitutionally protected decision made not by the Government, not by the majority—whoever the majority might be—but between a woman, her doctor, and her faith in God.

Judge Alito does not share this view. And I think we can be certain that, freed from the constraints of Supreme Court precedent, he will intensify his campaign to roll back these important privacy rights.

The extreme rightwing of the Republican Party was up in arms when President Bush nominated Harriet Miers to the Court to replace Justice O'Connor. It was quite a spectacle to see this good woman, who had risen to the top of her profession in Texas—not, I would imagine, an easy place to be the president of a State bar and be the managing partner of a large law firm, but had done so by dint of hard work and intelligence—be turned on by members of her own party because they could not be sure she would agree with them no matter what the facts or circumstances. Their reaction to Judge Alito's nomination, in contrast, has been enthusiastic, effusive, even ecstatic. Why? Because they know exactly what they are getting.

Judge Alito's constrained views have not been limited to issues of privacy. While on the Third Circuit, he has rarely sided with individuals seeking relief from discrimination on the basis of race, age, gender, or disability. In fact, in the vast majority of civil rights cases, Judge Alito has sided with those who would infringe on the civil rights of Americans. For example, in several dissents, he has called for curtailing what is called title VII of the Civil Rights Act of 1964, the landmark statute prohibiting discrimination against women and minorities in the workplace.

These individual views, as manifested by his writings, his work in the Government, and his opinions on the bench, are even more troubling because he seems to favor Executive power so much over the other branches of Government. So I also fear he will not respect the system of checks and balances that our Founders so carefully set out in the Constitution. No one who has read the Federalist Papers or the debate that our Founders had when constructing the Constitution or who understands the historical context in which our Declaration of Independence and our Revolution occurred could underestimate the importance they placed on having three truly independent and equal branches of Government.

The Founders understood human nature. They got it. They knew that unchecked power would lead to abuses. And we have seen some of that right here in Washington over the last 5 years. They realized that we had to check and balance against power centers in order to bring out the better ''angels'' of our nature, but also to keep a watch on each other.

I do not believe, after reviewing Judge Alito's record, he understands or respects this central principle to the way America is set up. He has sought to expand the power and purview of the executive branch at nearly every turn, while simultaneously stripping Congress of its authority and curtailing the rights enjoyed by private citizens. For example, while working for the

Reagan administration, he made the argument that Cabinet officials who are charged with authorizing illegal wiretaps of Americans in this country should be entitled to absolute immunity. At a time when this President and his political party stand accused of political overreaching and abuse of power, we must demand from our judiciary a respect for the proper role of each of our three branches of Government. But Judge Alito's excessive deference to Presidential authority, coupled with his restrictive view of congressional authority, tells me he does not have the proper reverence for separation of powers.

What is worse is that in supporting the expansion of the reach of Presidential power, Judge Alito also holds a harshly limited view of what the Government can or should do to help ordinary Americans. Judge Alito said it all in 1986, when he was a young lawyer with the Reagan administration. He wrote that in his estimation, it is not the role of the Federal Government to protect the ''health, safety and welfare'' of the American people. Well, I guess that explains the inept, slow, and dangerous response to Hurricane Katrina. If you are not responsible to protect the health, safety, and welfare, why should you be held accountable when people suffer, when their Government leaves them neglected without any help?

Judge Alito has long advocated a limited congressional authority view. Now, if that were adhered to, it would undermine a whole host of civil rights protections, health and safety regulations, standards for protecting our air and water, food and drug quality regulations, laws regulating firearms as well as vital programs such as Social Security, Medicare, and Medicaid.

Since his appointment to the Third Circuit, Judge Alito has aggressively sought to promote this theory of limited congressional power. In 1996, he voted to invalidate parts of our Federal gun laws, arguing there was no evidence in the record to determine that Congress had the power under the Constitution's commerce clause to enact legislation that regulated the sale of machine guns. In another case, Judge Alito wrote an opinion striking down Congress's right to make a State agency comply with the Family and Medical Leave Act. And just 3 years later, the Supreme Court, with a similar set of facts, reached precisely the opposite conclusion.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. CLINTON. Mr. President, I ask unanimous consent for 5 more minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. CLINTON. In several criminal cases, Judge Alito has shown blatant disregard for a defendant's fundamental right to be tried by an impartial jury—what any one of us would want if we or a loved one were ever in this position—chosen free of racial or gender prejudice. He has also narrowly construed other constitutional criminal procedure protections, arguing often in favor of granting law enforcement officials the greatest of latitude to conduct unauthorized searches and seizures.

Judge Alito's opinions on these and many other topics remind us that judicial activism comes in many guises. Adopting an unnecessarily narrow view of the Constitution or of our laws to reach a desired outcome is a form of judicial activism that is no less offensive than subscribing to an overboard interpretation of the law in order to reach a specific result.

Judge Alito, if confirmed, may hold a seat on the Supreme Court for a generation—long after this President has left office. Perhaps through 8 to 10 Presidential elections, decades of progress would fall prey to his radical ideology, jeopardizing not only civil rights, civil liberties, health and safety and environmental protections, but also fundamental rights such as the right to privacy. Our Federal Government could be transformed into one where Congress is largely irrelevant and the President is permitted to make up the rules as he goes. I do not believe Judge Alito's vision of that America is what our Founders intended for us. He would take us backward, when it has never been more important to move forward together.

I sincerely hope my concerns about Judge Alito are unfounded, but I suspect they are not, and our children and grandchildren will pay the price. He has not demonstrated a proper respect for the rule of law, our Constitution, and the principles, freedoms, rights, and privileges that Americans hold most dear. I, therefore, cannot give my consent to his confirmation.

Mr. President, I ask unanimous consent that letters written to Senators SPECTER and LEAHY opposing this nomination be printed in the RECORD.

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

NATIONAL ORGANIZATION FOR WOMEN,
Washington, DC, December 13, 2005.

DEAR SENATOR, NOW is strongly opposed to the elevation of Judge Samuel Alito to the Supreme Court of the United States, and with every passing day more information appears that reconfirms our opposition. We urge you to review his record, writings and judicial philosophy and join us in opposing his nomination.

Not only is NOW disappointed that President Bush has proposed to replace Justice Sandra Day O'Connor with yet another white male ultra-conservative, but we are deeply disturbed by the twenty-year track record that places Judge Alito on the far right of the judicial spectrum, especially when it comes to women's and civil rights. If Samuel Alito is confirmed by the U.S. Senate, many of our fundamental rights will be at great risk and could well be lost entirely.

A bedrock principle for NOW is full Constitutional rights for women and at the heart of that equality is self determination for women when they deal with their reproductive health care and childbearing decisions. When applying for a position in the Reagan administration in 1985, Alito stated he was ''particularly proud'' of his work on cases arguing ''that the Constitution does not protect a right to an abortion.'' A memo released later shows that Alito told his boss that two pending cases provided an ''opportunity to advance the goals of overruling Roe v. Wade and, in the meantime, of mitigating its effects.'' These are not the actions of someone simply trying to please his boss, but proud convictions that we have no reason to believe have altered in the past two decades.

Also troubling is his proud touting of his membership in a conservative Princeton alumni group that complained about the admission of women and the number of minority students on the elite college campus. How will Judge Alito deal with educational opportunity and Title IX? How will Judge Alito deal with pay equity and workplace policies as well as affirmative action and job benefit issues that disproportionately affect women? How will Judge Alito deal with challenges to federal legislation guaranteeing disability rights, lesbian and gay rights, and freedom from domestic and sexual violence? We believe he will rule on the side of narrowing our freedoms and barring our redress in court.

Please consider all of these issues as you review Samuel Alito's fitness to serve on our highest court in the land. Based on his record, he will not come down on the side of fairness and equality for all. We ask that you vote against his nomination.

Sincerely,

KIM GANDY,
President.

LEGAL MOMENTUM;
Washington, DC, January 10, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate

Senator PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate

CHAIRMAN SPECTER AND SENATOR LEAHY: Legal Momentum, the nation's oldest women's legal rights organization, opposes the confirmation of Judge Samuel Alito as Associate Justice to the Supreme Court of the United States. Throughout his career he has pursued legal approaches that raise questions about his ability to respect the balance of power between the three branches of government. Judge Alito defers to agency decisions in many settings, while showing skepticism toward individual litigants' claims, appears to support a narrow view of civil rights, prisoners' rights, and workers' rights, appears willing to uphold legislative restrictions on the right to privacy and is willing to limit congressional power while showing excessive deference to the executive branch. This agenda poses a danger to an inclusive society, and a representative democracy with constitutionally required checks and balances that serves the needs of the whole electorate. The legacy of conservative centrist, Justice Sandra Day O'Connor, deserves a replacement that does not rule based on political considerations, but can fairly and justly interpret the laws and Constitution of the United States.

Judge Alito's available record reveals a judicial philosophy that would undermine critical civil and privacy rights and protections. In his public statements, he speaks about the restrained role of judges. Put into practice, however, these views translate into higher burdens for plaintiffs seeking to vindicate their rights, deference to states or institutional defendants and employers, and limits on the ability of Congress to require certain conduct from states. For example, Judge

Alito often favors a restrictive reading of the law, which results in the narrowest interpretation of civil rights. Thus, individuals may be unable to enjoy the full reach of these protections at crucial times. Stressing the need for judicial restraint and discouraging judges from legislating from the bench, he has used these themes as a means to limit access to the ability of individuals to have their day in court. And, he frequently argues to constrain the power of the courts and the power of Congress, with regard to binding states. The end result is that individuals, courts, and Congress have less ability to hold states accountable to ensure compliance with the law and remedy legal violations.

Judge Alito has taken a very restrictive approach in employment discrimination cases, resulting in few successes for plaintiffs. In Bray v. Marriott, he would have let stand an employer's decision not to promote an African American female employee even though there was considerable evidence of irregularities in the hiring and interview process. Judge Alito argued in dissent that the employer's failure to follow its own rules was not sufficient to prove discrimination against the plaintiff. For him, the employer's argument that the plaintiff was not the best qualified should have been accepted at face value. In contrast, the majority concluded there were enough questions about the employer's motives and conduct to allow the plaintiff her day in court. Moreover, the majority chided Judge Alito's analysis for effectively eviscerating the antidiscrimination purposes of the law, by accepting the employer's reasoning without adequate review to determine whether racial bias influenced the hiring decision. They stressed that what mattered was not whether the company was seeking the ''best'' candidate, but ''whether a reasonable factfinder could conclude that Bray was not deemed the best because she is Black.'' In his fifteen years on the bench, Judge Alito has almost never ruled for African-American plaintiffs in employment discrimination cases. The Supreme Court deserves a Justice that is willing to consider the full circumstances of the case at hand, not deny plaintiffs their right to be heard.

While Congress has made efforts to protect workers who need time off work to care for a sick family member or to heal from a long-term illness, Judge Alito would make it harder for workers to challenge state employers for violating the Family & Medical Leave Act. In Chittister v. Department of Community and Economic Development, Judge Alito wrote for a Third Circuit panel that the state of Pennsylvania was immune from lawsuits by state workers alleging violations of the FMLA's medical leave provisions. The decision effectively insulated the state from FMLA, claims, and undermined the ability of workers to access medical leave when needed. Meanwhile, Justice O'Connor, who Judge Alito would replace, voted to uphold a key provision of the Family and Medical Leave Act. If the Supreme Court adopted Judge Alito's views, millions of workers could lose their ability to vindicate their rights under the Family & Medical Leave Act.

Judge Alito's record strongly indicates that he would question the constitutional right to privacy and undermine existing Court precedent on the issue. In a 1985 job application, he touted his work on Reagan Administration-era cases which argued that the Constitution does not protect a right to an abortion—a position with which he indicated he personally agreed. In a memorandum discussing the strategy for the government's amicus brief in a pending case involving a Pennsylvania abortion regulation, he stressed the importance of finding a way to give states maximum latitude to adopt abortion restrictions to undermine, if not overrule, Roe v. Wade. After leaving the Administration and becoming a judge on the Third Circuit, he wrote a dissent in Planned Parenthood of Southeastern Pennsylvania v. Casey, arguing to uphold burdensome restrictions and hurdles aimed at women seeking an abortion. The Supreme Court ultimately rejected his position, but he once again underscored a desire to place new limits on a woman's ability to make her own reproductive health decisions.

Judge Samuel Alito's rulings on Americans' privacy rights extend even further his support for increased power for the executive branch. As a lawyer in the Solicitor General's Office in 1984, Alito wrote a memo supporting absolute immunity from civil liability for cabinet officials who authorized illegal wiretaps of Americans due to national security concerns. Later, he co-authored a brief to the Supreme Court in which the government argued for absolute immunity—an argument rejected by the Supreme Court. In contrast, Justice O'Connor, writing for an 8–1 majority in the case of American-born detainee Yaser Esam Hamdi (Hamdi v. Rumsfeld), in which the court ruled that an American citizen seized overseas as an ''enemy combatant'' must be allowed to challenge the factual basis of his or her detention, said the Court has ''made clear that a state of war is not a blank check for the president when it comes to the rights of the nation's citizens.''

After becoming a judge, Alito wrote in several opinions that would have extended the reach of search warrants for the executive branch. In a dissenting opinion in Doe v. Groody, he argued that police officers did not violate the Constitution when they strip-searched a mother and her ten year-old daughter, despite the fact that neither was named in the search warrant. The majority opinion, written by now-Homeland Security Secretary Michael Chertoff, asserted that Judge Alito's position would effectively nullify the Fourth Amendment's warrant requirement and ''transform the judicial officer into little more than the cliché rubber stamp.'' In another dissent, in Baker v. Monroe Twp., Judge Alito voted to keep a jury from hearing whether a police supervisor unlawfully allowed his officers to handcuff, hold at gunpoint and search a woman and her teenage children who happened to stop by to visit the home of a relative in the midst of a search.

Alito's stance on executive branch powers is further revealed in a Feb. 5, 1986 draft memo where he argued that the White House should issue ''interpretive signing statements'' when signing a bill into a law, and that courts might be persuaded to consider this 'executive intent' equally with legislative intent. The balance of power between the three branches is imperiled when White House interpretation is accorded equal weight with congressional support.

In conclusion, Judge Alito has consistently articulated legal opinions that are outside the mainstream, that undermine legal protections against employment discrimination, that distorts the law in favor of extending power to the executive branch, and that resorts to judicial activism, blatantly ignoring the clear intention of the legislature to push his arch-conservative political agenda. Therefore, we urge you to oppose his nomination to the U.S. Supreme Court.

If you have any further questions, please contact Lisalyn Jacobs at Legal Momentum, (202) 326–0040.

Sincerely,

LISALYN R. JACOBS,
Vice President for Government Relations.

ELIMINATING RACISM
EMPOWERING WOMEN,
Washington DC, January 10, 2006.

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

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the YWCA USA, representing over 2 million women and girls with 300 associations nationwide, I am writing to write to express our opposition to the confirmation of Judge Samuel A. Alito, Jr. to the Supreme Court of the United States. His views are not consistent with the value of equality that our country holds dear, nor are they consistent with the YWCA USA mission of eliminating racism and empowering women. Over the past 50 years the Supreme Court's jurisprudence has often served to protect the fundamental constitutional rights of all Americans. After closely examining his record, the YWCA USA has concluded that if Judge Alito were to replace Justice O'Connor on the Court, this protection would likely halt and in fact reverse with regard to individual rights. Judge Alito's record reveals a history of troubling decisions in the areas of civil rights, civil liberties, and fundamental freedoms. The YWCA USA is extremely concerned that the confirmation of Judge Alito to the Supreme Court would be harmful for women and people of color.

If Judge Alito were confirmed, he has the potential to change the direction of the court and devastate the rights of women. For example, in the landmark case Planned Parenthood of Southeastern Pennsylvania v. Casey, Judge Alito concluded that it was not an ''undue burden'' for a married woman seeking an abortion to have to notify her husband, a position that the Supreme Court later struck down. This case raises key questions about whether, if confirmed to a seat on the Supreme Court, Alito would vote to overturn Roe v. Wade. Furthering the YWCA USA's concerns, about whether Judge Alito would seek to strip away women's reproductive freedoms, are his own words. As a lawyer in the Reagan administration, Samuel Alito wrote, that he ''personally believed'' that ''the Constitution does not protect a right to an abortion.'' In addition, during his tenure with the Solicitor General's Office he was one of the chief engineers of a multi-tiered, strategy to reverse Roe V. Wade. Alito wrote that an amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists was an ''opportunity to advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime of mitigating its effects.'' While it is impossible to know for certain how Alito would rule in a particular case before the Supreme Court, these statements along with Judge Alito's past opinions make it difficult to believe that he would effectively uphold the fundamental freedoms of women. The rights, health, and safety of women are too important to the YWCA USA to justify this risk.

The YWCA USA is also concerned with Judge Alito's record on civil rights and affirmative action. It is quite troubling that Samuel Alito touts his work as a lawyer in the Reagan administration opposing certain affirmative action programs as something he Was ''particularly proud'' of. One example of Alito's work against affirmative action during the Reagan administration is the case of Local 28 of the Sheet Metal Workers' International Association v. EEOC. Alito and the Solicitor General's office argued that it was illegal for courts to order remedies including

affirmative action even in cases of intentional, on-going and ''egregious racial discrimination.'' Alito signed a brief arguing the extraordinary theory that relief in Title VII cases could be granted only to ''identifiable victims of discrimination,'' contradicting an earlier view of the Equal Employment Opportunity Council (EEOC) itself. The Supreme Court rejected Alito's argument, stating that affirmative action relief ''may be ordered by a court as a remedy for past discrimination even though the beneficiaries may be non-victims.'' Furthermore, in the 1970s and 1980s Alito was a member of Concerned Alumni of Princeton (CAP), an organization that actively sought to limit the number of women and minorities accepted to the university. In contrast, Justice O'Connor cast the decisive vote in Grutter v. Bollinger, upholding affirmative action in higher education. If Judge Alito's views on affirmative action were to replace Justice O'Connor's on the Supreme Court, institutes throughout the country would be harmed. Eliminating this important tool for promoting diversity would deny universities, workplaces and other organizations the enlightenment provided by a greater variety of backgrounds.

In addition to a restrictive approach towards affirmative action, Judge Alito's record strongly questions the legitimacy of employment discrimination claims, and in a number of instances, Judge Alito issued opinions that made it far more difficult for victims of discrimination to get to court and prove their cases. Again, this is an area where Justice O'Connor has often been the swing vote in protecting and advancing civil rights. In contrast, Alito has ruled against three of every four people who claimed to have been victims of discrimination.

In one such gender discrimination case, Sheridan v. E.I. Dupont de Nemours, Alito was the sole dissenter in a 10–1 decision; arguing that he would require victims of discrimination to present much more evidence before they would be entitled to take their case to trial. Were this position adopted more broadly, it would make it much more difficult for victims of discrimination to have their day in court and remedy these actions of prejudice. In another employment discrimination case, this one dealing with race, Alito went even further than upping the level of evidence needed for a trial stating that even if discrimination occurred it may not be against the law. In Bray v. Marriott Hotels, Ms. Bray, an African-American woman, applied for a promotion but a white woman was hired for the job instead. Her employer, Marriott, did not follow its own guidelines for hiring and several of the key employees involved in the process gave conflicting statements about how the decision to hire the white woman was ultimately made. Judge Alito argued in his dissent that it might not be illegal for an employer to overlook a qualified person of color even if the employer's belief that it had selected the 'best' candidate was the result of conscious racial bias.'' The majority opinion responds to this analysis by noting that Title VII would be eviscerated if the analysis were to halt where the dissent suggests. In addition to the troubling interpretation of Title VII, Alito's dissent demonstrates skepticism about the legitimacy of discrimination claims. He closed his dissent with the disturbing pronouncement that a percentage of discrimination cases are manufactured by disgruntled employees, rather than victims of discrimination. This shows a lack of sensitivity about the on-going national problem of discrimination in the workplace. In contrast to Judge Alito, 70% of Americans believe racism is a problem in the workplace today. This again illustrates that Samuel Alito is out of step with mainstream America in the area of discrimination.

Finally, it is important to look at the make-up of the court. Given the role that Justice O'Connor plays on the court, it is necessary to review Judge Alito not only on his merits but also in the context of whom he will be replacing on the bench. Justice O'Connor has added an important, independent and unique voice to the Supreme Court. As the first women to sit on the nation's highest court, she has broken barriers for women not only by blazing a trail but also by providing a voice and a vote on the Court for all women. Indeed, time and again on those issues that affect civil rights, and women's rights, including reproductive freedoms, Justice O'Connor is the deciding fifth vote. Numerous laws have been shaped and upheld by this 5 to 4 margin. Thus it is important to evaluate not only if Judge Alito is qualified to sit on the Supreme Court, but also if he will protect and honor the legal and social legacy of the woman he would be replacing.

The concern that Alito would overturn well-established legal principles and social achievement in the areas of women's rights and civil rights, that the YWCA has worked to protect for almost 150 years, is too great to ignore. That is what his record indicates and furthermore, during his confirmation hearing he stated, ''If I'm confirmed . . . I'll be the same person I was on the Court of Appeals.'' For these reasons, the YWCA USA feels that Judge Alito's confirmation to the Supreme Court would negatively impact the lives of women and people of color and therefore is urging you to reject the nomination of Judge Samuel Alito to the United States Supreme Court. Senators must stand up and protect the rights of the people they represent by voting against Alito's lifetime appointment to the Supreme Court. The nation has come too far in the fight for equality and worked too hard to protect the rights of all individuals.

Sincerely,

PEGGY SANCHEZ MILLS,
YWCA USA CEO.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
Washington, DC, January 9, 2006.

Hon. ARLEN SPECTER,
Chair, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

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

DEAR SENATORS: On behalf of the more than 100,000 bipartisan members of the American Association of University Women (AAUW), we write to express our opposition to the confirmation of Third Circuit Court of Appeals Judge Samuel A. Alito, Jr. to be associate justice of the United States Supreme Court. As the Senate Judiciary Committee opens its confirmation hearings today, you will be faced with critical questions and, ultimately, a critical decision that will affect the balance of the nation's highest court—which will in turn impact the everyday lives of generations to come.

After a careful review of Judge Alito's record, including 15 years of appellate opinions, AAUW finds him to be a troubling choice with red flags in areas critical to our mission and membership, including workplace discrimination, reproductive choice, and affirmative action. Judge Alito's appellate judgments provide little reassurance that he would apply the law in ways that would uphold fundamental civil and women's rights precedents should he ascend to the highest court in the land. Indeed, taken as a whole, his publicly available record—both from his government service and his tenure on the Third Circuit—illustrate a judicial philosophy at odds with AAUW's Public Policy Program. For all these reasons, AAUW has opposed the confirmation of Judge Alito to the U.S. Supreme Court.

AAUW believes it is more important than ever to ensure the moderate balance of the U.S. Supreme Court by confirming a justice who reflects mainstream America. Decades of progress for women and girls hang in the balance. Further, given that Judge Alito has been nominated to replace the often-deciding vote of Justice Sandra Day O'Connor, this nomination has much at stake. AAUW is concerned that the confirmation of a potentially extremist justice would turn back the clock on decades of progress for women and girls. Two key areas in particular have led to AAUW's opposition to Judge Alito's confirmation:

Equal opportunity and legal protections against discrimination: Judge Alito has a troubling record on a range of civil rights issues, revealing a philosophy that would weaken workplace protections that are central to addressing discrimination against women. A number of Judge Alito's opinions would make it harder for employees to win their suits or even get their case to trial. Judge Alito has also demonstrated opposition towards affirmative action, dismissed constitutional protections against sexual harassment in schools, and aggressively sought to curb congressional authority to legislate on issues such as family and medical leave. In several of these cases, U.S. Supreme Court decisions have later espoused views opposite to those put forward by Judge Alito, showing him to be far outside the mainstream.

Reproductive rights and approach to precedent: Judge Alito has actively rejected a woman's constitutional right to choose, supported limits on abortion, and consistently upheld limits to this fundamental right. While Judge Alito has been careful to stress the importance of stare decisis, his recognition of the importance of precedent is not a predictor that he would follow the principle if confirmed. As a member of the nation's highest court, the obligation to follow settled law is different. Since Judge Alito helped develop the strategy for undermining women's reproductive rights, it stands to reason that Roe v. Wade and related cases maintaining the right to privacy could fall within the exceptions Judge Alito has set for himself regarding adherence to stare decisis.

As you know, the Senate has few constitutional duties more significant than that of advising on and consenting to U.S. Supreme Court nominations. AAUW believes you should confirm only a nominee that exhibits the impartiality and independence that are so critical to this third, co-equal branch of our government.

No nominee is presumptively entitled to confirmation. After a thoughtful review of his well-established judicial philosophy, AAUW cannot conclude that Judge Samuel A. Alito, Jr. is the appropriate choice for a lifetime position on the U.S. Supreme Court. AAUW urges senators to reject Alito's nomination and let their votes be a true measure of their commitment to equity for women and girls.

Sincerely,

LISA M. MAATZ,
Director, Public Policy and Government Relations.

NATIONAL COUNCIL OF WOMEN'S ORGANIZATIONS,
Washington, DC, January 11, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate.

Senator PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate.

CHAIRMAN SPECTER AND SENATOR LEAHY: The National Council of Women's Organizations, the oldest and largest coalition of the nation's women's groups, urges the Senate to reject the nomination of Samuel Alito to the United States Supreme Court. Judge Alito's extreme position on a range of issues, including reproductive rights, workplace discrimination and violence against women, make him the wrong choice to replace retiring Justice Sandra Day O'Connor.

In nominating Samuel Alito after Harriet Myers withdrew from consideration, President Bush chose to put political expediency ahead of the rights and well-being of this nation's women and girls. Mr. Bush's right-wing base clamored for rejection of Ms. Myers because, as conservative as she is, they felt she was not 100 percent pure on their issues. Samuel Alito, however, is apparently their man.

Judge Alito has a long record demonstrating hostility to women's reproductive rights. In the 1980's, he repeatedly advocated the overturning of Roe v. Wade. In the 1990's, as an appellate judge, he argued to uphold a Pennsylvania statute requiring women to notify their husbands before having an abortion—a position rejected by Justice O'Connor's 5–4 opinion in Planned Parenthood v. Casey. Nowhere in his writings, however, does he express any concern that the days of back-alley abortions could return if women do not have safe, legal means to terminate unwanted pregnancies. Nor have we been able to find any statement of concern, in any of his writings, for women's fundamental right to be in control of their own reproductive health decisions.

Indeed, Judge Alito has even expressed hostility to contraception. In 1985, as a Justice Department attorney, he wrote that some forms of birth control are ''abortifacients,'' and saw no constitutional problem with a state law restricting women's access to them. Extreme anti-abortion organizations have long argued that the IUD and some birth control pills are ''abortifacients''—subject to the same kinds of restrictions that may be placed on women's access to abortion—because they may prevent a fertilized egg from becoming implanted on the uterine wall. This view runs counter to accepted medical understanding, which is that pregnancy does not begin until after implantation. Yet it is the view embraced by Samuel Alito.

Judge Alito's opinions demonstrate an abiding deference to the powerful at the expense of ordinary people. He has argued, in cases such as Sheridan v. DuPont and Bray v. Marriott Hotels, for erecting higher and higher procedural hurdles that would prevent victims of employment discrimination from being able to present their case to a jury. He argued, in Doe v. Groody, to uphold a police strip search of a woman and her ten-year-old daughter even though they were not named in the search warrant and were simply at home when the house was searched. He ruled, on all but one issue, against a female police officer who was subjected to two years of pervasive sexual harassment in Robinson v. City of Pittsburgh. He has repeatedly criticized affirmative action policies, and struck down a school district's affirmative action plan in Taxman v. Board of Education. He ruled, in Chittister v. Dept. of Community and Economic Development, that state governments did not have to comply with provisions of the Family and Medical Leave Act. Women have fought hard over the last four decades, against resistance, skepticism and backlash, to win fundamental rights. If confirmed, Judge Alito will be in a position to undermine our gains for generations to come. We urge you to stand firm for women's rights and reject this nomination.

Sincerely,

SUSAN SCANLAN,
Chair

TERRY O'NEIL,
Executive Director.

NATIONAL WOMEN'S LAW CENTER
Washington, DC, January 9, 2006.

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

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the National Women's Law Center, an organization that has worked since 1972 to advance and protect women's legal rights, we write to reiterate the Center's opposition to the nomination of Samuel A. Alito, Jr. to the United States Supreme Court. As a result of its extensive review of Judge Alito's record, the Center has concluded that the confirmation of Judge Alito to the Supreme Court would endanger core legal rights for women, with profound and harmful consequences for women across the country and for decades to come. This letter summarizes the basis for the Center's conclusions, which are set forth more fully in the Center's December 8, 2005 letter and detailed report.

Judge Alito has worked to limit a woman's right to choose. While in the Solicitor General's office, Alito urged the government to file an amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists in order to ''advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime, of mitigating its effects.'' His memo argued in favor of upholding even the most burdensome and dangerous barriers to abortion. Alito then volunteered to work on the government's Thornburgh brief, and researched and wrote key portions. The Court rejected the brief's extreme positions—it struck down dangerous burdens on the right to choose the brief had argued to uphold, and it refused to overturn Roe v. Wade as the brief had urged. In plain reference to his role in the Thornburgh case, Alito later wrote: ''I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court . . . that the Constitution does not protect a right to an abortion.'' He wrote this in an application for a promotion a few months after the Thornburgh brief was filed.

Judge Alito's record on the Third Circuit reinforces the concerns about his approach to the right to choose. In Planned Parenthood v. Casey, he not only would have upheld a law requiring married women to notify their husbands before having an abortion, but took an approach to the law that would eviscerate Roe v. Wade by upholding many dangerous barriers to the right to choose. For example, he failed to focus on women who would be hurt by the restrictions (such as victims of domestic abuse), and would have given husbands the same kind of control over their wives' most personal decisions that parents have over their children. A majority of the Supreme Court, in an opinion co-authored by Justice O'Connor, soundly rejected his analysis.

Judge Alito has ruled to limit Congress's authority to protect public safety and welfare. Judge Alito would have struck down a federal law prohibiting the transfer and possession of machine guns, arguing in a dissenting opinion in United States v. Rybar that Congress did not have the authority to enact the statute under the Commerce Clause of the Constitution. Judge Alito's Third Circuit colleagues, and eight other circuit courts to date, have disagreed with him. In another case, Chittister v. Department of Community and Economic Development, Judge Alito wrote an opinion that barred state employees from suing for damages when their employers violate their right to take medical leave under the Family and Medical Leave Act (FMLA). A 6-3 majority of the Supreme Court, including even Justice Rehnquist, subsequently upheld another provision of the FMLA against a similar challenge on the ground that the FMLA was enacted to address sex discrimination in the workplace. Judge Alito gave short shrift to this argument.

Judge Alito has ruled to make it more difficult for plaintiffs to prove discrimination. Judge Alito's opinions in employment discrimination cases raise significant concerns. For example, he dissented from Sheridan v. E.I. DuPont De Nemours and Company, a sex discrimination case in which all 10 of the other members of the Third Circuit joined in reversing the trial court's rejection of a jury verdict for the plaintiff. Judge Alito ignored applicable legal standards to urge overturning the jury verdict, inappropriately credited the employer's explanations for its actions, and, standing in for the jury, downplayed the plaintiff's evidence. Alito also dissented in Bray v. Marriott Hotels, a race discrimination case, and again would have prevented the plaintiff from bringing her case before a jury by giving the employer the benefit of the doubt. The majority said that under his approach to the evidence, ''Title VII [of the Civil Rights Act of 1964] would be eviscerated.''

Judge Alito's publicly available record does not reveal his views on the constitutional protection against sex discrimination under the Equal Protection Clause of the Fourteenth Amendment. But in his 1985 job application he expressed support for at least some of the central legal tenets of the Reagan Administration, and the Justice Department under Attorney General Ed Meese favored the ''originalist'' approach to constitutional interpretation advocated by Robert Bork, which would permit almost any gender-based distinctions in law or government policy. Judge Alito's views in this area must be carefully explored at his confirmation hearing.

Throughout his career, Judge Alito has taken positions and issued rulings detrimental to women in other areas of the law, including through his membership in an organization that was openly hostile to the admission of women and minorities to his alma mater, Princeton; his participation in cases where the Solicitor General argued against affirmative action policies; his vote to uphold a strip search of a woman and her ten-year-old daughter, even though they were not named in a search warrant, in Doe v. Groody, his opinion in Sabree v. Richman strongly suggesting that if he were to join the Supreme Court, he would change the law to limit, and potentially preclude, the ability of individuals to enforce federal rights such as rights to Medicaid, public housing, child support enforcement, and public assistance; and his denial of an asylum claim by an Iranian woman who asserted that if she returned to Iran she would be persecuted for her feminist beliefs.

This is a watershed moment for women's legal rights. In recent years, the Supreme Court has decided cases affecting women's legal rights by narrow margins. Justice Sandra Day 0'Connor, the first woman on the Supreme Court, often has cast the decisive vote

in these cases. With the retirement of Justice O'Connor, the Court will lose not only its first female Justice, but also the Justice whose vote often has been pivotal on issues critical to women. Judge Alito's record demonstrates that if he is confirmed to the Supreme Court, he is likely to eviscerate core rights that American women rely upon, and shift the Court in a dangerous and harmful direction. Based on the information available at this time, as summarized above, we conclude that Judge Alito should not be confirmed to the Supreme Court.

Sincerely,

NANCY DUFF CAMPBELL,
MARCIA D. GREENBERGER,
Co-President.

Mrs. CLINTON. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Massachusetts.

Mr. KERRY. Mr. President, obviously, today we face one of the most important choices we make as Senators. This is a choice, as colleagues have said, that is going to affect the country for the next several decades.

To replace Justice Sandra Day O'Connor, the President has nominated a man who has consistently deferred to Government action regardless of how egregious that action may be. He has nominated a man whose pattern of decisions erects rather than breaks down barriers in the area of civil rights; a man who, to this day, has never retreated from his declaration that the Constitution does not protect a woman's right to privacy; a man who has demonstrated a persistent insensitivity to the history of racial discrimination in this country and was even, at the Government's request, willing to ignore overwhelming evidence that African Americans were intentionally stricken from an all-White jury in a Black defendant's capital case.

Judge Alito has been nominated to fill the seat, as we know, of an individual who has been the Court's swing vote; a woman who has upheld affirmative action programs; a woman who upheld the right to choose; a woman who upheld State employees' rights to the protections of the Family Medical Leave Act; a woman who recognizes that a declaration of war is not a blank check for the President's actions; a woman who decides each case narrowly on the facts presented, keenly aware of the greater impact that her decisions have.

So this is the contrast. We are being asked to confirm a nominee who will shift the ideological balance of the Court dramatically to the right. And many people are cheering for that.

We are being asked to confirm a nominee whose views will undermine a balance of power that I believe, and many others believe, literally keeps our country strong, a balance of power that helps to bring people together rather than divide them, that helps to apply the Constitution to people in all walks of life, not simply those with power and privilege.

For the reasons of this track record: the of his writings in the Justice Department, the questions unanswered in the hearings, the cases he has decided, where studies have shown a pattern of willingness to ignore our Constitutional rights and deny people access to our court system, for all of these and for other compelling reasons, I oppose this nomination.

In the past, in the 22 years I have been here, like many of my colleagues, I have voted for Federal court nominees despite the fact I disagreed with them ideologically. I have voted, I am confident, literally hundreds of times. In fact, I voted for Justice Scalia because despite our ideological differences, in the confirmation process he promised to be openmindedness that we have not seen in the Court.

So we have learned the hard way. The words of the confirmation hearings simply do not erase ideology, they do not erase a track record. And that ideology cannot be overlooked because a Justice's decisions can and will have a profound impact on the rights that we otherwise take for granted.

So something more is needed. A Supreme Court Justice needs to understand and have a record of respecting the constitutional rights and liberties which we confirm them to uphold. He or she needs to recognize the importance of precedent and the limited situations in which overruling is acceptable.

He or she needs to appreciate the significant struggles that our Nation has endured in the context of racial, sexual, and disability discrimination and to be aware of the road still to be traveled. And that awareness of the road still to be traveled has to be evidenced in the decisions and writings of that nominee. In short, ideology does matter. The Supreme Court's ideologically driven decisions have been the most regrettable in our Nation's history, decisions such as Korematsu, Dred Scott, and Plessy v. Ferguson.

In fact, ideology matters more in this nomination than it would in many others. We are replacing Sandra Day O'Connor, President Reagan's nominee to the Supreme Court, the person who has occupied the center of balance on the Court. She has been the deciding vote in critical cases involving and defining our constitutional rights and liberties. As we contemplate ripping that center out from under the Court, we have to understand what the impact of that action will be.

Given how high the stakes are, our decision simply cannot be based on whether Judge Alito is a smart man or whether he is a nice man or whether he is an accomplished man or even whether he is well respected in legal circles. He is all of those things. But what we need to consider is the impact that a Justice Alito will have on the Court and whether that impact is good for our country, good for our Constitution, and good for the American people.

I believe, based on his track record, the decisions already made, the writings already expressed, the questions that went un-answered, that the he will have a detrimental effect. President Bush had the opportunity to nominate someone who would have united the country. He could have nominated somebody who would have received 100 votes or 98 votes. He chose not to do this, which is his right. We all understand. We have heard the argument about the consequence of elections. The fact is, he chose not to do that.

The way in which this nomination came to us in the Senate tells us a huge amount what this nomination really means. The President was under fire from his conservative base for nominating Harriet Miers, a woman whose judicial philosophy was unmercifully attacked. President Bush, in the end, broke to those extreme rightwing demands. This was an ideological coup. Miers was removed and Alito was installed. The President didn't consult with the Senate, as required by the Constitution. He gave more thought to what the political needs were than to what the country's needs were. Indeed, he made this nomination about his political base. He made it about an ideological shift in the Court. He made it about unassailable conservative credentials and an unimpeachable conservative judicial philosophy.

If you want proof of that, all you have to do is look at the comments of people such as Ms. Ann Coulter. We all know Ms. Coulter is capable of being as inflammatory and conservative as anyone in the country, often engaging in character assassination. She denounced the nomination of John Roberts. She attacked the nomination of Harriet Miers, calling her completely unqualified and lamenting that President Bush had "thrown away a Supreme Court seat." Yet she celebrated the nomination of Sam Alito, stating that Bush gave the Democrats a "right hook" with this "stunningly qualified" nominee. This from a woman who said that the Republicans need to nominate a person who "wake[s] up every morning . . . chortling about how much his latest opinion will tick off the left."

Failed Supreme Court nominee Robert Bork had a similar reaction. He denounced the Miers nomination as "taking the heart out of a rising generation" of conservative constitutional scholars and "widen[ing] the fissures within the conservative movement." Yet he praised Alito's nomination as "substantially narrowing" that rift. In fact, he called the nomination something to "rejoice" because if Alito were confirmed, it would only take "one more Justice of the Roberts-Scalia-Thomas-Alito stripe to return the Court to so-called jurisprudential respectability."

Let's not forget conservative stalwart Pat Buchanan who denounced the Miers nomination as revealing the President's lack of desire "to engage the Senate in fierce combat to carry out his now suspect commitment to remake the Court in the image of Scalia

and Thomas.'' Apparently, Mr. Buchanan believes that the Alito nomination demonstrates the President's change of heart. He heralded the nomination as one that would unite and rally the base, a nomination for the base, not the country.

They say you can tell a lot by somebody's friends. These three individuals are consistently on the furthest edge of the ideological spectrum. Their positions rarely advance the interests of average working folk in America. So perhaps it should come as no surprise that these folks have jumped to support Judge Alito.

After reviewing more than 400 of Judge Alito's opinions, law school professors at Yale concluded:

> In the area of civil rights law, Judge Alito consistently has used procedural and evidentiary standards to rule against female, minority, age, and disability claimants. . . . Judge Alito seems relatively willing to defer to the claims of employers and the government over those of advancing civil rights claims.

Similarly, a Knight Ridder review of Judge Alito's opinions concluded that Judge Alito ''has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the Nation's laws'' and that he ''seldom sided with a criminal defendant, a foreign national facing deportation, an employee alleging discrimination, or consumers suing big business.''

After reviewing 221 of Judge Alito's opinions in divided cases, the Washington Post concluded that Judge Alito is ''clearly tough minded . . . having very little sympathy for those asserting rights against the government.'' The pattern is clear, and I think it is unacceptable.

I don't think you should put somebody on the Court who makes access to justice in the United States harder and more elusive for people who already face incredible obstacles when trying to have their voices heard in court. I don't think we should put somebody on the Court who will fail to serve as an effective check on excessive Executive power.

If this pattern is not enough, as has been described by others, then all we to have to do is look at some individual cases. In Sheridan v. E.I. duPont De Nemours and Company, Judge Alito wrote a lone dissent opposed by all of the other judges on the court, eight of whom were Republicans. His opinion would have made it more difficult for victims of discrimination to sue their employers.

Applying a similarly high standard of proof, one that the majority believed would eviscerate the protections of title VII, Judge Alito dissented from a decision to allow a racial discrimination claim to go to trial in Bray v. Marriott Hotels.

These are all cases where people were trying to have their rights adjudicated, and disagreeing with his colleagues, including Republican-appointed judges, Judge Alito said no.

What is the practical impact of these decisions? Simple: They keep victims of discrimination from having their day in court.

If it is not enough to see this kind of insensitivity toward the victims of discrimination evidenced in those judicial opinions, in his 1985 job application to President Reagan's Justice Department, Judge Alito wrote that his interest in constitutional law was driven in part by a disagreement with Warren Court decisions on reapportionment, decisions which established the principle of one person, one vote. And he said that he was ''particularly proud'' of his work to end affirmative action programs.

Judge Alito's hostility to individual rights isn't limited to civil rights. He consistently excuses government intrusions into personal privacy, regardless of how egregious or excessive they are. In Doe v. Groody, for example, he dissented from an opinion written by then-Judge Michael Chertoff because he believed that the strip search of a 10-year-old was reasonable. He also thought the Government should not be held accountable for shooting an unarmed boy who was trying to escape with a stolen purse or even for forcibly evicting farmers from their land in a civil bankruptcy proceeding where there was no show of resistance from those farmers. He believed a show of force from the enforcers was reasonable.

This pattern of deference to power is reinforced by a speech he gave as a sitting judge to the Federalist Society just 5 years ago.

In that speech, Judge Alito ''preached the gospel'' of the Reagan administration's Justice Department, the theory of a unitary executive. And though in the hearings Judge Alito attempted to downplay the significance of this theory by saying it didn't address the scope of the power of the executive branch but, rather, addressed the question of who controls the executive branch, don't be fooled. The unitary executive theory has everything to do with the scope of Executive power.

In fact, even Stephen Calabresi, one of the fathers of the theory, has stated that ''[t]he practical consequences of the theory are dramatic. It renders unconstitutional independent agencies and councils.'' That means that Congress would lose the power to protect public safety by creating agencies like the Consumer Products Commission, which ensures the safety of products on the marketplace, or the Securities and Exchange Commission which protects Americans from corporations such as Enron. And who would gain the power? The Executive, the President.

Carried to its logical end, the theory goes much further than simply invalidating independent agencies. The Bush administration has already used this theory to justify its illegal domestic spying program and its ability to torture detainees. The administration seems to view this theory as a blank check for Executive overreaching.

Judge Alito's endorsement of the unitary executive theory is not the only cause for concern. In 1986, while working at the Justice Department, he endorsed the idea that Presidential signing statements could be used to influence judicial interpretation of legislation. His premise was that the President's understanding of legislation is just as important in determining legislative intent as Congress's, which is absolutely startling when you look at the history of legislative intent and of the legislative branch itself. President Bush has taken the practice of issuing signing statements to an extraordinarily new level. Most recently, he used a signing statement to reserve the right to ignore the ban on torture that Congress overwhelmingly passed. He also used signing statements to attempt to apply the law restricting habeas corpus review of enemy combatants retroactively, despite our understanding in Congress that it would not affect cases pending before the Supreme Court at the time of passage.

The signing statements have been used to specifically negate or make an end run around very specific congressional intent. The implication of President Bush's signing statements are absolutely astounding. His administration is reserving the right to ignore those laws it doesn't like. Only one thing can hold this President accountable, and it is called the Supreme Court. Given Judge Alito's endorsement of the unitary executive and his consistent deference to government power, I don't think Judge Alito is prepared to be the kind of check we need. Reining in excessive government power matters more today to the average American than perhaps at any recent time in our memory, as we work to try to provide a balance between protecting our rights and our safety. As Justice O'Connor said: The war on terror is not a blank slate for government action. We can and must fight that in a manner consistent with our Constitution.

Last but certainly not least, I have grave concerns about Judge Alito's ability and willingness to protect a woman's right to choose. In his 1985 job application, Judge Alito wrote that he was ''particularly proud'' of his work arguing before the Supreme Court that ''the Constitution does not protect a right to abortion.'' Now, all of us know this is an extraordinarily complicated issue. I don't know anybody here who is pro-abortion. But we are in favor of the right of people individually to make that choice for themselves rather than having the Government make that choice for them. And, the fact is that the Constitution protects that right.

Yet, in 1985, Judge Alito wrote a memo outlining a strategy for chipping away at Roe v. Wade, an approach he believed would be more successful than asking for an outright reversal. In his

hearings, Judge Alito stated these statements were accurate reflections of his views in 1985. But what is more disturbing is what he refused to say. He refused to say his views have changed, that he accepted Roe v. Wade as settled law, which even Chief Justice Roberts did during his confirmation hearings. In other words, Judge Alito refused to give any assurances that his concept of the Constitution's protected liberty is consistent with mainstream America's.

I realize Judge Alito has promised he is going to keep an open mind, but I don't think any of us can be reassured by those words. We heard those very same words before. Justice Thomas repeatedly told the Judiciary Committee he would keep an open mind on this issue. But we all know that once safely on the Supreme Court, Justice Thomas voted to overturn Roe v. Wade months later, writing a dissent in Casey that likened abortion to polygamy, sodomy, incest, and suicide. Given Justice Thomas's success, you can almost imagine Karl Rove whispering to Judge Alito: Just say you have an open mind; say whatever it takes.

We cannot rely on these empty platitudes, and we obviously cannot rely on any promises of open-mindedness given to the Judiciary Committee, particularly when they are absent an acknowledgment of what is or what is not a settled law, particularly when the nominee's entire professional history suggests something very different, and particularly when the past promises of that very nominee have already been rendered meaningless by his actions once safely on the bench. In Judge Alito's 1990 Judiciary Committee hearings, he promised that he would recuse himself in any cases involving the Vanguard Company given his ownership of Vanguard mutual funds. In his Supreme Court hearings, he admitted he could not remember having put Vanguard on his permanent recusal list. We know it did not appear on his 1993, 1994, 1995, or 1996 list. So how do we know he kept his word to the Judiciary Committee? We don't. How can we trust him now? We can't.

I am deeply concerned about where we are heading with this ideological choice for the Court. I am deeply concerned about maintaining the integrity of our constitutional rights and liberties. I fear that the most disadvantaged in our society be locked out of our system of justice, a system that is already becoming increasingly harder for them to access. I fear that the President's powers will grow beyond what the Framers intended them to be, and I fear that Congress's hands will be tied even further and we will be unable to do the work of the American people.

Therefore, I cannot and will not vote to confirm a nominee who will shift the Court in this ideological way. I believe that Judge Alito had the burden of proving not just to me, but to the American people, that he would not be a Justice who would move the Court far to the right, that he would understand what was settled law and what was not. I believe he failed to carry that burden. I believe if he moves the Court in the direction that I think he will—I hope I am proven wrong, but if he moves it far to the right, then I think that those rights and values which we cherish so deeply will be set back and the country will move backwards with them.

Mr. President, I ask unanimous consent that letters to Senator LEAHY and Senator SPECTER in opposition to this nomination from the Women's Caucus, Black Caucus, and Hispanic Caucus all be printed in the RECORD at this time.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, January 9, 2006.

Hon. ARLEN SPECTER,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

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

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As women Members of Congress who work hard to enact legislation and promote policies that protect women and ensure equality within our society, we fear our work, and the contributions of our colleagues who served before us, will be dismantled with the confirmation of Judge Samuel Alito to the U.S. Supreme Court.

We believe that Judge Alito poses a direct threat to the rights of women in America. As the attached memorandum details, Judge Alito has a long record of extreme views on women's reproductive health, sexual and workplace discrimination, the Family Medical Leave Act and civil rights. He has worked to thwart established precedent and has affiliated himself with radical organizations that have actively sought to keep women and minorities from advancing educationally and economically.

Under the scrutiny of the nomination process, it is not surprising that Judge Alito now disavows his positions on issues important to women and families in order to secure confirmation votes. But his record speaks to his true views and it speaks loudly. Rather than offering a balanced successor to the moderate views of Justice Sandra Day O'Connor and the majority of this nation, Judge Alito's nomination radically tips the scales of justice against women.

As guardians of the Constitution, Supreme Court Justices play a key role in protecting and ensuring our liberties. They are given life tenures and are expected to stay above the political fray so their decisions will be fair and unbiased. They must judge cases with impartiality and open mindedness, and they must respect settled law.

You have a responsibility to ensure that the highest court is not stacked against the hard fought rights that protect women across the country. When you consider the nomination of Judge Alito to the U.S. Supreme Court, we hope you will reflect on the milestones in women's rights and determine that America cannot afford to abandon these fundamental protections. We encourage you to review the attached memorandum which details many of the disturbing examples of Judge Alito's extreme views of women's rights in law. We urge you to consider that this lifetime appointment will have detrimental consequences for American women, and oppose the confirmation of Judge Alito as the next U.S. Supreme Court Justice.

Sincerely,

Louise M. Slaughter, Tammy Baldwin, Lois Capps, Jane Harman, Barbara Lee, Doris O. Matsui, Juanita Millender-McDonald, Hilda L. Solis, Corrine Brown, Rosa L. DeLauro, Eddie Bernice Johnson, Carolyn B. Maloney, Betty McCollum, Gwen S. Moore, Grace F. Napolitano, Linda T. Sánchez, Ellen O. Tauscher, Diane E. Watson, Jan Schakowsky, Debbie Wasserman Schultz, Nydia Velázquez, Lynn Woolsey.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 6, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Hart Senate Office Building, Washington, DC.

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

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As you examine the nomination of Judge Samuel Alito to the United States Supreme Court, we ask that you consider the particular implications that Judge Alito's confirmation would have on the Latino community.

We are deeply disappointed that President Bush did not take this third opportunity to nominate a qualified Latino to the Supreme Court. Given the size of the Hispanic community in the United States, the under-representation of Hispanics in the judiciary and the abundance of Hispanics qualified for appointment, it is difficult to comprehend the President's decision other than in the harsh light of political factors trumping all other considerations.

We do not need to stress to you the importance of this nomination and the impact that the Court has on the lives of our citizens. We are equally confident that you understand the critical role that the Supreme Court has played in safeguarding the rights of minorities. Oftentimes it is the Court to which minorities must turn for protection from discriminatory laws and practices. It is therefore important that nominees are sensitive to the experiences and struggles that minorities have faced in securing their constitutional rights.

While Judge Alito's background and record on the bench have been largely discussed in the public forum his opportunity to explain his opinions and philosophy will come during the confirmation hearings. Like all Americans, we deserve and expect clear answers on his record both on and off the bench, as many of his opinions and writings give us reason to be concerned. In order to better gauge his current attitudes, we respectfully request that you consider asking Judge Alito the attached questions or questions similar to these during the confirmation hearings in the Senate Judiciary Committee.

While we should not expect any Supreme Court justice to consistently rule in a manner that we agree with, we hope that the successor to Justice Sandra Day O'Connor will share her tradition of being fair, open-minded and unbiased towards any specific group.

Thank you for taking these views into consideration as you proceed with fulfilling your constitutional duty to provide advice and consent on Judge Alito's nomination.

Sincerely,

GRACE F. NAPOLITANO,
Chair, Congressional Hispanic Caucus.

CHARLES A. GONZALEZ,
Chair, CHC Civil Rights Task Force.

CONGRESSIONAL HISPANIC CAUCUS QUESTIONS TO SUPREME COURT JUSTICE NOMINEE JUDGE SAMUEL A. ALITO, JR.

A. RACIAL (ETHNIC) DISCRIMINATION: PEMBERTHY V. BEYER, 19 F.3d 857 (3D CIR. 1994)

Facts: Alito wrote majority opinion allowing ''peremptory challenges'' by the prosecution of bilingual prospective jurors because of concerns that ability to understand Spanish would jeopardize jurors' acceptance of official translations of tape recorded conversations.

Question: This holding would provide a vehicle for striking jurors based on ethnicity (i.e., Latinos more likely to speak Spanish) under the guise of ''language concerns''. Why isn't this unconstitutional as it relates to the prospective juror being struck (deprivation of right to serve on jury, participate in government)? Why isn't this unconstitutional as to the defendant per Batson precedent?

B. VOTING RIGHTS ACT: JENKINS V. MANNING, 116 F.3d 685 (3D CIR. 1997)

Facts: The issue was the ''at-large'' election of school board members. After reversing and remanding the District Court's ruling that no violation of the VRA took place, the District Court considered additional evidence and again found no violation. Judge Alito appears to have joined the majority in affirming the District Court's ruling. Judge Rosen's dissent is insightful and a good example of a judge's exercise of discretion in viewing the same evidence and reaching a decision that gives meaning to the VRA.

Question: The ''Senate Factors'' (after finding Gingles factors present) were additional and necessary considerations and consisted of (1) the extent to which minority group members had been elected to public office in the jurisdiction and (2) the extent to which voting in the elections of the political subdivision is racially polarized. Judge Alito found that the Senate Factors were met when historically only 3 of 10 black candidates over a 10 year period were successful (one in a never-repeated plurality win and one by a black candidate defeating another black candidate). Would Judge Alito please elaborate on his ''judicial philosophy'' when it comes to VRA and ''at-large'' voting districts?

C. IMMIGRANT RIGHTS: 1986 DEPUTY ATTORNEY GENERAL ALITO MEMO TO FBI DIRECTOR WILLIAM WEBSTER

Facts: The memo reflects Judge Alito's legal analysis that ''. . . illegal aliens have no claim to nondiscrimination with respect to non-fundamental rights.''

Question: In light of *Plyler* v. *Doe*, 457 U.S. 67 (1982), how does he reconcile his conclusions that appear to be based on the 1976 case of *Matthews* v. *Diaz*, 426 U.S. 67 (1976), obviously a case decided PRIOR to Plyler? Does he follow precedent only when convenient? If he is not willing to follow existing precedent (is there any other kind?), then it would appear that if he is able to establish ''precedent'' (that's what the Supreme Court does), he will do it readily and easily.

CONGRESSIONAL BLACK CAUCUS,
RAYBURN BUILDING
Washington, DC, January 17, 2006.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: On December 8, 2005, the Congressional Black Caucus (CBC) announced its opposition to the confirmation of Judge Samuel Alito to the United States Supreme Court. We announced this decision prior to the Senate Judiciary Committee's confirmation hearings after making an extensive review of his record as a judge and as a high-level government official and after Judge Alito and the Administration failed to respond to our request for a meeting with the nominee. Unfortunately, nothing transpired at the hearings before the Judiciary Committee to change our view that Judge Alito should not be confirmed.

If the Senate values its own work on federal statutes in many areas of American life, it will find unacceptable Judge Alito's record as a frequent dissenter in commerce clause and other cases involving of long established congressional authority to enact laws benefiting Americans of every background. For example, his dissent in United States v. Rybar, in which he unsuccessfully sought to restrict congressional authority to regulate machine guns, is an example of a dangerous retrenchment that could have far-reaching consequences for many kinds of federal legislation that have long been considered well within congressional power.

However, the CBC is most especially concerned that Judge Alito's record on matters of race reflects a consistent pattern of hostility to race discrimination cases and remedies. This pattern places at extreme risk important work of the Supreme Court and the Congress to eliminate discrimination in voting, employment and other critical areas in which Judge Alito's dissents have left little doubt about his views. If he is promoted to the Supreme Court, where stare decisis is less constraining and where his views are no longer subject to reversal, his dissents can be expected to become the law of the land. In that case, we have no doubt that racial progress would be reversed, especially in light of the delicate 5–4 balance that has existed on the Court. We, therefore, believe that a vote for Judge Alito would radically change the Court and lead to an erosion of 50 years of jurisprudence on matters of race and equality. Our country moves in that direction at its peril.

We find extremely troubling the consistency and predictability of Judge Alito's hard-right views in an area that has been so critical to African Americans and where his views could become the decisive vote. The best evidence that Judge Alito is a judge of extreme views is the often strongly critical written opinions of his judicial colleagues. Faced with Supreme Court precedents upholding remedies for discrimination, Judge Alito has sought instead to close the Federal courts to job discrimination claims by using unprecedented technical evidentiary standards long rejected by the Supreme Court. For 40 years in an unbroken record of thousands of job discrimination cases, the Supreme Court and every federal circuit have left no doubt that discrimination claims must not be prematurely destroyed by requiring significant upfront evidence before trial. Consequently, all the Third Circuit judges in an en banc review in Sheridan v. E.I. DuPont de Nemours and Company criticized Judge Alito, the only dissenter, for seeking to elevate the standard necessary for a woman, who alleged her employer failed to promote her, to even get access to the Federal courts to attempt to prove discrimination. Undeterred, the next year in Bray v. Marriott Hotels, Judge Alito was similarly admonished by the Circuit's majority in a racial discrimination case in which a hotel employee was denied a promotion. In sharply criticizing Judge Alito, the majority said that if they followed his lead, ''Title VII [the basic job discrimination statute] would be eviscerated.''

Habitually attempting to use procedural technicalities to get around precedents, Judge Alito has been a virtually automatic vote to deny discrimination claims in 14 of the 18 job discrimination cases he has considered. In one of the cases, he favored white civil rights complainants, Pittsburgh police officers who sued alleging reverse discrimination, and in another he ruled in favor of a mentally disabled employee. Alito's hostility to discrimination cases could not be more systematic, carrying over to claims against the disabled as well, where the Third Circuit criticized his dissent that would allow ''few if any'' Rehabilitation Act plaintiffs access to the courts (Nathanson v. Medical College of Pennsylvania).

Considering the distance the Nation has come on race and the distance still to go, in our view the confirmation of Judge Alito would mark a dangerous step backwards. In our view, no one who reads his opinions can believe that he has the open mind required of a Supreme Court justice. Judge Alito moved from his days in the Reagan Justice Department, where he sought unsuccessfully to get the Supreme Court to restrict discrimination remedies, to the Third Circuit, where he has compiled a striking record as a dissenter, rather than follow employment discrimination precedents.

The evidence is too clear to leave any doubt about where Judge Alito would stand, for example, on fragile 5–4 rulings in which Justice O'Connor has been the deciding vote. Among these cases are the University of Michigan case upholding affirmative action in law school admissions (Grutter v. Bollinger) and other cases where the Court has allowed race to be considered as a factor to rectify discrimination. As we approach reauthorization of the Voting Rights Act in 2007, the Congressional Black Caucus cannot afford to forget that the 5–4 cases also include redistricting cases such as Hunt v. Cromartie.

A critical election year of accountability for the Congress must begin with how members of the Senate vote on this nominee. All that we have fought for in order to secure rights long denied African Americans is put at risk by this nomination. For African Americans, the stakes don't get any higher. Therefore, the members of the CBC are asking you and all of your colleagues to vote against the confirmation of Judge Alito.

Sincerely,

MELVIN L. WATT,
Chair, CBC.

ELEANOR HOLMES NORTON,
CBC Judicial Nominations Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. 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. SANTORUM. Mr. President, I rise today to give my full support to Judge Alito to be an Associate Justice of the Supreme Court. I am sure that will be no great surprise to those who have followed my career.

I want to lay out in brief why I believe Judge Alito is exactly the kind of Justice this country needs at this time and, candidly, is exactly the kind of Justice this country, for the most part, has had, in keeping with its constitutional traditions over the last 200-plus years.

Judge Alito is not from Pennsylvania, although he claims to be a Phillie fan, which is fine by me. I somewhat prefer the Pirates, being from

Pittsburgh. I certainly respect him. He comes from the Third Circuit, which includes the Commonwealth of Pennsylvania. I have had an opportunity to talk to many of his colleagues on the court, Republicans and Democrats. Both Republicans and Democrats—everyone I have spoken to, and I have spoken to several—have praised him in the highest terms possible. Colleagues of his have stepped forward and have used terms of respect you don't often hear. Unfortunately, you don't often hear it around this body—certainly not lately—but you certainly heard it from them both privately and publicly, saying how much integrity the man has, how much his legal acumen is right on, as are his demeanor, jurisprudence, and humility—all of the things one would want to see out of a judge, and they speak in glowing terms about him. So that was my introduction to him.

I had never met Judge Alito prior to his nomination. When he was nominated, one of the first things I did was call some of his colleagues. I did it to get a sense of the kind of man he was. The response I received was overwhelming.

One of the things I want to cover is how I believe that his view of the role of a judge is very similar to John Roberts' view of the role of a judge. In fact, his record, in my opinion, and the way he approaches the law is remarkably similar to the judge who is now a Justice confirmed here in the Senate by 70-plus votes. I am somewhat at a loss to see why Judge Alito is not receiving similar support, because their records and their approach to the law are remarkably similar, in my mind. He is a judge who, when I met him, used very much the same terms as Justice Roberts—terms such as humility and modesty in dealing with the matters before them; that he was not to be a judge who was to impose his views on the case before him.

Many have tried to claim that somehow or another he is ideological. I don't think there is anything in the RECORD that would indicate Judge Alito applies his own personal viewpoints to the case at hand. He looks at the law, looks at the facts of the case and does his best on the narrowest grounds possible to decide the cases before him. That is what a judge is supposed to do—not say, gee, here is my opportunity to change the law, my opportunity to right a wrong that I think Americans or a particular State or the Government has done that I disagree with; here is my opportunity to change the law by using the force of the Constitution to impose my values. That is not what he does. Again, what he also doesn't do—and it strikes me as a very odd discussion when it comes to analyzing a judge's rulings on who he rules for, does he rule for the little guy or the big guy, as if little guys are always right and big guys are always wrong, or vice versa, for that matter. It is the idea that you don't decide the case before you based on the law and the facts but based on whether you like the plaintiff, or you like the defendant, or what is a sympathetic figure on one side or the other—that is about the worst kind of justice you can possibly acknowledge.

My colleagues who say he rules for the big guys or the big corporations, or whoever it is, are you saying every action that comes before the Court where a little guy is in a case, he automatically should win? Is that what it is? If you are not a judge who rules for the little guy all the time, is it true that somehow you don't have a proper view of the law? This is a remarkable discussion I keep hearing. I heard over and over again in the Judiciary Committee about the result of these cases and who he sides with. Is that somehow a point which is legitimate when it comes to a judge? The question is, is he an appellate jurist who was following the law? Was he properly applying the law to the case? It is not who won or lost the case. I find it very disturbing that we are reducing this confirmation process to whose side he ruled on and whether ideologically he fits a particular Senator's view of a particular issue or particular issues. That is not how we have ever viewed Justices in the Senate. We do not keep scorecards of whether you side with the little guy or big guy or how you came down on cases. We certainly have not had ideological litmus tests in the past on judicial nominations.

Those two things, I have to tell you, that have been some of the more frequent criticisms of Judge Alito trouble me as to how we are morphing the judicial process or the selection, approval, and confirmation process into sort of a campaign process, into a process of how we elect legislators and Presidents. We are not electing a legislator or a President, someone who we have a right to know their ideology or what side they are going to come down on.

We are electing someone whose job it is to play it right down the middle, whose job it is to be blind justice, who is going to weigh the facts in the law and do what it dictates, not do what they believe, in their ideological viewpoint, is right.

I am disturbed by the criticism, but I am very encouraged by Judge Alito and the way he has conducted himself and the way he answered the questions and how he has, in fact, laid out a very concise and well-reasoned approach to his making decisions on the Court in the past.

He obviously has impeccable credentials. The Senator from Utah is in the Chamber right now, and I heard him say over and over that no one has the credentials this man has and the experience he brings to the Supreme Court. No one, in my view, has been more personally decent, humble, and modest dealing with a rather rancorous hearing process. He came off, at least from my view, as exactly the kind of temperament we would want of a Supreme Court Justice—of any judge. He is obviously highly intelligent, battling wits with some of the best minds in the Senate. During this process, both privately and publicly, he has been gracious. He is, again, someone I am very proud to support.

If I can, for a moment, talk again about where we are in the context of the role of the judiciary in our democratic process. We often talk about the tyranny of the judiciary—many on our side of the aisle do—how the judiciary has run amok in its ever-unceasing quest to take responsibilities and decisions away from the elected democratic bodies of our country and hoist it onto the backs of the Supreme Court or the courts in our country. That is a very dangerous precedent we have seen over the last 30 and 40 years in our courts, that increasingly decisions are being made by the judicial system and, in so doing, barring the House, the Senate, and the President from regulating or legislating in that area in the future, in a sense making these substantive decisions as to how we should live our lives, how our economy will function, how our laws will be written across the street in an unelected body as opposed to how the democratic process works—to have the people's collective will reflected in their laws.

One of the reasons I think these nominations are so important and maybe so contentious is because we are at a point right now where there has been a movement for many years to bypass the democratic process, bypass the people's Houses and go to the courts to get an extreme agenda passed and into law in this country.

The voices we have heard over the past couple of months during this nomination and which we heard somewhat more muted during the Roberts nomination were of those trying to hold onto power by holding onto a majority on the Supreme Court of the United States to continue to promulgate a far-left-of-center agenda on a variety of issues, using the Court as the place to silence the people in their collective judgments.

One of the reasons that I think is vitally important for putting a Judge Alito on this Court, and hopefully future Judge Alitos as other vacancies occur, is that we will have an opportunity to return a balance of power in this country away from nine unelected people across the street from the Senate to the halls of the people's bodies, to the living rooms of America, for them to be able to make these decisions that are important to the future of our country and not have those decisions taken from them by radical judges on our courts.

So this is an important step. Do I believe that we are going to see, as a result of Judge Alito's confirmation, which appears to be all but certain, a dramatic change in the precedents of the U.S. Supreme Court? I sort of doubt that we will see dramatic change, certainly not any time soon. But I think what we will see is a more

modest approach to dealing with the problems with which the Supreme Court is confronted. We will not see cases where the Court could decide a case on a narrow issue and settle the dispute at hand and instead of doing so take the opportunity, ''while we are at it,'' to overturn a variety of precedents they don't need to overturn and create new legislation, if you will, through their judicial opinions. We see that happen time and again. It threatens the very foundation of our country.

Thomas Jefferson understood that. Jefferson in 1821—this was after he was President, 5 years before he died, obviously a great student of our Constitution, obviously a great student of the powers of the Congress and the judiciary and obviously of the Presidency—he said, in reflecting on this very delicate system and the balance of power among the executive, the judicial, and the legislative branch:

> The germ of destruction of our Nation is in the power of the judiciary, an irresponsible body working like gravity by night and by day, gaining a little today and a little tomorrow and advancing its noiseless step like a thief over the field of jurisdiction until all shall render powerless the checks of one branch over the other and will become as venal and oppressive as the government from which we separated.

He saw the power of an immodest, a brash, a bold judiciary in its ability by using the ultimate law of the land, the Constitution, in grabbing power by day and by night quietly—drip, drip, drip—taking the power away from the people and ceding it to itself so that, to paraphrase Jefferson, they would be like the monarchs we left, ruling from their kings' benches.

This is a true threat, in my opinion, to the democracy in America today. Jefferson, as he did with many issues, had it right here too. There have been times in American history where the pendulum has swung in favor of one branch of Government to the other. I think this is such a time when we have seen that pendulum swing to the Supreme Court, and it is incumbent upon all of us to make sure that equilibrium is restored.

I know there are a lot of folks who are listening who say: I like the decisions the Supreme Court has made; that is why I am out here arguing, to make sure we can preserve that. I can say what is good for the goose is good for the gander. There may, indeed, come a day—although I hope it will not come—there may, indeed, come a day when this Court decides, since we have power to make laws in favor of those who like the recent decisions of the courts or decisions over the last 30, 40 years, there may come a time when they take that same authority and make a whole host of decisions that you don't like.

Whether I am in the Senate or somewhere else at that point in time, I hope I will have the integrity and the ability to stand up and criticize that Court such as I am criticizing the courts over the last 30 years for their activities. There is no place for the Court imposing its will and making laws. There is no place for that in our Constitution. That is not their role.

I am very pleased the President understands that and that he has put forth judges who I believe understand that point of view as a member of the judiciary. I am hopeful that we will confirm Judge Alito and that we will continue this process of creating a better balance of powers among the Congress, the executive branch, and the judiciary. This is a very important, in my opinion, second step in that process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I enjoyed my colleague's remarks. We are in the final stretch of considering the nomination of Samuel Alito to the Supreme Court of the United States, and by any reasonable objective or traditional standard, Judge Alito deserves overwhelming confirmation, without question.

The first reason Judge Alito should be confirmed is that he is highly qualified to serve on the Supreme Court. It amazes me that some parties to this debate practically ignore his qualifications altogether. They are so intent on manufacturing a case against this nominee that they brush aside this seemingly minor detail of his qualifications as if it were just an annoyance.

After serving in the Department of Justice and as a highly regarded Federal prosecutor, Judge Alito has served on the U.S. Court of Appeals for the Third Circuit since 1990, has participated in nearly 5,000 cases, and has written more than 360 opinions. He has more judicial experience than any Supreme Court nominee in the last three-quarters of a century.

The American Bar Association, which conducts perhaps the most comprehensive and exhaustive evaluation of Supreme Court nominees, interviewed more than 300 people who know and have worked with Judge Alito. The American Bar Association, after all those interviews, unanimously gave Judge Alito its highest well-qualified rating. Here, too, it is amazing how some Senators and leftwing interest groups brush aside this ABA rating as if they were dusting the mantel.

While the ABA's role in the judicial appointment process has been controversial at times, certainly no one has ever charged it with a conservative bias—no one. It was my Democratic colleagues and their leftwing interest groups that once lauded the ABA rating as the veritable gold standard for evaluating judicial nominees.

The criteria for the ABA's highest well-qualified rating includes Judge Alito's compassion, openmindedness, freedom from bias and commitment to equal justice under the law. Judge Samuel Alito is eminently qualified to serve on the Supreme Court of the United States.

The second reason Judge Alito should be confirmed is that he is a man of character and integrity. Anybody watching those proceedings would have to conclude that. I have been struck, throughout this process, at the level of respect and praise for Judge Alito's character and integrity, how it is directly related to how well people know him, how closely they have worked with him. Without exception, those sounding the most dire warnings, creating the most negative caricatures, and painting the scariest picture of Judge Alito are those who know him the least or who do not know him at all.

We have heard from those who worked with him at the Department of Justice and in the U.S. Attorney's Office in New Jersey. We have heard from Judge Alito's law clerks and fellow judges, and there were dozens of those law clerks from all across the ideological spectrum who were supportive of Judge Alito.

Make no mistake, this is not a bunch of rightwing clones but a diverse group of men and women, liberals and conservatives of different religions and backgrounds. They do not agree with him on every issue or, in some cases, they don't agree with him on virtually any issue at all, but they all praise Judge Alito as a man of character and integrity. Judge Samuel Alito possesses the character and integrity necessary to serve on the Supreme Court of the United States.

The third reason Judge Alito should be confirmed is that he understands and is committed to the appropriately limited role of the judiciary. America's Founders established a system of limited Government containing three branches, each with its category of power and ability to check the others. The judicial branch is as much a part of this system of Government and must remain as limited as the legislative and executive branches.

The fight over judicial appointments is a fight over whether we should stick with the system America's Founders established.

Some want to change that system because, frankly, it does not give them everything they want.

Self-government, after all, can be a little messy and sometimes very frustrating.

Letting the people and their elected representatives make the law and define the culture means that, on any given day, certain political interests win and others lose.

Some who lose in the political process pick themselves up and try again another day.

Others leave the political process behind and go to the courts, trying to persuade judges to impose upon the American people policies and priorities the people would not choose for themselves, or they could never get through the elected representatives of the people.

The fight over judicial appointments is whether we should have judges willing to take such political bait.

It is fashionable in some circles to put the Supreme Court on a pedestal, pretending that a few unelected judges are supposed to lead us to some kind of promised land.

During the debates about Chief Justice John Roberts' nomination last fall and Judge Alito's nomination now, we have heard all sorts of grand descriptions of the judiciary's role and purpose.

The judiciary, we are told, is the engine of social progress, the protector of all our rights and liberties, even the savior of the environment.

Yesterday, in the Judiciary Committee's businss meeting, the ranking Democratic member said that the very reason the Supreme Court exists is to be ''a constitutional check on the expansion of presidential power.''

The Senator from Massachusetts, Senator KENNEDY, said the very same thing yesterday, that the Supreme Court's historic role is ''enforcing constitutional limits on presidential power.''

These grand descriptions give the impression that the Supreme Court alone polices our system of separated power, hands down decrees about issues, opines on abstract theories, and decides how best to order the universe.

It does no such thing. The last time I checked, most of the Supreme Court's cases have nothing whatsoever to do with issues such as presidential power, abortion, religion, or the environment.

The Supreme Court does not exist to run the country, right all wrongs, and usher in peace and domestic tranquility.

The judiciary is part of our system of limited government; it is not a system unto itself. It is that whole system of government, not anyone part of it, that protects our rights and liberties, checks excessive government power, provides for social progress, and all the rest.

As a part of that system, judges who exceed their proper role and power are no less a threat to liberty than legislators or the president who do so.

In the famous case of Marbury v. Madison, Chief Justice John Marshall wrote that the Constitution was designed for the government of courts as much as of legislatures.

As Chief Justice Roberts put it last fall, judges are not politicians.

The tendency of some in this debate simply to look at the results judges deliver is, therefore, misguided because it suggests that judges, as politicians, are free to take whatever side they choose and the only thing that matters is whose side judges are on.

This politicized approach misleads our fellow citizens about the judiciary and its proper place in our system of government.

America's founders had a very different view and, I am glad to say, Judge Alito sides with them.

As the Constitution puts it, judges exercise judicial power in the context of cases and controversies. Judges do not make the law they apply. Judges are neither school boards nor inspectors general. Judges are neither legislative oversight commissions nor political provocateurs. Instead, judges settle legal disputes by applying already established law to cases that come before them.

Because that is what they do, it is impossible to properly evaluate judges or judicial nominees the way we evaluate politicians, by the results they can be expected to deliver.

Yet that is exactly what we see in this judicial confirmation process.

To hear some of my Democratic colleagues and their left-wing interest group friends talk, there is absolutely nothing that is not the judiciary's job. That is ridiculous.

To hear some of them talk, everything is fair game for judges and the only thing that matters is who wins that game.

America's founders rejected that view, and Judge Alito should be confirmed because he rejects that view.

I hope we find more qualified men and women who believe there is something, anything, that is not a judge's job and appoint them to the judiciary right away.

While scorecards are familiar in the political process, they have no place in the judicial process.

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

Who can disagree with that? Yet, they seem to on the other side.

I hope that my fellow citizens are watching this debate, either live right now or when it is replayed later.

I ask my fellow citizens, do you agree with Judge Alito? Do your expect judges to do justice on an individual basis, to take each case on its own facts and its own merits, and to decide it solely according to the law? Or do you expect a judge to look at a case not as a legal dispute between real parties, but as a political issue, deciding it based on his opinion of the issue, practically before the case even comes before him?

Judge Alito rejects scorecards and tallies, he rejects percentages and patterns, and looks at each case based on its own facts and the law that applies.

I might add that at one time in the proceedings one of the Democratic Senators said he never ruled in favor of labor. We immediately showed a number of cases where he did. You can find rulings by Judge Alito across the spectrum with respect to people who should have won those cases.

Let me describe another revolutionary idea. Let me read it.

At his hearing, Judge Alito said that ''although the judiciary has a very important role to play, it's a limited role. . . . Judges don't have the authority to change the Constitution. . . . The Constitution is an enduring document and the Constitution doesn't change.''

Let me speak again to my fellow citizens out there who may be watching.

The first three words of the Constitution are ''we the people.''

The Constitution belongs to the people.

It does not belong to judges.

The Constitution, your Constitution—I am speaking to the people out there—already has a specific process for changing it, and the only branch of government involved in that process is this one, the legislative branch, the one you directly elect.

If America's founders explicitly excluded the judiciary from the process of changing the Constitution, do you think instead that judges should now be able to change the Constitution?

Do you believe that the Constitution, your Constitution, is whatever judges say it is?

It is the Constitution that ultimately protects our rights and liberties.

If the Constitution means whatever judges say it means, then our rights and liberties are whatever judges say they are. They are not elected. They are nominated, appointed and confirmed for life.

If that is what my Democratic colleagues and their left-wing interest group allies mean when they say the judiciary protects us, then do not sign me up for that protection package.

Our rights and liberties, and particularly the rights and liberties of the minority, are secure only when the constitution is solid.

Judge Alito is precisely the kind of judge who will protect our rights and liberties because he does not believe that he defines them.

So the case for Judge Alito's confirmation is overwhelming. He is highly qualified, he is a man of character and integrity, and he understands and is committed to the properly limited role of judges in our system of government.

In the past, this would have been enough for confirmation by a wide bipartisan margin.

Perhaps because this case for confirmation is so strong, Judge Alito's opponents have tried a host of attacks that not only have failed but have degraded this process along the way.

One is the familiar guilt-by-association tactic, trying to smear Judge Alito by attacking a group of conservative Princeton alumni to which he once belonged. Membership in this group, mind you, was nothing more than a magazine subscription. Imagine if someone tried to attribute to each of you everything published in every magazine or newsletter you receive.

Some Democratic Senators used this very illegitimate tactic on Judge Alito, selecting the most salacious or controversial articles which Judge Alito never read. One Senator even tried to

pass a parody of such outrageous views off as the real thing. That is how denigrating this process became.

Our staff spent hours pouring through boxes of documents related to this group and the name Samuel Alito never appeared on a single scrap of paper—not one.

The disinformation was even worse in the media.

The group in question, or at least some of its members, wanted to preserve Princeton's all-male tradition and opposed affirmative action—in other words, affirmative action.

On January 6, a well-known pundit claimed on the FOX News Channel that Judge Alito himself was personally ''trying to keep women and minorities out of Princeton.''

I have been around for a long time, and I have seen a lot of bad journalism, but this goes beyond the pale. This goes beyond spin, beyond any reasonable characterization of the facts. In fact, it is ridiculous.

When I asked what the media characterizes as a softball question, sarcastically asking it, are you really against having women or minorities in colleges, anybody listening to that had to conclude I was being sarcastic. He said, Of course not.

When I said I thought that is what he thinks, I couldn't have been more sarcastic. But apparently I am so serious on most matters that people thought I was serious on that. But it is ridiculous, this guilt by association that went on, even in the committee, in something as important as the Judiciary Committee of the Senate.

Let me address a few of the other arguments by Judge Alito's opponents. Yesterday, at the Judiciary Committee markup, the Senator from New York, Mr. SCHUMER, tried once again to paint Judge Alito as an out-of-control judge, wantonly disregarding and seeking to disrupt his own court's past decisions. The political rhetorical value of the tactic is obvious. If Judge Alito played fast and loose with his present court's precedence, the story goes he would certainly do so on the Supreme Court.

The problem is that this claim, this picture of Judge Alito as an activist judge out to remake precedent in his own image is patently wrong. It bears no relationship to reality.

At Judge Alito's hearing, the Senator from New York cited a few cases in which colleagues disagreed with how Judge Alito treated the court's prior decisions. The Senator from New York made no attempt whatever to determine whether Judge Alito's position in those cases was right or wrong. He simply grabbed quotes supporting his preconceived point of view.

With all due respect to the judges who disagreed with Judge Alito in those cases, they could very well be the ones who misread or misapplied the Third Circuit's prior decisions.

What the Senator from New York never said was that Judge Alito has dissented in just 79 of the more than 5,000 cases in which he participated. That is a rate below the average for appeal court judges around the country.

Something else the Senator from New York has not revealed is Judge Alito has voted to overturn his own court's precedence just four times in his whole 15 years on the bench. In each of those cases in which all the judges of the circuit participated, Judge Alito was in the majority, and two of them were unanimous in each of those cases. He was in the majority, and two of them had a unanimous majority.

My colleagues will remember that seven of Judge Alito's current and former judicial colleagues appeared before the Judiciary Committee. Who better to give the Senate real insight of Judge Alito's approach to cases, his attitude toward litigants, and his perspective on the law? Better yet, what a unique opportunity to hear from those fellow judges about how Judge Alito handled precedent.

I might add that earlier in the hearing, for example, the Senator from New York quoted a passage critical of Judge Alito from the majority opinion in Dia v. Ashcroft. Chief Judge Anthony Scirica joined that opinion. Chief Judge Scirica was sitting right there in front of the committee.

The Senator from New York also quoted a passage critical of Judge Alito from Judge Leonard Garth's dissent in Bray v. Marriott Hotels. Judge Garth visited with us via teleconference from Arizona. That would have been a great opportunity to question the very judges on the side of the Senator from New York of evidence of Judge Alito's activism and disregard for precedent. Hearing it from them could be more meaningful than cutting and pasting a few selected quotes from poster board. Yet the Senator from New York did not ask those judges questions about this issue. In fact, he did not ask any questions at all because he did not attend that portion of the hearing. That was his right.

I asked him about it. I referred to the claims by the Senator from New York and asked the judges whether Judge Alito disregards precedent, whether he has an agenda to disrupt the court's prior decisions. Judge Edward Becker, former Chief Judge of the Third Circuit Court of Appeals, participated with Judge Alito in more than 1,000 cases. Judge Becker said he never saw Judge Alito disregard or ignore precedent. Judge Alito followed precedent unless he believed the precedent was distinguishable or was what judges called dicta—in other words, not binding language in a particular case.

Another judge on that distinguished panel was Judge Ruggero Aldisert, appointed nearly 40 years ago by President Lyndon Johnson, and still serving on the court. In addition to his many years of service in both the State and Federal courts, Judge Aldisert has written a well-known textbook on the judicial process. Judge Aldisert was a Democrat. I know him very well. I tried one of my first jury trials in front of Judge Aldisert in the common pleas court in the highest trial court in Pennsylvania. I got tears in my eyes when he appeared. But he, too, a Democrat, defended as sound Judge Alito's treatment of precedent.

I might add, chatting with Judge Aldisert afterwards, he had had a number of health problems. He risked his life to come back to right this wrong that had been done to one of his colleagues on the Third Circuit Court of Appeals. Judge Aldisert, when I knew him, and I have known him all these years, but when I knew him as a young trial lawyer in Pittsburgh, Judge Aldisert was the national president of the Italian Sons and Daughters of America. And proudly so. I was very proud of him when he went to the Third Circuit Court of Appeals and have been very proud of him since and proud of the scholarship he has written. He knows the difference between a good judge and a bad judge, and he has had a world of experience. I got very emotional when I saw him once again.

As I mentioned earlier, some of my Democrat colleagues are particularly fond of scorecards and tallies, thinking that tells anything useful about a judge's approach to the law. Perhaps they can create something like a confirmation rate card listing the percentage of cases in different categories that one side or the other is supposed to win. Plaintiffs should win this percentage of employment discrimination, the prosecution is allowed to win this percentage of criminal cases, and so on. Perhaps it can be a list titled ''Whose Side Are You Supposed To Be On'' as a judge. That is about the way it comes off. Before anyone dismisses this as ridiculous or farfetched, this is exactly what some of my Democrat colleagues and many of their leftwing interest group friends have done to Judge Alito.

In his opening statement on January 9, the Senator from Massachusetts, Mr. KENNEDY, cited a so-called study by University of Chicago law professor Cass Sunstein claiming that Judge Alito voted against the individual in 84 percent of his dissents. The Senator from Massachusetts did not quote from Professor Sunstein's letter that such statistics must be taken with ''many grains of salt and with appropriate qualifications,'' or Professor Sunstein's own admission that his analysis was done under what he called considerable time pressure, rendering his conclusions only tentative and preliminary. And, of course, the Senator from Massachusetts did not examine any of the dissents on the merits. He let the calculator do the talking. Remember, these are appeals. Most of the appeals are upheld on appeal.

Actually, the Senator from Massachusetts went much further than that. On the basis of this one tentative and preliminary statistic from this one study, he claimed that ''average Americans have had a hard time getting a

fair shake in [Judge Alito's] courtroom.'' That is an outrageous claim, one that would not be at all justified even if the supposed evidence behind it were more legitimate.

Let us be honest about this. Saying a pattern of past decisions shows an entire group of litigants will have a hard time getting a fair shake in the future is to accuse Judge Alito of bias.

Before the Senator from Massachusetts or anyone else using this tactic gets indignant, throws up his hand and claims he never accused Judge Alito of bias, there is simply no other meaning to what was said.

I again call into contention the testimony of those seven judges, all circuit court of appeals Federal judges from all across the spectrum, who said Judge Alito has never demonstrated any bias toward anybody. I would much rather have their confirmation than any law professors in this country, especially any liberal law professor in this country, or conservative law professor. What else could the words ''average Americans have a hard time getting a fair shake'' actually mean?

Another example last week, Thursday, the Senator from Massachusetts claimed that while on the appeals court Judge Alito literally bent over backwards to ''help the powerful.''

He said:

> The record is clear that the average person has a hard time getting a fair shake in Judge Alito's courtroom.

These are his words, not mine. Saying that Judge Alito bends over backwards to help the powerful means only one thing. Saying that a category of litigants will have a hard time getting a fair shake before Judge Alito means only one thing. If Senators wish to accuse Judge Alito of bias, they should do so up front, not through innuendo or hiding behind statistics.

Evaluating judges with a calculator is wrong, misguided, and misleads our fellow citizens about what judges do and the role they play in our system of government. Again, I call attention to the judges who appeared, all of whom spoke in favor of Judge Alito. In all honesty, let me choose the most liberal of those judges. He has some very interesting things to say. That was Judge Lewis who is retired now. He said:

> I am openly and unapologetically prochoice and always have been. I am openly—and it's very well known—a committed human rights and civil rights activist and actively engaged in that process as my time permits. . . .
>
> I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—''Well, why are you here today saying positive things about his prospects as a justice on the Supreme Court?''
>
> And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular the United States Supreme Court.

He went on to say:

> As Judge Becker and others have alluded to, it is in conference, after we have had oral argument and are not propped up by law clerks—we are alone as judges discussing the case—that one really gets to know, gets a sense of the thinking of our colleagues. I cannot recall one instance during conference or doing any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

He endorsed Judge Alito in no uncertain terms.

Let me close by noting a few things I find encouraging. First, I am encouraged the attacks, distortions, and misleading claims about Judge Alito have not persuaded the American people. The leftwing interest groups have thrown everything they have against this nominee. It is shameful the way they act. One of their leaders said at the beginning of this campaign: You name it, we will do it. That is the type of opposition this man has had to endure.

They did it. We have seen millions of dollars spent week after week on petition drives, television ads, rallies, phone banks, and grassroots lobbying. The net result of that barrage of propaganda has been that support for Judge Alito's nomination among the American people has steadily increased—not a very good return on their investment.

In early November, Newsweek found that 40 percent of Americans thought Judge Alito should be confirmed. In December, even polls conducted for liberal groups found that support had risen to nearly 50 percent. And this month, polls by CNN, FOX News, and Reuters find support even higher with Americans backing the nomination by a ratio of more than 2 to 1. A new Gallup poll conducted after Judge Alito's hearing last week shows support has risen by about 10 percent since early December. This is particularly significant because Judge Alito's opponents have issued all sorts of apocalyptic warnings and predictions. They have cast Judge Alito as a radical extremist, a threat to the environment and individual rights.

The Senator from Vermont has repeatedly said that all by himself, Judge Alito is a threat to the rights and liberties of all Americans literally for generations to come. The critics have said that Judge Alito would give the executive branch a blank check to invade your privacy, strip search children, and tap your phones.

According to the critics, if Judge Alito has his way, machine guns will flood our streets, big business will pollute the air and water, and the poor and down trodden will be unable to find justice.

I am pleased to say despite all of this propaganda, as CBS News found, the percentage of Americans having a favorable impression of Judge Alito has risen 50 percent since the end of October. I am also encouraged that not all Democrat leaders have abandoned reasonable, traditional, judicial confirmation standards.

Pennsylvania governor Ed Rendell, a past general chairman of the Democratic National Committee, yesterday described a confirmation standard that I hope his fellow Democrats would once again embrace.

He said that if a nominee is qualified and passes the test of integrity, elections matter and disagreement with some of nominee's positions or decisions are not enough to deny the President his appointment.

That was the standard that allowed President Clinton to appoint two liberal justices with minimal opposition.

I wish my Democratic colleagues would follow Governor Rendell's lead.

Finally, Mr. President, I am encouraged that Judge Alito will indeed be confirmed.

A highly qualified judge, a man of character and integrity, and someone who understands and is committed to the judiciary's properly limited role, will soon join the Supreme Court of the United States.

When Judge Samuel Alito becomes Justice Samuel Alito, our system of limited government under the rule of law will be stronger and the freedoms that system makes possible will be more secure.

I urge my colleagues to vote to confirm Judge Samuel Alito to the Supreme Court.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we have Senators who wish to speak.

On several occasions, but publicly and privately, I have asked the distinguished senior Senator from Utah if he purports to quote me, to try to at least get within the ballpark of accuracy. I realize that is probably a failing and useless request after hearing him misquote me again the last few minutes, but I renew the request, and I hope that he would do that.

Mr. HATCH. Will the Senator yield?

Mr. LEAHY. To suggest that I have said—I would like to find the quote where I said that Judge Alito, all by himself, would do away with all the liberties of Americans.

I see the distinguished senior Senator from Florida, and I yield to the Senator.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, some things can get hot here, particularly when we get into personalities. Well, the senior Senator from Florida came here not to speak about personalities but to talk about the substance of the issue in front of us.

In the Good Book, the Gospel promises all of us impartiality at judgment. And I would suggest impartiality—or justice for all—is a principle embedded deep in our constitutional democracy.

I believe in an America where courts address injustice and correct it. I believe in an America where our judges serve the people by interpreting the Constitution, without agenda. I may have no greater responsibility in the Senate than to be charged by our Constitution with advising the President

on his picks for the U.S. Supreme Court. And in assuming this awesome responsibility, I rise to oppose Judge Alito's confirmation to the Supreme Court.

Soon, the Supreme Court likely will hear cases about protecting our personal privacy from Government and corporate intrusion and about the sharing of power between Congress and the President. These decisions will have an important effect on each of our lives and on the future of our Nation.

In the break we had over the holidays, I had numerous townhall meetings all over my State of Florida. The residents shared with me their thoughts about Judge Alito. So I took all of that information, and that is why, then, I carefully studied his record over the past 15 years as a judge on the Third Circuit Court of Appeals.

During his time on the bench, Judge Alito ruled on cases ranging from the rights of individuals to the stewardship of the environment. After his testimony before the Judiciary Committee, and after studying his judicial record, I am concerned that he, more often than not, ruled in favor of big Government and big corporations over the ordinary American, putting trust in an authoritarian type of institution. That is a concern.

Following the hearings, I had the pleasure of personally meeting with Judge Alito to discuss my concerns. It was a very amiable and friendly conversation. He seems to be a very nice gentleman. But I explained to him some of my concerns. I explained how a recent Supreme Court decision has frightened many of our constituents who fear their homes can now be seized by the Government to make way for a private developer's project.

While he expressed sympathy for the parties whose homes had been seized, in this personal meeting with him, he offered no misgivings about the legal reasoning that led to that outcome.

I am concerned about his rulings in other cases pitting the Government against individuals, in the area of the environment, workers' rights, and racial discrimination.

In Public Interest Research Group of New Jersey v. Magnesium Elektron, he, Judge Alito, established high barriers to prevent individuals from being able to sue polluters for violations of the Clean Water Act. The U.S. Supreme Court later rejected this reasoning by a vote of 7 to 2.

In Chittister v. Department of Community and Economic Development, he ruled that State employees could not sue for damages to enforce their rights under the Federal Family and Medical Leave Act. The Supreme Court later reversed this ruling by a vote of 6 to 3. I might say that both of those acts under consideration by the Court I had the privilege of voting for when I was a Member of the House of Representatives.

And then in Riley v. Taylor, he ruled there was no basis for appeal in a death penalty case in which prosecutors had used their preemptory challenges to exclude Black jurors from the jury pool. The full Third Circuit later heard the case and overturned Judge Alito's ruling.

These cases highlight the broader concerns I have with Judge Alito's record.

During my years in the Senate, I have voted for almost all of President Bush's judicial nominees. All told, I have voted for 216 of the President's 226 judicial picks, including Chief Justice John Roberts. That is 96 percent.

I greeted Judge Alito's nomination with an open mind. But his many legal writings, his judicial opinions and evasive answers, both at his hearing and in my private meeting with him, convinced me that he would tilt the scales of justice ever so slightly against the average Joe. I do not want that outcome.

And because he is not the voice I believe this Nation needs to replace the retiring Justice Sandra Day O'Connor, who fiercely defended the rights and liberties of all Americans—because of this—I am going to vote no on his confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, before I comment on the nomination, I would like to recognize and thank several people who have been very helpful in preparing my comments: Kara Stein, Justin Florence, and Sharon Rapport.

Mr. President, I also ask unanimous consent to have printed in the RECORD a series of letters from national organizations with respect to issues of church and state separation and the nomination of Judge Alito.

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

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE,
Washington, DC, January 10, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Hart Office Building, Washington, DC.

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

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: Americans United for Separation of Church and State urges you to oppose the confirmation of Judge Samuel A. Alito, Jr. to be Associate Justice of the Supreme Court of the United States. Americans United for Separation of Church and State represents more than 75,000 individual members and 9,500 clergy nationwide, as well as cooperating houses of worship and other religious bodies committed to the preservation of religious liberty. We oppose the confirmation of Judge Alito to the Supreme Court because his record demonstrates that he would fundamentally alter First Amendment law and immediately put at risk many of the crucial protections for religious minorities that the Supreme Court has recognized and consistently enforced over the past sixty years.

Legal scholars have understood the First Amendment's religion clauses as striking a balance between the religious and political rights of individuals and groups within our society. There is a necessary tension between the Free Exercise Clause and the Establishment Clause, which serves to balance the sometimes competing interests of individuals' freedom of conscience against the requirement that the state be neutral with respect to religious viewpoints. Justice O'Connor has been successful in ensuring that public expression did not turn into government favoritism or state coercion of religious beliefs.

During his fifteen year tenure on the United States Court of Appeals for the Third Circuit, however, Judge Alito has shown himself to have a view of the First Amendment, particularly of the Establishment Clause, that differs dramatically from both Justice O'Connor's judicial philosophy and the settled understanding of fundamental Establishment Clause principles that has guided the Supreme Court's decisions for at least six decades. Indeed, early on, Judge Alito acknowledged his disagreement with the Supreme Court on its Establishment Clause jurisprudence. When applying for a position in the Reagan Administration Department of Justice, Judge Alito declared that his ''deep interest in constitutional law [was] motivated in large part by disagreement with the Warren Court decisions, particularly in areas [such as] the Establishment Clause. . . .'' As evidenced by his longstanding appeals court record, we remain concerned that such a motivation taints his view today.

There is much at stake for the future of religious liberty as a result of Justice O'Connor's retirement and Judge Alito's nomination to take her place on the Supreme Court. As Justice O'Connor has recognized, it is vital that our longstanding Establishment Clause protections remain in place:

''At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish. . . Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?'' (McCreary County, Kentucky v. ACLU of Kentucky, 125 S. Ct. 2722, 2746 (O'Connor, J., concurring)).

In the Establishment Clause area, replacing Justice O'Connor with Judge Alito likely would have a profound effect on the religious freedoms that our dual constitutional commitments to free exercise and separation of church and state have long ensured. Both the straightforward holdings and the underlying tenor of Judge Alito's decisions in Establishment Clause cases contrast sharply with Justice O'Connor's views. Throughout her career on the Court, Justice O'Connor has been keenly attuned to the plight of religious minorities in society as a whole, and most especially in the public schools. But Judge Alito's focus has been elsewhere: on religious majorities' ability to express their views through governmental instrumentalities, at government owned facilities, and in government-organized enterprises like the public schools. Judge Alito has given broad license to religious majorities to use the public schools and other official settings to broadcast their religious messages without regard for the competing rights and interests of religious minorities.

Because Judge Alito has not extended the same protections to all Americans that he has granted to politically powerful religious majorities, the Senate should decline to confirm his appointment as an associate justice of the U.S. Supreme Court.

If you have any questions on Americans United's position on this nomination, please contact Aaron D. Schuham, Legislative Director.

Sincerely,

REVEREND BARRY W. LYNN,
Executive Director.

B'NAI B'RITH INTERNATIONAL,
Washington, DC, January 6, 2006.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: On behalf of B'nai B'rith International and our more than 110,000 members and supporters, we write to ask that the confirmation hearings of Judge Samuel Alito deeply probe the nominee's judicial philosophy with regard to issues of great concern to our organization. Founded in 1843, B'nai B'rith is America's pioneer Jewish agency, with a wide range of domestic and international public policy priorities. Included in our agenda are several issues that we would like to ask the Judiciary Committee to raise with Judge Alito:

(1) Church-State Relations. We hope the Committee will ask Judge Alito which judicial test should be applied to determine whether a particular government action violates the First Amendment's Establishment Clause. It might be helpful to ask if the nominee feels it is permissible for public school officials to lead students in prayer or scriptural readings, or whether he believes that public funds and public property may be used for religious displays. We also would be interested to learn whether Judge Alito believes that a statute or ordinance requiring schools to give ''equal time'' to instruction in creationism or intelligent design would violate constitutional principles.

(2) Asylum. B'nai B'rith hopes the Committee will ask the nominee what standard should be applied to asylum claims by individuals facing persecution in their homelands. We would be interested to know what threshold of harm, or risk of harm, a person fleeing a repressive society must demonstrate before receiving asylum in the United States.

(3) Workplace Discrimination. B'nai B'rith would like to hear Judge Alito's views on the standard that should be applied to cases of age, disability, or sexual discrimination in the workplace. It would be useful to know the nominee's position on the burden of proof an older worker must meet to demonstrate that he or she has been passed over for promotion, denied accommodation, or unfairly rejected as a job applicant because of his or her age or disability.

Thank you for your attention and consideration. B'nai B'rith looks forward to remaining in communication with you about this and other matters of mutual interest in the months to come.

Respectfully,

JOEL S. KAPLAN,
President.

DANIEL S. MARIASCHIN,
Executive Vice President.

UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS,
Washington, DC, December 15, 2005.

UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS URGES OPPOSITION TO THE CONFIRMATION OF JUDGE SAMUEL ALITO JR. TO THE UNITED STATE SUPREME COURT

DEAR SENATOR: On behalf of the over 1,000 congregations that make up the Unitarian Universalist Association, I urge you to oppose the confirmation of Judge Samuel Alito Jr., to the United States Supreme Court. After a careful review of his decisions, and in particular dissents, we have concluded that Judge Alito does not show sufficient respect for civil liberties. His deciding vote on the court could undermine fundamental rights for decades.

The decision to take a position on a judicial nominee is not one the UUA takes up lightly—or frequently. Indeed, it was only in 2004 that our highest policy-making body approved language explicitly stating that the Association would oppose nominees whose records demonstrated insensitivity to civil liberties. We did not take a position on the confirmation of either Judge John Roberts or Harriet Myers.

The nomination of Judge Samuel Alito Jr. is significantly different, in that he has an extensive judicial record—more than 15 years on the 3rd Circuit Court of Appeals—that clearly reveals his judicial philosophy on a wide range of issues. After extensive research, Unitarian Universalist Association staff agreed that Judge Alito's rulings demonstrate a pattern of views that were outside the mainstream and hostile to established precedent favoring civil liberties. In case after case, Judge Alito found against the rights of individuals in relation to government or corporations. In at least six cases, the Supreme Court voted to overturn decisions of the Third Circuit or Alito's dissent in Third Circuit cases. Several notable cases and patterns are mentioned below.

Police Power: In the case of Doe v. Groody, Judge Alito dissented from a Third Circuit ruling that police officers had violated clearly established constitutional rights. Police had strip-searched a mother and her ten-year-old daughter while executing a search warrant authorizing only the search of her husband and their home. Then-Third Circuit Judge Michael Chertoff, now Secretary of Homeland Security, held that the unauthorized search violated ''clearly established'' rights. Alito disagreed, arguing that even if the warrant did not authorize the search, an officer still could have read the warrant as allowing it.

Religious Liberty: In the case of ACLU-NJ v. Schundler, Judge Alito held that religious symbols displayed on government property during the holiday season (in this case a crèche and menorah) were not unconstitutional when ''secular'' decorations such as Frosty the Snowman and Santa Claus were subsequently added to the display. While Justice O'Connor has voted to allow secular holiday displays, she has rejected efforts for religious symbols, including the Ten Commandments, to stand alone in public display.

In ACLU of New Jersey v. BlackHorse Pike Regional Board of Education, Judge Alito joined a dissent from the Third Circuit's ruling which struck down a public school board policy allowing high school seniors to vote on whether to include student-led prayer at their school-sponsored graduation ceremonies. In a subsequent case (Santa Fe Independent School District v. Doe), the Supreme Court, with Justice O'Connor in the majority, struck down a public school board policy allowing students to vote on whether to include student-led prayer at high school football games.

Limiting Access to the Courts: Among the most troubling pattern is Judge Alito's consistent finding that plaintiffs in discrimination cases did not have enough evidence to bring their cases to trial. By denying even the opportunity for judicial remedies, Judge Alito's philosophy undermines one of the most fundamental checks and balances in our system of government. For example:

Judge Alito has strongly disagreed with Third Circuit rulings protecting the civil rights of African Americans. In Bray v. Marriot Hotels, Alito disputed a ruling by Theodore McKee—the Circuit's only African American judge—allowing a race discrimination case to go to trial. McKee said that Alito's position would ''immunize an employer from the reach of Title VII if the employer's belief that it had selected the 'best' candidate, was the result of conscious racial bias.''

Judge Alito has narrowly construed statutes in gender discrimination cases. In Sheridan v. E.I. DuPont de Nemours and Co., Alito was the only judge to dissent from a ruling clarifying the nature of evidence permitting a jury to find an employer engaged in discrimination. Alito's position would have denied the plaintiff the opportunity to go to trial despite significant evidence of discrimination.

Judge Alito's dissents would have made it harder for victims of discrimination based on disability to prove their cases. In Nathanson v. Medical College of Pennsylvania, the majority lamented that under Alito's restrictive standard for proving discrimination based on disability under the Rehabilitation Act of 1973, ''few if any Rehabilitation Act cases would survive summary judgment.''

Reproductive Freedom: Dissenting in Planned Parenthood v. Casey, Judge Alito wrote that the right to reproductive freedom does not prevent states from requiring women to notify their spouses, except in limited circumstances, before getting an abortion. Justice O'Connor cast the deciding vote rejecting Judge Alito's position. Joined by Justices Kennedy and Souter, O'Connor held that the provision Alito supported harkened back to the days when ''a woman had no legal existence separate from her husband'' and created an undue burden on a woman's ability to obtain an abortion.

WE ARE NOT ALONE

When the Unitarian Universalist Association makes a decision to adopt a particular stance, we generally find ourselves in the company of other religious organizations with similar views. This holds true for our opposition to the confirmation of Judge Alito.

In late November, the biennial convention of the Union for Reform Judaism—the largest branch of Judaism in North America—voted overwhelmingly to oppose Judge Alito's confirmation, saying that it ''would threaten protection of the most fundamental rights'' that the Reform Movement supports. ''On choice, women's rights, civil rights and the scope of federal power,'' Alito would ''shift the ideological balance of the Supreme Court on matters of core concern to the Reform Movement,'' according to the resolution adopted by the more than 2,000 voting delegates from more than 500 congregations in all 50 states.

Both our denominations reviewed Judge Alito's rulings and found that his record did not support our stated values. The Unitarian Universalist Association of Congregations criteria and supporting materials are available at http://www.uua.org/. Materials from the Union for Reform Judaism can be found at http://urj.org.

Liberty is at the core of our Unitarian Universalist faith. Civil liberties are at the heart of our American experiment in democracy. Those civil liberties guaranteed by the Bill of Rights are as fundamental to our practice of democracy as freedom of conscience is to our religion. We believe that Judge Alito's philosophy does not sufficiently respect these fundamental rights, and we urge you to oppose his confirmation.

In Faith,

ROBERT C. KEITHAN,
Director.

WOMEN OF REFORM JUDAISM,
New York, NY, January 9, 2006.

Hon. PATRICK J. LEAHY,
Ranking Member, Senate Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Recognizing the profound significance of the Judiciary Committee hearings on the nomination of Judge Samuel Alito, Jr. to the United States Supreme Court for the future of jurisprudence in the United States, Women of Reform Judaism, comprised of 75,000 members in 550 affiliates in North America urges you to oppose his confirmation.

Women of Reform Judaism rarely opposes judicial nominations. Its resolution ''Judicial and Executive Branch Nominations'' adopted in 2004, however, emphasizes the need for balance of legal and social perspectives on the federal bench. This resolution also enables Women of Reform Judaism to oppose judicial candidates whose record demonstrates opposition to the core values, rights and principles supported by our organization.

In his years in the Reagan Administration and on the Third Circuit Court of Appeals, Judge Alito has been a strong and consistent voice for restricting women's rights, extending police powers and destroying the wall separating church and state in schools and in community religious displays. Judge Alito has also taken anti-affirmative action positions and has supported stringent barriers in discrimination cases. Judge Alito's vote could be a crucial one on the court in all these areas and more, replacing the balance provided by Justice Sandra Day O'Connor with a marked shift that would endanger the civil liberties and civil rights of the people of the United States.

Committed to the precepts of our tradition and adhering to the words of Deuteronomy, which tell us to pursue justice (Deuteronomy 16:20), we look to the Supreme Court to protect the civil liberties and civil rights of all Americans. Based on his record, we are concerned that Judge Alito will be unable to put aside his private views to dispense equal justice for all and oppose his confirmation.

Respectfully,

SHELLEY LINDAUER,
ROSANNE M. SOLFON.

RELIGIOUS ACTION CENTER
OF REFORM JUDAISM,
Washington, DC, January 11, 2006.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. PATRICK J. LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS SPECTER AND LEAHY: As you consider the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States, we write on behalf of the Union for Reform Judaism, encompassing 1.5 million Reform Jews in 900 congregations across' North America, to express our opposition to Judge Alito's nomination.

Our decision to oppose Judge Alito's nomination was not taken lightly. During the debate on the nomination at our recent Biennial General Assembly Reform Jews old enough to remember the significant role the Supreme Court played in extending basic human and civil rights to all Americans cautioned the delegates about the danger of a Court whose members have records in opposition to defending those rights. Our Movement's youth spoke of cherished constitutional rights that, with but one Supreme Court justice's vote changing the balance of the court, could be undone, altering their lives and those of the generations to follow. The older members did not want to leave this legacy, and the youth did not want to inherit it.

In 2002, the Union for Reform Judaism adopted a resolution that established our criteria for considering nominees to the federal courts. Under these criteria, which are not limited to issues of character or professional competence, we will oppose a nominee in those rare cases in which after consideration of what the nominee has said and written, and his or her record, a compelling case can be made that the appointment would threaten protection of the most fundamental rights which our Movement supports. Based on these criteria, in November of 2005 we resolved to oppose the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States believing that:

Judge Alito's elevation to the Supreme Court would threaten protection of the most fundamental rights which our Movement supports including, but not limited to, reproductive freedom, the separation between church and state, protection of civil rights and civil liberties, and protection of the environment;

On choice, women's rights, civil rights, and the scope of federal power (particularly as it relates to civil rights and environmental protection), Judge Alito's nomination has sparked a national debate on one or more issues of core concern to the Reform Movement so that the outcome of the nomination is likely to be perceived as a referendum on that issue and will have significant implications beyond the individual nomination;

Many of his rulings have been contrary to our core values and differed from the views of Justice Sandra Day O'Connor (who was so often the moderate ''swing vote'' on a closely divided Supreme Court), and, consequently, Judge Alito's elevation would shift the ideological balance of the Supreme Court on matters of paramount concern to the Reform Movement; and

Judge Alito's elevation to the Supreme Court would likely contribute significantly to reshaping American jurisprudence in a direction that would jeopardize our core values.

Judge Alito's government service, and especially his fifteen-year record on the 3rd Circuit Court of Appeals, provide clear insight into his judicial philosophy and understanding of the Constitution. His rulings from the bench in many areas of great import to the Reform Movement, and the views he expressed while working at the Department of Justice, demonstrate to us that he should not be confirmed.

As a religious minority, our community has historically been committed to maintaining a strong wall of separation between church and state. We see nothing in Judge Alito's background to suggest he shares our commitment. In fact, in his 1985 job application to the Reagan Justice Department, Judge Alito wrote that one of the very reasons he became interested in constitutional law was his ''disagreement'' with the Warren Court's decisions regarding the Establishment Clause. His opinions as a sitting judge have been consistent with this claim. In ACLU–NJ v. Schundler, Judge Alito said it was constitutional to have a holiday display consisting of a crèche (a representation of the infant Jesus in the manger), a menorah, a Christmas tree, and other ''secular holiday'' displays in front of the entrance to the main city government building. Again evidencing his lack of commitment to Establishment Clause values, in ACLU of New Jersey v. Black Horse Pike Regional Board of Education, Judge Alito's dissenting opinion argued that it was constitutional for a public school district to allow prayer at graduation ceremonies. Later, in a similar case involving school prayer the Supreme Court disagreed. The statements in Judge Alito's 1985 job application and the aforementioned cases illustrate his indifference (at best) to the constitutional protections separating church and state; safeguards that have been the linchpin protesting religious liberty for all Americans.

A longtime advocate for women's rights and reproductive choice, the Reform Movement is also deeply concerned by Judge Alito's views on reproductive rights. During his time as an attorney in the Solicitor General's office, Judge Alito helped author the Reagan Administration's amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists which argued for overturning the Roe v. Wade decision. Judge Alito also authored a 17-page memo to the Solicitor General on how to ''advance the goals of bringing about the eventual overturning of Roe v. Wade . . .'' Further, in his 1985 job application to the Reagan Justice Department he wrote of his work in the Solicitor General's office saying, ''it has been a source of personal satisfaction to me . . . to help advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions to recent cases in which the government has argued in the Supreme Court that . . . the Constitution does not protect a right to an abortion.'' This dedication to the ''advancement'' of reversing Roe is also clearly illustrated by his dissenting opinion in Casey v. Planned Parenthood (1991). Judge Alito would have upheld a provision of Pennsylvania's restrictive anti-abortion law requiring a woman to notify her husband before obtaining an abortion. His colleagues on the Third Circuit disagreed and the Supreme Court overturned the Pennsylvania provision (with Justice O'Connor casting the deciding vote). The Court's majority opinion found that the provision Judge Alito would have upheld reverted back to the days when ''a woman had no legal existence separate from her husband.''

So often our nation's courts ensure civil rights and civil liberties that are otherwise unprotected by flawed systems and discriminatory actions. In order to continue administering justice and equality for all, individuals with grievances must have access to the courtroom. Here, too, the record suggests that Judge Alito does not share our commitment to this fundamental principle. In split decisions on the merits of claims alleging violations of the civil rights of racial minorities, women, seniors, and people with disabilities, Judge Alito has consistently ruled with the defendants. In 16 of 24 such cases, Judge Alito has voted to deny litigants the right to even bring their suit before the court. For example, in Bray v. Marriott Hotels, involving claims of race discrimination, the Court majority sharply criticized Judge Alito's dissent, stating that his ''position would immunize an employer from the reach of Title VII'' in certain circumstances. In Public Interest Research Group v. Magnesium Elektron, another case involving access to the courtroom, Judge Alito again voted to make it harder for citizens to establish standing to sue, this time concerning toxic emissions that violate the Clean Water Act.

Judges, especially those selected to serve on the highest court in our land, must be committed to upholding our foundational principles of liberty and equality. Judge Alito's record leaves us with serious doubts as to his ability to safeguard these rights that we as a Movement, and a nation, hold so dear. Here, with the stakes so high—a lifetime appointment to the nation's highest court, replacing a pivotal Justice who was often the ''swing vote'' in key areas—we cannot afford such doubts.

We, therefore, urge you to oppose the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States, and we

stand ready to discuss our concerns with you or your staff in greater detail.

Respectfully,

RABBI DAVID SAPERSTEIN,
Director, Religious Action Center of Reform Judaism.
JANE WISHNER,
Chair, Commission on Social Action of Reform Judaism.
NATIONAL COUNCIL OF JEWISH WOMEN,
November 29, 2005.

Hon. ARLEN SPECTER,
Chairman, Senate Judiciary Committee, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER: I am writing to you on behalf of 90,000 members and supporters of the National Council of Jewish Women (NCJW) to express our strong opposition to the nomination of Judge Samuel A. Alito, Jr. to fill the seat of Justice Sandra Day O'Connor on the U.S. Supreme Court. We have decided to oppose Judge Alito for many reasons, most notably because of his record concerning the right to privacy, his views on civil rights and women's equality, and his support for weakening the wall of separation between religion and state. In light of this record, NCJW believes that Judge Alito should not be confirmed for a lifetime position on the Supreme Court.

When Justice Sandra Day O'Connor announced her intention to retire from the Supreme Court, NCJW called upon President Bush to seek a mainstream consensus nominee that would unite and not divide the nation. Instead, he has selected a nominee who is deeply ideological with a demonstrated commitment to pulling the court to the far right.

Judge Alito is clearly not a nominee in the tradition of Justice O'Connor, who sought to balance competing interests and adopted a pragmatic approach to the law. Rather, over the course of his career, Judge Alito has ruled to severely restrict a woman's constitutional right to abortion and against civil rights protections for both women and minorities. He has shown a cramped view of the power of Congress to legislate, ruling, for example, that Congress lacked authority to ban fully automatic machine guns and that Congress overstepped its bounds in passing the Family and Medical Leave Act.

With the withdrawal of the nomination of Harriet Miers to the Supreme Court, it became clear that the extreme right wing was determined to see a justice confirmed who would implement their agenda from the bench. Judging from his record, Samuel Alito appears to be just such a nominee. We are extremely disappointed that the President chose this path and gave in to those forces demanding a nominee dedicated to rolling back fundamental constitutional rights, rather than protecting them. We urge the Senate to reject Judge Alito's nomination.

We applaud your intention to hold hearings that will thoroughly explore Judge Alito's views and judicial philosophy. While we hope that he will be candid in his answers, the hearing is only part of the record that senators must take into consideration as they determine whether or not a nominee is fit to be confirmed to be an Associate Justice of the Supreme Court. With the stakes so high, it is all the more critical that the Senate take into account Alito's entire record—not just his brief appearance before the Judiciary Committee. President Bush must immediately turn over all of the records requested by the senators. And Judge Alito must now be forthcoming regarding his judicial philosophy and views on settled legal questions.

NCJW believes that the most basic qualification for a lifetime seat on the federal bench is a commitment to fundamental rights and freedoms. What we know of Judge Alito's record raises sufficient doubt that he meets that essential qualification and therefore we urge the Committee to reject his confirmation.

Sincerely,

PHYLLIS SNYDER,
NCJW President.

Mr. REED. Mr. President, nearly two centuries ago, Alexis de Tocqueville observed that ''there is hardly a political question in the United States which does not sooner or later turn into a judicial one.''

As was the nomination of John Roberts to replace Chief Justice Rehnquist, the nomination of Samuel Alito to replace Associate Justice Sandra Day O'Connor, upon her retirement, is an extremely important moment for our Nation.

The Constitution makes the Senate an active partner, along with the President, in the confirmation of a Supreme Court nominee. Article II, section 2, clause 2 of the Constitution states that nominees to the Supreme Court shall only be confirmed ''by and with the Advice and Consent of the Senate.'' The Senate's role in the confirmation process places an important democratic check on America's judiciary.

As a result, this body's consent is both a constitutional requirement and a democratic obligation. It is in upholding our constitutional duty as Senators to give the President advice and consent on his nominations to Federal courts that I believe we have our greatest opportunity and responsibility to support and defend the Constitution of the United States.

In our consideration of the nomination of Chief Justice Roberts last fall, I stated my test for a nominee to the Supreme Court. It is a simple test, one drawn from the text, the history, and the principles of the Constitution. As I said then, a nominee's intellectual gifts, experience, judgment, maturity, and temperament are all important. But these alone are not enough.

In addition, a nominee to the Supreme Court must live up to the spirit of the Constitution. A nominee must not only commit to enforcing the laws, but to doing justice. A nominee must give life and meaning to the great principles of the Constitution: equality before the law, due process, freedom of conscience, individual responsibility, and the expansion of opportunity.

It is these principles that ensure full and equal participation in the civic and social life of America for all Americans. A nominee to the Supreme Court must make these constitutional principles resonate in a rapidly changing world.

In my view, Judge Alito has not met this test. In his personal writings from his time in the Reagan Department of Justice, he has outlined a view of the Constitution that is narrow, restrictive, and backward-looking on issue after issue. He has pursued this vision through both the clients he has chosen to represent and the causes he has chosen to advocate.

In addition, his opinions on the Third Circuit Court of Appeals have shown the impact of his personal philosophy on his role as a judge. Too many times he has read constitutional clauses and statutes in a narrow and cramped way to protect the Government or big corporations instead of ordinary Americans. In case after case, and in his testimony before the Judiciary Committee, Judge Alito has failed to show a commitment to protecting the spirit of the Constitution.

Indeed, during his hearings, he had a chance to answer questions about his prior writings and rulings in a clear manner. Instead, Judge Alito opted to speak in broad platitudes and failed to answer key questions in a manner that would qualify or put in adequate context his prior writings and rulings.

Part of the genius of the Constitution that our Founding Fathers drafted is that it fulfills two functions at once. It is a blueprint for our Nation to govern itself through a system of checks and balances. It is also a charter of the rights and liberties of the American people. I am deeply concerned about Judge Alito's views in both of these areas. Judge Alito's record on the Third Circuit shows he has joined or agrees with a movement to undermine the ability of Congress to protect the American people through restrictive interpretations of the Commerce Clause and the 14th amendment. The Supreme Court, in recent years, has struck down more acts of Congress than ever before. By narrow 5-to-4 margins, in cases such as United States v. Lopez and United States v. Morrison, the Court has drifted from longstanding Supreme Court precedents to invalidate portions of the Gun-Free School Zones and the Violence Against Women Acts.

Judge Alito would go even further. In his dissent in the case of United States v. Rybar, he advocated striking down Congress's ban on the transfer and possession of machineguns. Alito's opinion diverged not just from the majority in his own Third Circuit but also from five other courts of appeals that had already found the law to be a constitutional expression of Congress's authority.

Yet Judge Alito argued that he was not convinced by Congress's findings on the impact of machineguns on interstate commerce. He substituted his own policy preferences in a way that the Third Circuit majority found was, in their words, ''counter to the deference that the judiciary owes to its two coordinate branches of government.'' Every other circuit has since disagreed with Judge Alito's views on this case, and the Supreme Court has concurred in these circuit court decisions.

Judge Alito's divergence from mainstream constitutional views on this issue is particularly disturbing because it echoes personal views on congressional authority he has expressed in other contexts. For example, while

working in the Reagan administration, he argued in a memo that the Truth in Mileage Act of 1986 ''violates the principles of freedom'' and should be vetoed by the President. This Federal law requires a seller to disclose the vehicle's mileage on the title when ownership is transferred. Congress enacted this law to prohibit odometer tampering and to protect consumers from mileage fraud. Samuel Alito argued that it was the States, and ''not the federal government,'' that should protect American citizens.

Not only does Judge Alito have an unusually narrow view of the Commerce Clause, it also appears that he would restrict Congress's ability to pass laws under section 5 of the 14th amendment. This clause states that ''Congress shall have power to enforce, by appropriate legislation, the provisions of this article.'' Those provisions include some of our most fundamental constitutional principles, including due process and the equal protection of the law.

Congress has acted under the authority of this clause to protect the rights of women and minorities, to ensure religious freedom, and to guarantee civil rights for the elderly and the disabled. But based upon his writings and rulings, Judge Alito would severely limit the meaning of this clause. In Chissiter v. Department of Community and Economic Development, he found the sick leave provisions of the Family and Medical Leave Act to be unconstitutional because he believed that 12 weeks of leave was ''out of proportion'' to the gender discrimination that Congress wished to remedy. Here again, Judge Alito relied on his own policy preferences to strike down the measured judgment of Congress.

In the case of Nevada Department of Human Resources v. Hibbs, the Supreme Court explicitly upheld the family leave provisions of the act by a 6-to-3 vote. Where Alito had questioned the judgments of Congress, the Hibbs majority, including Justices Rehnquist and O'Connor, found that, in their words:

> The [Family Medical Leave Act] is narrowly targeted at the fault line between work and family—precisely where sex-based overgeneralization has been and remains strongest.

The possible consequences of this tendency by Judge Alito to second-guess the policy judgments of Congress and to replace them with his own policy preferences are profound. They go beyond any single act of Congress or any single area of policy. As just one example, this year the Supreme Court will consider a pair of cases on the constitutionality of the Clean Water Act. These cases challenge whether Congress can protect wetlands and tributaries through its commerce clause power. If the Supreme Court, with a recently confirmed Judge Alito, adopts a more restrictive view of the commerce clause and the 14th amendment, it could limit our ability to protect our country's wetlands, let alone our national interests in area after area.

At the same time that Judge Alito has advocated for a narrower vision of Congress's constitutional authority, he has argued that the powers of the executive branch should be nearly unlimited. In a 2001 speech to the Federalist Society, Judge Alito stated that since the 1980s, he had believed in the ''theory of the unitary executive.'' In the Judiciary Committee hearings, Judge Alito denied any connection between the unitary executive theory and the scope of Executive power. But scholars and judges have drawn from this theory to advance expansive views of the executive.

For example, in Hamdi v. Rumsfeld, the Supreme Court reviewed the President's claim that he could indefinitely detain an American citizen without bringing charges or giving him a day in court to challenge the detention. Eight of the nine Supreme Court Justices rejected the President's claim, and Justice O'Connor wrote in her plurality opinion that ''a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.''

In a lone dissenting opinion, Justice Thomas deployed the unitary executive theory to support broad Presidential powers. He wrote that congressional or judicial interference in foreign affairs or national security ''destroys the purpose of vesting the primary responsibility in a unitary Executive.''

In view of the long scope of American constitutional history, the unitary executive theory is a relatively recent invention. It was a creation of the Reagan Justice Department in the 1980s. And according to his speeches, Judge Alito has subscribed to it since working there. While he worked in the Reagan administration, Judge Alito proposed a particular idea to, in his words, ''increase the power of the Executive to shape the law.''

In a 1986 memorandum, Alito argued that the President should issue statements when signing a bill because the President's ''understanding of the bill should be just as important as that of Congress.'' The administration has followed Judge Alito's 1986 advice. For example, just recently, the President issued a signing statement regarding the McCain amendment which prohibits torture. In that statement, the President wrote that he would construe the McCain amendment ''in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch.''

The practice Judge Alito first advocated in the mid-1980s arguably helps the executive to thwart the will of Congress when it passes a law. While the current Supreme Court has not given weight to these signing statements interpreting the meanings of acts of Congress, I worry how a possible Justice Alito would view these Presidential statements should they come before him on the Supreme Court.

I think Judge Alito's view of the unitary executive is wrong and violates the text and the spirit of the Constitution. In Federalist Paper No. 47, James Madison explained how the Constitution deliberately divided power among the branches of Government. Rather than create a unitary executive, the Framers created a careful and thoughtful system of checks and balances between all three branches of Government. They were very weary of concentrating too much power in any one branch of Government. As the McCain amendment demonstrates, Congress plays a vital role in placing limitations on Executive power, but so do and must the courts.

In the near future, the Supreme Court will hear further cases in this area. Perhaps the President's claimed authority to conduct warrantless surveillance of Americans in violation of congressional statutes will come before the Court. In this time of crisis in particular, we need to have Supreme Court Justices committed to the balance and separation of powers between the three branches of Government. Despite Judge Alito's statements that no one is above or beneath the law, Judge Alito's record and views on the unitary executive give me pause. If Judge Alito believes that under the Constitution the President can determine what laws apply to him and how they apply, then he is essentially giving away the power of the Supreme Court as well as the power of Congress.

Ever since Marbury v. Madison, it has been ''emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.'' That settled doctrine, Marbury v. Madison, clashes with this notion of a unitary executive who can declare the law for himself and thus make himself exempt from the law.

Judge Alito's support for a powerful and unitary executive is exacerbated by his 15-year circuit court record of repeatedly deferring to government officials when American's civil rights and liberties lie in the balance. As I mentioned earlier, this is the other function the Founding Fathers created for the Constitution. The Framers included the fourth amendment in the Bill of Rights to protect Americans against unreasonable government searches and seizures. It was a response to the abuses of the British in the years leading up to the American Revolution. Yet time and again, Judge Alito has deferred to police, prosecutors, and other governmental agents instead of ordinary Americans.

Judge Alito wrote in his now famous 1985 job application essay that he disagreed with the Warren Court's criminal procedures decisions. These include famous cases in the development of American liberties—for example, Miranda v. Arizona, which sets forth

rights for the accused; or Katz v. the United States, which prohibited warrantless electronic surveillance; or Gideon v. Wainwright, which guaranteed every American the right to a lawyer. There is little doubt that Judge Alito's personal views in this area have carried over to his time on the bench.

As Professor Goodwin Liu testified before the Judiciary Committee, in fourth amendment cases, Judge Alito has not one time taken a position more protective of individual rights than his colleagues on the Third Circuit. These include cases where there were defective warrants, where agents conducted warrantless electronic surveillance, or where police used excessive force against unarmed individuals. Indeed, the Washington Post found that Judge Alito had sided with the government in these cases over 90 percent of the time, whereas other appeals court justices nationwide only sided with the government 54 percent of the time. In the face of government officials, the dignity, autonomy, and rights of individual Americans have carried less weight for Judge Alito.

As just one example, his dissent in the 2004 case of Doe v. Groody would have upheld the strip search of a mother and her 10-year-old daughter even though they were not named in the search warrant for the house. Judge Michael Chertoff, who wrote the majority opinion in the case and who is now the Secretary of Homeland Security, said that Judge Alito's opinion of the case, if adopted, could ''transform the judicial officer into little more than the cliche 'rubber stamp.'''

Judge Chertoff's quote is an apt summation of my concern over the nomination of Judge Alito. American courts cannot become a rubberstamp blotting out the constitutional rights of our citizens. But from women's rights to workers' rights and reproductive freedom to religious freedom, Judge Alito's writings and rulings reveal insensitivity to the judiciary's role in protecting the charter of freedoms enshrined in our Constitution.

The first amendment protects Americans' religious liberties through two clauses that work in tandem: the free exercise clause and the establishment clause. I worry that if confirmed, Judge Alito would upset the careful balance the Founders sought in constructing the first amendment. In fact, Judge Alito seems to interpret the establishment clause as a rarely applicable part of the first amendment. He applies the free exercise clause on a much broader basis, often interpreting establishment clause cases as free exercise cases. He seems to see a plaintiff's complaint of establishment clause violations as attempts to block the free exercise of religion.

Judge Alito's views appear to have been developed well over 20 years ago on these issues. In his 1985 job application essay, Judge Alito wrote that he disagreed with the Warren Court's establishment clause decisions. These rulings prohibited government-sponsored prayer in public schools, protected students who are members of minority religious faiths, and prevented State interference with and entanglement in America's religious liberty.

Judge Alito's record on the bench supports a troubling view of the establishment clause. For example, he joined a dissenting opinion in the case of ACLU of New Jersey v. Black Horse Pike Regional Board of Education, supporting student-led prayer at official, school-sponsored high school graduation ceremonies. The Supreme Court, in an opinion joined by Justice O'Connor, has since explicitly rejected this approach in Santa Fe Independent School District v. Doe and as recently as last year has sought a careful balance in establishment clause cases such as ACLU v. McCreary County.

In summary, in ACLU of New Jersey v. Black Horse Pike Regional Board of Education, the Third Circuit majority determined that a student-led prayer at a graduation ceremony violated the establishment clause.

Judge Alito joined the dissent in arguing that the establishment clause does not prohibit a high school graduation prayer. The school board involved had decided to allow graduating students to vote whether they wished to have a prayer, a moment of silence, or neither at their graduation ceremony. The students voted for prayer. Citing Wallace v. Jaffree and Board of Education v. Barnette, the Third Circuit majority said:

> An impermissible practice cannot be transformed into a constitutionally acceptable one by putting a democratic process to an improper use.

Judge Alito joined the dissenting opinion written by Judge Mansmann, stating that ''the establishment clause should not be read to prohibit activity which the free exercise clause protects.'' The dissent argued that the Supreme Court in Lee had not decided any broad constitutional precedents against prayer at graduation ceremonies, stating the facts in the case were wholly different, as the graduates, not the principal, maintained control over the ceremony, thereby avoiding the appearance of a state actor. The dissenters wrote:

> The establishment clause should not be used for imposing content-based restrictions on religious speech in a public forum under the appropriate scrutiny analysis.

The dissent further criticized the Lemon test established in Lemon v. Kurtzman, pointing to a ''division'' existing on the Supreme Court ''as to whether the establishment clause precludes the government from conveying a message that endorses or encourages religion in a generic sense, or especially acknowledges or accommodates the broad Judeo-Christian heritage of our civil and social order.'' It also concluded:

> [A]n absolute prohibition on ceremonial prayer at graduation would . . . violate the Free Exercise Clause by unduly inhibiting the practice of religion, and would also implicate the free speech guarantees of the First Amendment.

In another case, Child Evangelism Fellowship of New Jersey v. Stafford Township School District, Judge Alito wrote an opinion requiring a school to distribute a proselytizing religious group's literature to elementary school students under the Equal Access Act. Judge Alito dismissed the school district's concerns that students would perceive distribution of the religious fliers as endorsement of religion. Again, Judge Alito's view in this area of the law differed from that of the Supreme Court. Justice O'Connor's opinion in Board of Education v. Mergens, for example, carefully distinguished between requiring access to school facilities—which was acceptable under the Equal Access Act—and requiring the active involvement of school officials and teachers, which could have an inappropriately coercive effect.

Although I could discuss more cases, the basic point I want to make here is that I believe Judge Alito would upset the careful balance between the Free Exercise and Establishment Clauses of the First Amendment, allowing majority religious views to prevail over minority views, and leading to an inappropriate Government coercive effect on religious practice.

As Justice O'Connor states in McCreary:

> At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for the constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish . . . Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?

I believe Judge Alito would make that trade.

Consider another area. The Federal Courts play an important role in enforcing American workers' access to fair and safe working conditions, while protecting their right to organize, and providing a forum for remedying wrongful discrimination. Yet, as a judge, Alito has consistently tried to limit the reach of Congress' workplace statutes, and to make it more difficult for plaintiffs to bring legal claims. For example, in RNS Services v. Secretary of Labor, the Third Circuit majority found that the Mine Safety and Health Review Commission had jurisdiction over the work and safety conditions of employees at coal processing sites. But Judge Alito disagreed, siding with the employer by interpreting the statute and case law restrictively. One academic study has found that Judge Alito has sided with the employee or union in only 5 out of 35 labor opinions he has written. These are decisions that have real world effects on working people, as the recent mining accidents in West Virginia demonstrate all too clearly.

As far as a woman's right-to-choose is concerned, in his 1985 job application, Samuel Alito wrote that he was proud of his work in the Reagan administration advancing a ''legal position'' that he ''personally believe[d] very strongly.'' Namely, that ''the Constitution does not protect the right to an abortion.'' Let me make clear, he did not say that he thought abortion was wrong; he wrote that the Constitution did not protect a woman's right to choose. This is a view that he advanced as a lawyer and then a circuit judge, and that he did nothing to dispel in his Judiciary Committee hearings.

In his work for the Reagan Justice Department, Alito wrote a memo with a strategy for ''bringing about the eventual overruling of Roe v. Wade'' by chipping away gradually at privacy and reproductive rights. In the case of Planned Parenthood of Southeastern Pennsylvania v. Casey, Judge Alito used his dissent to argue for a constitutional interpretation that would do just that, chip away at the protections for the freedom to choose. The Supreme Court explicitly rejected Alito's opinion, with Justice O'Connor writing that the State ''may not give to a man the kind of dominion over his wife'' that Judge Alito would have accepted. Judge Alito's record in this area is long and clear, and I am disappointed that rather than openly answer the questions of Senators on the Judiciary Committee, he responded with obfuscating statements about the judicial process.

The Supreme Court has been a leader in safeguarding all kinds of civil rights, through momentous cases like *Brown* v. *Board of Education*, and through its application of historic laws of Congress like the Civil Rights Act of 1964. Victims of racial, gender, age, or disability discrimination can find remedies in the Federal Courts. But from my reading of his record, Judge Alito has repeatedly used procedural and evidentiary requirements to make it more difficult for plaintiffs to vindicate their civil rights claims. One study of discrimination cases heard by Judge Alito in which the panel was divided concluded that he sided against civil rights protections 85 percent of the time, more than any other judge on the Third Circuit.

For example, in the case of Bray v. Marriott Hotels, the Third Circuit said that an African-American woman denied a promotion in favor of a white woman, when the company had not followed its policy, should have a chance to present her case before a jury. Judge Alito disagreed, saying that this would ''allow disgruntled employees to impose the costs of trials on employers.'' As the majority in the case noted, under Judge Alito's view Title VII ''would be eviscerated.''

I know Judge Alito spoke in the hearings about his own family's history as immigrants to the United States. America's courts have played a crucial role in reviewing the immigration, deportation, and asylum decisions of the Federal Government and the Board of Immigration Appeals (BIA). As the noted conservative Judge Posner recently wrote, his appellate court reversed the Board of Immigration Appeals 40 percent of the time last year, mitigating the at-times harsh, unequal, and unfair application of our immigration laws. In the hearings, Judge Alito said he agreed that the way BIA cases are handled ''leaves an enormous amount to be desired.'' Yet immigrants who have appealed these decisions have found no place of refuge in Judge Alito's courtroom. According to one academic study, Judge Alito sided with the BIA in 7 out of 9 opinions he has written on asylum, and in 7 out of 8 other immigration opinions he has authored. I believe that the spirit of our laws and the history of our country require that immigrants to our shores are assured fair and full hearings.

In his application to the Reagan Justice Department in 1985, Samuel Alito wrote that his interest in constitutional law had been ''motivated in large part by disagreement with Warren Court decisions'' about voting rights. These landmark decisions, in cases like Baker v. Carr and Reynolds v. Sims, have enshrined the bedrock principle of ''one person, one vote'' into our Constitution. They have protected the right of all Americans to have an equal share in our democracy, regardless of the color of their skin or the location of their home.

While Judge Alito backed away from these strong statements in his confirmation hearings, his opinion in a voting rights case he heard on the Third Circuit calls that statement into question. In the case of Jenkins v. Manning, Judge Alito joined an opinion rejecting the African-American plaintiffs' challenge to the voting system for the local school board. The dissenting judge in the case wrote that Judge Alito's side had ''overlooked the broad sweep of the Voting Rights Act of 1965 and its 1982 amendments'' which that judge noted ''is widely considered to be the most successful piece of civil rights legislation ever enacted by Congress.'' The Supreme Court continues to regularly hear cases about the ability of Americans to participate fairly and equally in our democracy, and I believe a nominee to the Supreme Court should clearly and emphatically treasure and respect the Court's role in safeguarding voting rights, rather than minimizing it.

At the hearings before the Judiciary Committee, Judge Alito attempted to distance himself from his record and the constitutional views he has advocated throughout his career. An attorney must vigorously serve the interests of his client, but in the case of Judge Alito, he chose his clients—political offices in Republican Justice Departments—precisely because of the constitutional agenda it allowed him to advance. So, I do not accept Judge Alito's plea that we should not evaluate him based on the constitutional values he advanced through political positions.

I also have not been convinced by Judge Alito's vague rhetoric during the hearings about following the judicial process, or his begrudging acknowledgment that important Supreme Court cases were indeed ''precedents of the Court.'' While judges on the Federal circuit courts are circumscribed by Supreme Court precedent, there is no higher court to bind the Justices of the United States Supreme Court. Decisions of the Supreme Court are binding on all lower courts, so even if a circuit judge disagrees with well-established precedent about the rule of law, he or she must follow that law. But this is not true of the Supreme Court.

As Justice Frankfurter once wrote:

> It is because the Supreme Court wields the power that it wields that appointment to the Court is a matter of general public concern and not merely a question for the profession. In truth, the Supreme Court is the Constitution.

It goes without saying that the constitutional views of the Justices determine the rulings of the Supreme Court. In response to questioning during the hearings, Judge Alito pledged to put aside his personal views. But in his writings and speeches, including his 1985 job application, Judge Alito didn't just record his personal political views; he wrote down his views about what the Constitution means—about what rights it contains, and what limits it places on Government. To be clear, this is exactly what it means to serve on the Supreme Court and interpret the Constitution.

America's courtrooms are staffed with judges, not machines, because justice requires human judgments. This is particularly so on the Supreme Court. Of all the hundreds of thousands of cases filed in American Federal Courts each year, only about 80 reach the Supreme Court. These are the hardest of cases, cases that have divided the country's lower courts. These are cases where one constitutional clause may be in conflict with another; where one statute may influence the interpretation of another; and where one core national value may interfere with another. These cases often divide the Justices of the Court by close margins. Surely the Justices on both sides of a 5 to 4 case can claim to be following the judicial process and respecting the precedents of the Court. What divides their opinions is the set of constitutional values that they bring to the case. Judge Alito's testimony before the Judiciary Committee suggests a failure either to understand or to acknowledge the impact of his own constitutional views on the outcome. of cases that he hears.

Given his lengthy record and his extensive statements about what the Constitution means, the burden was on Judge Alito to convince the Senate that he would be a judicious and balanced member of the Supreme Court.

The questions he was asked by members of the Judiciary Committee gave him numerous opportunities to do so. Judge Alito did not meet this burden. He failed to inform this body of his views on important constitutional issues, he evaded fair and important questions instead of offering honest and insightful answers, and he in no way demonstrated that he would uphold not just the letter of the law, but also its spirit.

As a result, I cannot support his lifetime nomination to the highest court in America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I rise this evening to discuss my vote on the confirmation of Judge Samuel Alito, Jr., to the U.S. Supreme Court. After meeting with Judge Alito and studying his record and comparing his answers to my criteria for judicial nominees, I have decided to vote against confirming Judge Samuel Alito, Jr., as an Associate Justice of the U.S. Supreme Court.

The next Justice will have the power to change the Court, change the country, and change our rights for generations. Judge Alito has a very troubling record. In his hearing and in our private meeting he did not show that he will be an independent judge who will uphold the rights and liberties of all Americans. With our rights and freedoms on the line, I will not take a chance on Judge Alito because I have serious questions about his independence and his commitment to protecting our rights and our liberties.

As with past nominees, I have evaluated this nominee based on my longstanding criteria, which ask: Is the nominee qualified, ethical, and honest? Will the nominee be fair, evenhanded, and independent? And will the nominee uphold the rights and liberties of all Americans?

Personally, I got involved in politics because of another Supreme Court nomination, that of Clarence Thomas. At the time, I was frustrated that average Americans didn't have a voice in the process that affects them so much. I have worked to be the voice of working families in my State, and I have asked the questions they would ask. I am voting to protect their interests.

I recognize the significance of a seat on the U.S. Supreme Court. The Constitution directs Senators to provide advice and consent on all judicial nominees, and the people of my home State of Washington have trusted me to be their advocate to safeguard their rights as I vote on judicial nominees.

I take that responsibility very seriously. That is why I have reviewed Judge Alito's past writings, studied his answers to the Senate Judiciary Committee, and asked to meet with him in my office.

A lifetime appointment to the Supreme Court is a tremendous grant of unchecked power. If the Supreme Court rules incorrectly, there is no option for appeal. There is no backstop. Any seat on the Supreme Court can affect our rights for generations. But there are three factors involved in this particular nomination that make it even more significant. Those factors are the times, the seat, and the process.

First, I am well aware that we are living in historic times. Each day, it seems that the rights of the individuals and the power of government are being tested. We are at war overseas, we face threats from terrorism here at home, and the current administration is pushing the bounds of governmental power in remarkable ways.

The Bush administration has arrested U.S. citizens and held them without access to the courts. It has run secret prisons around the world. It has expressed views on torture that put our own troops at risk. As we recently learned, the administration has been spying on American citizens without prior approval from a court. These are grave issues which will likely come before the Supreme Court. How that Court rules will affect the rights of our citizens, the balance of power between the branches of our Government, and the balance of power between our citizens and Government.

So as I make my decision on this nominee, I am very mindful of the historic times we are living in and the serious questions this Supreme Court will address in the coming years.

Secondly, I am very mindful of the seat that is open on the Supreme Court and its significance. Justice Sandra Day O'Connor was a pioneer in the field of law, and her decisions will shape the lives of the American people for generations to come.

As I said when she announced her resignation, we live in a better America due to her 24 years of service on the Court. Justice O'Connor was often a swing vote on those critical decisions. Her successor could easily change the balance of power on the Court, which could dramatically shift the Court's ruling on so many issues. Because this is a swing seat that could tip the Court's balance of power, we need to make sure that the person we confirm is someone who will protect our rights and liberties.

Some have suggested that I should just go along and support the President's nominee. That is not the way I make decisions. I have criteria that I use to evaluate all judicial nominees, and Judge Alito is no different.

Third, I am also well aware of how Judge Alito came to be the President's nominee. The President, as we all remember, had nominated his counsel, Harriet Miers, to the High Court, but Ms. Miers was not acceptable to the rightwing of the President's party. I found it very interesting that before her nomination, Republicans were demanding an up-or-down vote on the Senate floor for anyone the President nominated. But when President Bush nominated Ms. Miers, suddenly we stopped hearing that urgent call for an up-or-down vote. In fact, Ms. Miers' nomination was killed by the President's own party, apparently because she did not meet the ideological test of the extreme right.

I recount this history tonight not to diminish Judge Alito but to point out that his nomination comes before the Senate in the context of an ideological battle that has been created by the rightwing. When the President nominated Judge Alito, the rightwing cheered, confident that he would vote their way. That reaction gives me pause as to whether this nominee can keep an open mind on the issues that come before him. If the rightwing is so confident that he is going to vote their way, how can all of us be confident that he will put our country's needs first? That alone does not suggest that Judge Alito cannot be fair, but it did lead me to explore those questions diligently.

Given the importance of the Supreme Court and the background of the times and the seat and the process, I began to evaluate how Judge Alito measured up to my standards for judicial nominees. Judge Alito's record contains some disturbing statements, rulings, and pronouncements that require detailed explanations. Does he still hold some of those views? In many cases, we don't know. I wish Judge Alito had been more forthcoming during his hearing. At the same time, many of the things he said and refused to say spoke volumes.

As I noted earlier, my standards are simple: Is the nominee qualified, ethical, and honest? Will the nominee be fair and evenhanded and independent? And will the nominee uphold the rights and liberties of all Americans?

I am very comfortable that Judge Alito is qualified, he is honest, and he is ethical. But whether he will be fair and evenhanded is another question. And, as was discussed at his hearing, he does have a troubling record for fighting for the government and corporations and against individuals. He seems to favor the entrenched power over the little guy. His record does not give me the confidence that everyone who comes before the Court will be treated fairly.

I am also deeply concerned about Judge Alito's independence. We rely on our courts as a critical check and balance against government abuse. That independent check helps to protect our rights. This is especially important today because of the growing questions of the expansion of Executive power.

The Supreme Court will need to evaluate whether recent Executive actions are constitutional. Here Judge Alito's unbalanced minority view of the scope of Executive power tells me he does not have the independence to be an adequate check on the Government's abuse of our rights.

Finally, I have serious doubts that Judge Alito will uphold our rights and liberties. One example is his hostility

to the right of privacy. In the hearings, he refused to say that Roe v. Wade is settled law, and he did not adequately explain his 1985 statement that the Constitution does not protect a right to an abortion.

Last year, when I voted to confirm, yes, Chief Justice John Roberts, I said I was choosing hope instead of fear and that Judge Roberts, through his answers, inspired such hope. Judge Alito, through his writings, his rulings, and his nonanswers, does not inspire confidence in me that he will protect all our rights. Because so much is on the line, because I do not believe he will be sufficiently independent or will uphold our rights and liberties, I will respectfully vote against his confirmation to the U.S. Supreme Court.

Mr. President, I ask unanimous consent to print in the RECORD a letter from teachers around the country who have opposed this nomination.

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

SOCIETY OF AMERICAN LAW TEACHERS,
January 9, 2006.

Re The Society of American Law Teachers' Opposition to the Nomination of Judge Samuel Alito to the United States Supreme Court.

Hon. ARLEN SPECTER,
Chair, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Minority Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATORS SPECTER AND LEAHY: The Society of American Law Teachers (SALT) opposes—and urges all members of the Senate Judiciary Committee to vote against—the nomination of Judge Samuel Alito to the United States Supreme Court. SALT is the largest organization of law professors in the United States, representing more than 900 professors at more than 160 law schools. SALT has taken a position opposing only a very few judicial nominations. It did not oppose the nomination of Justice Roberts or Harriet Meirs. However, it is deeply committed to civil rights, individual rights and liberties, and an interpretation of federalism that retains a robust role for Congress in protecting these rights. Judge Alito's work in the United States Department of Justice and fifteen year record on the United States Court of Appeals for the Third Circuit evidence his disregard for all three. Replacing Justice Sandra Day O'Connor with Judge Alito will result in the Court shifting profoundly to the right.

A Knight-Ridder comprehensive review of published opinions written by Judge Alito concluded that Alito has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the nation's laws . . . [His] record reveals decisions so consistent that it appears results do matter to him . . . [He] rarely supports individual rights claims. . . [and] often goes out of his way to narrow the scope of individual rights.

While Judge Alito's opinions are devoid of explosive language and appear to reflect a dispassionate application of law to facts, he has used legal craftsmanship and existing precedent in the service of predetermined results. As Professor Lawrence Tribe has stated, "I simply make a plea to quit pretending that law, life and an individual's assumptions about both can be entirely separated. . . ." A judge's values, beliefs and experiences do matter. Judge Alito has undermined the protections of civil rights laws, devalued individual rights, overturned or weakened federal statutes, and narrowly reinterpreted precedent in the name of dispassionate application of the law.

UNDERMINING CIVIL RIGHTS PROTECTIONS

EMPLOYMENT DISCRIMINATION

Judge Alito has engaged in an effort to eviscerate the laws that seek to remedy violations of federal civil rights. This effort can be seen in particular in an evaluation of his opinions in the area of employment discrimination. Judge Alito has written opinions in eighteen employment discrimination cases and has sided with the plaintiff only four times, which includes one case in which he sided with white police officers challenging an affirmative action policy. He has evinced deep skepticism about the legitimacy of most discrimination claims and an unwarranted belief that discrimination is rare in our society.

In three cases in which Judge Alito would have dismissed claims of harassment, he displayed a lack of understanding of the dynamics of harassment and hostile environment discrimination and their impact on a victim's workplace environment and psychological well-being. In one case, writing for the court, he upheld the exclusion of a report showing the harasser had previously harassed another woman because "the report in no way put the City on notice that Dickerson was harassing Robinson."

In another case, Pirolli v. World Flavors, Inc., there was an undisputed evidence that an employee with mental disabilities had suffered sexually motivated, physically abusive workplace harassment. The trial court dismissed Pirolli's claim, calling the quite horrifying harassment mere macho horseplay. In a 2–1 decision, the Third Circuit reversed and sent the case back for trial. Judge Alito dissented, not because Pirolli had failed to meet the legal standard for sexual harassment, but because his brief never explicitly asserted that he suffered from a work environment that a reasonable person without mental retardation would find hostile or abusive, even though all the necessary facts had been alleged. In other words, Judge Alito would have dismissed the case for sloppy brief writing. Additionally, he would have held Pirolli to a higher standard of reasonableness than the law requires. Judge Alito would have compared Pirolli to a reasonable person without mental retardation. The Supreme Court had previously emphasized in Oncale v. Sundowner Offshore Services, Inc., Justice Scalia writing for the majority, that the severity of the harassment is to be judged from the perspective of a reasonable person in the plaintiff's position—in this case, a reasonable person with a mental disability.

Lastly, in a dissenting opinion, Judge Alito would have excluded evidence crucial to the victim's discrimination case in Glass v. Philadelphia Electric Co. Mr. Glass had worked for Philadelphia Electric for twenty-three years and received only one job evaluation less than satisfactory. He applied for and was denied many promotions. The employer explanation was based part in on the one sub-par evaluation Glass had received. Glass tried to present evidence that during that time period he was assigned to a position where he was subject to racial harassment and a hostile work environment. Amazingly, Judge Alito's dissent argued that allowing Glass to tell his side of the story might cause "substantial unfair prejudice" and, failing to do so was, in any case, harmless error.

In several cases, Judge Alito would have granted summary judgment depriving plaintiffs of their right to trial by setting the evidentiary bar so high that it would be almost impossible for a plaintiff to survive summary judgment. In Sheridan v. E.I. de Nemours and Co., a hotel employee brought suit for sex discrimination in the failure to promote her. The District Court granted the employer summary judgment, and the case was appealed to the Third Circuit. The issue was how much evidence a victim of discrimination must present to get her case to trial. In an en banc 10–1 decision in which Judge Alito was the only dissenter, the majority overturned the grant of summary judgment and sent the case back for trial. The majority held that a plaintiff would survive summary judgment if she made her prima facie case and presented evidence of pretext to rebut the employer's evidence. Judge Alito would have disregarded the evidence in plaintiff's prima facie case if the employer presented evidence of a non-discriminatory reason for its action and would have required additional evidence of discrimination. Judge Alito's approach misinterpreted a Supreme Court case, St. Mary's Honor Society v. Hicks, regarding litigants' shifting evidentiary burdens in Title VII cases. The majority's interpretation of Hicks was reaffirmed by the Supreme Court in Reeves v. Sanderson Plumbing Products, Inc. Although the dispute in Sheridan appears to be highly technical, it is central to whether victims of discrimination will have their day in court.

In another discrimination case in which Judge Alito dissented from the reversal of a grant of summary judgment, the majority said, "Title VII would be eviscerated if our analysis were to halt where the dissent suggests." An African American woman was denied promotion and alleged race discrimination. The issue was whether the employer's evaluation that a white woman was the best candidate was the result of discrimination. In spite of conflicting evidence, Judge Alito would have simply accepted the employer's judgment of who was the best candidate. The majority accused Judge Alito of overstepping his judicial role and acting as a fact finder in resolving the conflicting evidence in favor of the employer. Judge Alito's hostility toward some employment discrimination cases was reflected in his dissent:

"I have no doubt that in the future we are going to get many more cases where an employer is choosing between competing candidates of roughly equal qualifications and the candidate who is not hired or promoted claims discrimination. I also have little doubt that most plaintiffs will be able to use the discovery process to find minor inconsistencies in terms of the employer's having failed to follow its internal procedures to the letter. We are allowing disgruntled employees to impose the costs of trial on employers who, although they have not acted with the intent to discriminate, may have treated their employees unfairly."

Taken together, these cases reflect a palpable hostility toward plaintiffs in employment discrimination cases.

DISCRIMINATION IN JURY SELECTION

Judge Alito has written troubling opinions in two death penalty cases where the defendants challenged jury selection as reflecting discrimination. The cases are troubling for three reasons. First, they reflect a general hostility toward civil rights. Second, they suggest that Judge Alito is among the most conservative judges when it comes to the death penalty (whereas Justice O'Connor was frequently the swing vote in capital cases). Third, one of the cases reflects Judge Alito's hostility to the use of statistics to prove discrimination. This hostility is most troubling because statistics have been an important element of proof in creating an inference of discrimination or a discriminatory impact.

While picking a grand jury in Ramseur v. Beyer, the judge announced that he was not randomly selecting jurors because he was trying to pick a cross section of the community, instead asking some prospective jurors, including at least two African Americans, to sit separately in the body of the courtroom. An en banc divided Third Circuit ruled against Ramseur's claim of an equal protection violation. Judge Alito wrote a separate concurrence, making the astounding assertion that defendants have no constitutional basis to challenge a grand jury when certain racial groups were treated differently in order to get a cross section jury. Equally dismayingly, he suggested that defendants may not be able to assert rights of jurors who are the victims of discrimination with respect to grand jury jurors (although the right is clearly established for challenges to regular jurors). Judge Alito reached well beyond what was necessary to decide the case in order to present radical ideas in dicta.

In Riley v. Taylor, the defendant was convicted of felony murder and sentenced to death. Eventually he filed a motion in federal court challenging his conviction on numerous grounds, including that peremptory challenges were used impermissibly to strike jurors based on race. The full Court reversed his conviction, in part based on a violation of his constitutional rights with respect to peremptory challenges. Judge Alito filed a dissenting opinion. Ramsey presented evidence that all three of the potential Black jurors were struck in his trial and that prosecutors struck every potential Black juror in all four murder trials held the same year in Delaware County. Judge Alito completely discounted the statistical evidence, writing that inferring discrimination was no more reasonable than attempting to explain why a disproportionate number of recent presidents were left handed. As the majority noted, the analogy ignored the underlying constitutional right and ''minimize[d] the history of discrimination against prospective black jurors and black defendants.'' Because of this history of discrimination, courts have consistently held that, barring another explanation by the defendant, statistics can aid in proving discrimination. Judge Alito's approach would completely discount reliance on statistics to help prove discrimination and would fly in the face of years of judicial decisions in discrimination cases.

ENDANGERING CORE LEGAL RIGHTS FOR WOMEN

In cases raising issues of gender discrimination, Judge Alito has written troubling decisions in which he appears to accept traditional notions of the subservient role of women in society and to deny the separate rights of women to control their own destiny.

Judge Alito's record, both prior to and subsequent to joining the bench, reflects clearly that he does not support the constitutional right to choose and that his elevation to the Supreme Court would endanger this fundamental right. In 1985, while in the Solicitor General's office, he wrote a memo offering his own strategy for using the government's brief in Thornburgh v. American College of Obstetricians and Gynecologists to (1) advance the goal of bringing about an eventual overruling of Roe v. Wade, and (2) in the meantime to mitigate its effects by upholding even the most burdensome barriers to abortion. In the same year, Judge Alito submitted an application for a Justice Department promotion, wherein he wrote that he was particularly proud of his contributions in cases in which the government has argued to the Supreme Court that the Constitution does not protect the right to an abortion.

Judge Alito's record in the Third Circuit demonstrates that he has sought to implement his earlier views. In a concurring opinion rejected by the majority and subsequently rejected by the Supreme Court in Planned Parenthood v. Casey, Judge Alito would have upheld a requirement that a woman notify her husband before having an abortion. He discounted the liberty and bodily integrity of the woman while showing great concern for the husband's rights. Judge Alito's view that the spousal notification provision in the law caused no undue burden to women suggests that he believes a woman loses her autonomy rights when she marries. Even in two cases concerning abortion rights protections which had previously been struck down by the Supreme Court and in which Judge Alito was compelled to follow precedent, he wrote narrow concurring opinions to insure that there was no language that might support the upholding of Roe or inhibit the ability to further narrow the right to choose.

Just as Judge Alito has denied the liberty rights of women to control their bodies, his decision striking down the Family and Medical Leave Act demonstrates that he has no understanding of the distinctive burdens women face in juggling work and family. Likewise, his opinions have demonstrated a lack of understanding of the dynamics of sexual harassment and its detrimental impact on victims of harassment. Even in cases involving fathers of unborn children, Judge Alito's solicitude seems to apply only to married couples. He has shown a lack of sympathy for protection of people and couples who are unmarried. In an immigration case, Judge Alito held that it was justifiable to permit a husband, but not a fiance to contest a woman's deportation to China where she fears coerced abortion of the couple's unborn child. In another asylum case, Judge Alito denied asylum to an Iranian woman who asserted she would be persecuted for refusal to wear the traditional veil and for her feminist beliefs if she returned to Iran. While acknowledging that an asylum claim can be based on gender-based persecution, Judge Alito was not convinced that she would be willing to actually defy the authorities and therefore suffer the severe consequences alleged. In other words, a woman must show her willingness to become a martyr in order to prevail in the typical gender-based asylum case.

AN EXPANSIVE VIEW OF THE POLICE POWER AT THE EXPENSE OF INDIVIDUAL RIGHTS

Judge Alito has advanced an expansive view of the police power. His 1985 application to the Justice Department expressed his disagreement with Warren Court decisions concerning criminal procedure. Since ascending to the Third Circuit, he has in criminal cases consistently deferred to state courts, police, and prosecutors. In particular, he has written a series of decisions narrowing the Fourth Amendment protection against unreasonable search and seizure. Judge Alito has sat on at least twelve panels in which judges agreed regarding a citizen's Fourth Amendment rights. In each case, Judge Alito adopted the view most supportive of the government's position.

One of the most troubling examples of Judge Alito's expansive view of law enforcement authority is his dissent in Doe v. Groody, where he voted to approve the strip search of a mother and her ten-year-old daughter, even though the search warrant obtained by the police did not name or refer to either of them. As then Judge Michael Chertoff wrote, Judge Alito's position threatened to turn the Constitution's search warrant requirement into little more than a ''rubber stamp.''

Other dissenting decisions of Judge Alito suggest that he views individual and other constitutional rights as stopping at the prison door. He would have upheld a Pennsylvania law prohibiting certain inmates from having newspapers, magazines, and photos of their family and friends. In a death penalty case, Judge Alito wrote an opinion for the court rejecting a claim of denial of the right to effective counsel. In the sentencing phase of the trial, the attorney had failed to look at materials he knew would be relied on by the prosecutor, materials that would have revealed a range of mitigation leads. The Supreme Court overturned Alito in a 5–4 decision with Justice O'Connor in the majority.

EXTREME VIEW OF FEDERALISM AND SEPARATION OF POWERS THAT WOULD LIMIT THE ROLE OF CONGRESS IN PROTECTING THE HEALTH, SAFETY AND WELFARE OF ITS CITIZENS AND GIVE UNWARRANTED POWER TO THE EXECUTIVE BRANCH

LIMITING THE ROLE OF CONGRESS

Judge Alito has written two opinions that reflect an extreme view of the limits of congressional power to pass legislation. He voted to invalidate the federal prohibition on machine gun possession and part of the federal Family and Medical Leave Act. His decisions are consistent with his 1985 application to be Deputy Assistant Attorney General, in which he wrote that he ''believe[s] very strongly in . . . federalism.

In United States v. Rybar, Judge Alito argued in dissent that the federal ban on machine gun possession, which had been on the books in some form since 1934 is unconstitutional Commerce Clause legislation. The Commerce Clause undergirds many of the most important civil rights, consumer protection, worker protection and environmental protection laws. Judge Alito argued that the majority's theory would lead to the conclusion that Congress may ban purely intrastate possession of just about anything. He rationalized his decision in part by claiming that there were no congressional findings or statutory bases for the law, thus imposing a new stringent fact-finding requirement for Congressional justification of its laws. He ignored common sense—the facts involved a licensed gun dealer selling machine guns at a gun show—transactions which involved interstate commerce. Additionally, he ignored references in conference reports and on the floor of Congress concerning the effect of the ban on interstate commerce. Judge Alito's colleagues accused him of institutional disrespect by requiring the ''coordinate branches of government'' to ''play'' show and tell with the federal courts at the peril of invalidating congressional statutes. All of the other appellate courts which had considered the law in the wake of United States v. Lopez agreed with Judge Alito's colleagues, and all but one court to have looked at the law since then has done the same. The Supreme Court rejected Judge Alito's restrictive view of Congress' lawmaking authority in Gonzales v. Raich.

In another case concerning Congress' lawmaking authority, Judge Alito again advocated an extremely narrow view of congressional power. Chittister v. Department of Community and Economic Development involved a state employee who sued for damages under the Family Medical Leave Act (FMLA) when his sick leave was revoked and he was terminated. Congress claimed the authority to pass the FMLA under section 5 of the Fourteenth Amendment on the grounds that the Act attempted to remedy sex discrimination by allowing women to take leave without sacrificing their jobs. Judge Alito held that Congress does not have the authority to give state employees the right to sue their employers for damages for violating the FMLA. He rejected the justification that the FMLA remedied sex discrimination and claimed that Congress had failed

to make any findings that state statutes had discriminated against women. The preamble to the statute explicitly states that the purpose of the Act is to remedy sex discrimination. There is of course, a long history of litigation striking down state statutes disadvantaging women in the workplace. Nevertheless, Judge Alito would require Congress to engage in fact finding specifically directed at the FMLA. In a similar challenge, Nevada Department of Human Resources v. Hibbs the Supreme Court later held that state employees can enforce their right to damages pursuant to a violation of another provision of the FMLA.

ADVOCATING AN EXPANSIVE SCOPE OF EXECUTIVE POWER

Since the Nixon Administration, the country has witnessed a legal battle concerning the scope of presidential authority under our Constitution. The present administration advances an extreme, expansionist theory of the scope of presidential power, both foreign and domestic. The theoretical underpinnings for the concept of the ''imperial presidency'' have been developed by writings of the Federalist Society. Judge Alito's 1985 application to serve as Deputy Assistant Attorney General in the Office of Legal Counsel (OLC) boasts of his regular participation in the Federalist Society, an involvement which continues to this day. OLC, during his tenure, was the source of extreme thinking about expansive presidential power. For example, OLC opined that the executive branch could ignore congressionally authorized procedures for federal procurement and determined that the President had constitutionally unfettered authority to determine when to tell Congress of his covert initiative with regard to Iranian arms sales—even though the power to regulate foreign trade is an express congressional authority.

In other memoranda which Judge Alito wrote during his time at the Justice Department, he argued in favor of expanded government authority to intercept computer messages and broader authority for government agents to set up shell companies to help with undercover operations. He also told the FBI that it was not bound by two district court decisions restricting the Bureau's power to investigate employees whose jobs were not critical to national security.

During his years on the bench, Judge Alito has been extremely deferential to assertions of executive authority, particularly in the area of criminal law, and has gone out of his way to place limitations on Congress's legislative powers. It is this line of thinking that has spawned (1) unprecedented claims of executive privilege, (2) claims of authority to engage in torture, (3) claims to hold U.S. citizens indefinitely as enemy combatants and foreign nationals as enemy combatants in Guantanamo Bay without any right of review of that designation, and now (4) an apparent pattern of flagrant violations of the Foreign Intelligence Surveillance Act by sanctioning domestic wiretapping without obtaining a warrant.

CONCLUSION

With the retirement of Justice O'Connor, the direction of the Court stands in the balance. Judge Alito's record demonstrates that he would shift the court radically rightward. His vision of federalism and separation of powers would dangerously expand the power of the executive and the states; shrink the power of Congress to protect the health, safety and welfare of this nation's citizens; and diminish the role of the courts in guarding against discrimination and undue government intrusion into individual rights. Justice Alito's opinions show an alarming detachment from real life and real people. His opinions are a historical and reflect a lack of empathy for or appreciation of the human condition and the role of courts in protection the rights of minorities.

We urge you to reject the nomination of Judge Alito to the Supreme Court.

Sincerely,

EILEEN KAUFMAN,
Co-President.
TAYYAB MAHMUD,
Co-President.

Mrs. MURRAY. Mr. President, I yield the floor.

Mr. HATCH. Mr. President, today on this floor the distinguished Senator from Vermont, Mr. LEAHY, accused me of misrepresenting him when I earlier characterized comments he has made about the nomination of Samuel Alito to the Supreme Court. He would not yield to me at that time, and I want to set the record straight.

This is how I characterized the Senator from Vermont's previous comments: ''The Senator from Vermont, Senator LEAHY, has repeatedly said that, all by himself, Judge Alito is a threat to the rights and liberties of all Americans literally for generations to come.''

The Senator from Vermont reacted by saying that I was not even ''within the ballpark of accuracy.''

This reaction was particularly perplexing because the latest example of the Senator from Vermont making such a statement had occurred just hours before.

This time, I will be careful to quote, rather than characterize, what he said. In his opening remarks today on the Alito nomination, the Senator from Vermont said: ''This is a nomination that I fear threatens the fundamental rights and liberties of all Americans, now and for generations to come.'' That language is simply cut and pasted from the statement as it appears on the Senator from Vermont's Web site.

The Senator from Vermont made the exact statement yesterday, during the Judiciary Committee's business meeting at which we considered the Alito nomination. He said: ''This is a nomination that I fear threatens the fundamental rights and liberties of all Americans now and in generations to come.''

I was not only in the ball park, I was standing on homeplate.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, my time to speak is not until 6:15. Since there is nobody else in the Chamber, I will proceed to speak on the nomination of Judge Samuel Alito to the U.S. Supreme Court.

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

Mr. ALLARD. Mr. President, I rise today in support of Judge Samuel Alito, President Bush's nominee as Associate Justice to the U.S. Supreme Court.

Judge Alito has the experience, intellect, temperament, and integrity required of a Supreme Court Justice.

He has more judicial experience than any Supreme Court nominee in 70 years. In his 15 years on the U.S. Court of Appeals for the Third Circuit, Judge Alito participated in over 1,500 cases and authored more than 350 opinions.

Prior to becoming a Federal appellate judge, Judge Alito established a record as a tough Federal prosecutor while serving as the U.S. attorney for the District of New Jersey.

As the State's top Federal law enforcement official, Judge Alito oversaw the prosecutions of drug traffickers, terrorists, and organized crime figures. He also cracked down on perpetrators of environmental crimes, creating a new position of Environmental Crimes Coordinator.

Prior to being unanimously confirmed twice by the U.S. Senate, Judge Alito proved himself to be an effective advocate on behalf of the United States while serving in the Office of the Solicitor General. There, Judge Alito participated in more than 250 cases, arguing 12 before the Supreme Court.

In sum, Judge Alito has served as a judge on one of the Nation's highest courts, as the top Federal prosecutor in one of the Nation's largest Federal districts, and as an advocate for the United States in the Office of the Solicitor General. His 30 years of public service spans the full breadth of the law.

Judge Alito is unarguably a highly qualified nominee. However, I told the citizens of Colorado that I would also evaluate judicial nominees on their judicial philosophy and commitment to the rule of law.

Specifically, I pledged to support judges who rule on the law and facts before them—not judges who attempt to legislate from the bench. Judge Alito's judicial philosophy corresponds with that promise.

Judge Alito recognizes the limited role of the Federal judiciary, having observed that ''although the judiciary has a very important role to play, it's a limited role. . . . It should always be asking itself whether it is straying over the bounds, whether it's invading the authority of the legislature, for example, whether it is making policy judgments rather than interpreting the law.''

Like his view of the limited role of the judicial branch, Judge Alito also recognizes the limits on the powers of the executive branch. Speaking on his understanding of the ''unitary Executive,'' Judge Alito explained, ''the idea of the unitary Executive is that the President should be able to control the executive branch. . . . [I]t goes just to the question of control. It doesn't go to the question of scope.''

Further, Judge Alito recognizes that ''[n]o person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.'' This statement reflects his commitment to a principle so fundamental to justice in this country that it is carved in stone over the entrance to the Supreme Court: ''Equal justice under law.''

Consistent with the principle of equal justice under law, Judge Alito does not

allow his personal opinion to decide the outcome of a case. He says ''[a] judge can't have any agenda. . . . The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.''

I believe that each of my colleagues would agree that judges should be held to this standard. Yet, at the same time, some criticize Judge Alito's record for living up to it.

For example, in Doe v. Groody Judge Alito argued in dissent that a search warrant authorized law enforcement officials to search everyone inside a drug dealer's house, including the wife and daughter. Even though he personally ''share[d] the majority's visceral dislike of the intrusive search,'' Judge Alito's unwavering commitment to the rule of law led him to do what he believed the law required, despite his personal beliefs on the outcome.

In sum, Judge Alito will serve as an effective steward of the law and Constitution. His record evidences a deep respect for the separation of powers and other fundamental principles envisioned by our Founding Fathers. I have no reason to believe Judge Alito will be deferential to anyone or anything other than the law and the facts before him.

As a representative of Colorado, I also appreciate the uniqueness of the issues important to our State and the West. The departure of Justice O'Connor and 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 who could capably decide issues important to Colorado and the West, such as water and resource law.

When I asked Judge Alito about his understanding of Western resource and water law, I was pleased to learn that he grew to appreciate the importance and complexity of these issues while working in the U.S. Solicitor General's Office. He assured me that he understands the uniqueness to the West of such issues as water rights, the environment, and public lands.

In conversing with Judge Alito, I couldn't help but be reminded of my meeting with now Chief Justice Roberts. Judge Alito is a man of great restraint, delivering thoughtful, careful, and thorough responses to my many questions—a further reflection of his view of the limited role of a judge.

Although America was already aware of Judge Alito's distinguished record, the Judiciary Committee hearings were helpful in shedding additional light on his character, temperament, and integrity, particularly in trying circumstances.

During the nearly 18 hours of questioning, Judge Alito was both open and candid. He answered 97 percent of the nearly 700 questions that were asked of him, declining to answer only 3 percent. By comparison, Justice Ginsburg declined to answer 20 percent of questions. Justice Ginsburg received 96 votes in favor of her confirmation.

Throughout the course of the demanding process, Judge Alito demonstrated great patience, humility, and respect—all attributes of a temperament desirable for a Supreme Court justice.

The hearings were also an opportunity for Judge Alito to set the record straight on scurrilous attempts to impugn his integrity. Laid to rest is the claim that he acted improperly by participating in a case involving Vanguard, his mutual fund company. Shares in Vanguard mutual funds are not an ownership interest in the Vanguard company, and Judge Alito had no legal or ethical obligation to recuse himself. His ultimate decision to do so—beyond what the law requires—should be praised, not attacked.

These and other attacks are nothing but thinly veiled attempts to distract from the impeccable record of a highly qualified nominee.

Judge Alito's jurisprudence and integrity have been praised by major newspapers, legal scholars, former law clerks, and colleagues from both sides of the aisle.

The American Bar Association unanimously awarded Judge Alito its highest rating of ''well qualified.'' The ABA's stated criteria for evaluating nominees are ''integrity, professional competence and judicial temperament.''

The judges with whom he has served on the Third Circuit offer their praise. Judge Tim Lewis, a former Clinton appointee, commended Judge Alito for his role in discrimination cases. Judge Lewis, testifying in support of Judge Alito, said that ''if I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today.''

Major newspapers across the State of Colorado, including both the Rocky Mountain News and the Denver Post, offer their praise for Judge Alito.'''

The Rocky Mountain News says that Judge Alito ''personifies judicial restraint'' and ''deserves confirmation. . . . He has refused to elevate his ideology above the rule of law while showing deference to the crucial but limited role the Founders envisioned for federal judges.''

Commenting on the temptation for Democratic Senators to cave to the demands of ''left-wing interest groups [who] portray Alito as someone who should be under house arrest, rather than an accomplished nominee with a distinguished resume,'' the Rocky Mountain News points out that ''Senate Democrats have an opportunity to rise above the muck'' concluding that ''Samuel Alito should be confirmed.''

I ask unanimous consent to have the January 9, 2006 Rocky Mountain News editorial printed in the RECORD.

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

[From the Rocky Mountain News, Jan. 9, 2006]

ALITO PERSONIFIES JUDICIAL RESTRAINT

No one seriously questions the qualifications of federal appeals court Judge Samuel Alito to sit on the Supreme Court: U.S. attorney, assistant to the solicitor general and the attorney general, and a 15-year tenure on the 3rd U.S. Circuit Court of Appeals.

Former colleagues, including Democrats, who worked with Alito the prosecutor laud his insistence on defending the law rather than pursuing a political agenda. Keep that in mind as confirmation hearings open in Washington today. Liberal interest groups and some partisan Democrats are up in arms because Alito has served as a model of restraint.

And that's why the Senate should confirm Judge Alito to succeed Sandra Day O'Connor. He has refused to elevate his ideology above the rule of law while showing deference to the crucial but limited rule the Founders envisioned for federal judges.

On principle, the Senate should give the president substantial leeway to appoint federal officials who share his views. And while candidates for life-tenured positions on the Supreme Court deserve thorough scrutiny, we are confident that the hearings will let Alito earn the nation's trust.

On the bench, Alito has championed a government with limited, defined powers. He has defended the First Amendment's guarantee of religious liberty, ruling against governments that denied Muslims and Indians their ability to freely express their faiths.

In United States v. Rybar, he seconded the view articulated by the Supreme Court in United States v. Lopez that the Constitution's Commerce Clause does not give Congress unlimited power to regulate private actions. And though in Planned Parenthood v. Casey Alito wrote in favor of a spousal-notification requirement for abortions that the Supreme Court later rejected, his law clerk at the time, self-described Democrat Jim Goneia, told the Las Vegas Sun that he ''never had any clue what (Alito's) personal opinion might be.''

His measured approach has not slowed the partisan spinmeisters from lobbing scurrilous allegations—charging everything from misogyny to racism. The left-wing interest groups portray Alito as someone who should be under house arrest, rather than an accomplished nominee with a distinguished réumś.

But Senate Democrats have an opportunity to rise above the muck. We applaud their plan to focus on Alito's views of the proper balance of power between the president and Congress. Concerns about executive authority deserve special attention, particularly as the Bush administration prosecutes the war on terror.

Barring any stunning surprises, Samuel Alito should be confirmed. While we will surely disagree with some of his decisions, we're confident that they will be soundly reasoned and reflect respect for both the Constitution and the law.

Mr. ALLARD. Mr. President, Colorado's other major newspaper, the Denver Post, proclaims that there is ''no reason to block [the] Senate's Alito vote . . .'' On the threat of a Democrat filibuster, the Denver Post says ''we don't believe the arguments against Alito merit a filibuster. . . . Alito has served capably on the 3rd U.S. Circuit Court of Appeals for 15 years, and his confirmation should rise or fall on a majority vote.''

I ask unanimous consent that the January 17, 2006, Denver Post editorial be printed in the RECORD.

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

[From the Denver Post, Jan. 17, 2006]

NO REASON TO BLOCK SENATE'S ALITO VOTE

Judge Samuel Alito managed to navigate his way through last week's Senate Judiciary Committee hearings without upsetting supporters' high hopes or relieving opponents' high anxiety.

Though his testimony to the committee was never too revealing, Alito demonstrated his qualifications for the high court, and he's likely to be confirmed. We wish we could be enthusiastic, but Alito's record is troubling in such areas as reproductive rights, privacy and executive power. If he rises to the Supreme Court, we hope Alito will follow the letter of the law and not the call of ideology or the urging of special interests. Associates who have worked with Alito over the years offer welcome assurances that he can be an impartial figure and not a clone of Clarence Thomas on the far right side of the bench.

We tend to agree with Sen. Dianne Feinstein, D–Calif., who said on Sunday, ''This is a man I might disagree with. That doesn't mean he shouldn't be on the court.'' Like Feinstein, we don't believe the arguments against Alito merit a filibuster.

Alito needs a simple majority to win confirmation unless opponents try to extend debate indefinitely; then 60 senators must agree to a vote. Republicans have 55 senators, and many are willing to ban judiciary filibusters if that's what it takes.

In the end, Republicans will probably support Alito en masse and most Democratic senators will vote no, reflecting both parties' expectation of his future role. Much attention is being paid to the ''Gang of 14,'' the coalition (including Colorado Sen. Ken Salazar) that vowed to avoid filibusters except under extraordinary circumstances. This isn't one of them; Alito has served capably on the 3rd U.S. Circuit Court of Appeals for 15 years, and his confirmation should rise or fall on a majority vote.

We hope Alito will moderate his views if voted to the court of last resort. His statements about Roe vs. Wade suggest he opposes abortion-rights, which we favor, while his support for the ''unitary executive'' theory, which exaggerates the powers of the president, is chilling given the current debate on domestic surveillance and the balance of powers among the branches of government. Some of Alito's dissents on the 3rd Circuit inspire disbelief, such as his defense of a police officer who strip-searched a 10-year-old girl whose father was wanted on drug charges.

We urged President Bush to choose a centrist to succeed retiring Justice Sandra Day O'Connor, but once his first choice, Harriet Miers, was blocked, it was inevitable that he would seek out a nominee with proven conservative credentials. That's Alito, to be sure. Wherever he serves, we hope Alito exercises his approach to the law in a way that affords Americans all the protections due under law and the Constitution.

Mr. ALLARD. Mr. President, I am pleased to see that these Colorado publications join me in recognizing that Judge Alito is the type of judge that Coloradans—and all Americans—deserve.

In conclusion, Judge Alito is one of the most qualified judicial nominees ever. He is deeply committed to the rule of law, he recognizes the limited role of the judiciary, and he has the judicial temperament fitting of a Supreme Court justice.

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.

It would be unfortunate and irresponsible for any of my Senate colleagues to continue to politicize the judicial confirmation process. Judge Alito is eminently qualified, and he deserves a swift up-or-down vote.

I intend to vote in favor of Judge Samuel Alito's confirmation as the 110th Justice to the United States Supreme Court and I strongly urge my colleagues to do the same.

I believe that Judge Alito will not be an activist judge and supports limits on the judiciary.

I ask unanimous consent to have printed in the RECORD a letter from attorney William Banta in which he discusses judicial independence, judicial activism, and judicial usurpation, now referred to by many of us as just judicial activism.

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

Englewood, CO, September 6, 2005.

Re: A Lawyer's Duty—Judicial Independence, Judicial Activism, and Judicial Usurpation.

Hon. WAYNE ALLARD,
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR ALLARD: Recently there has been an outcry from the established bar in defense of judicial independence. However, very little has been said against judicial activism, which used to be referred to as ''judicial usurpation''. Because of the present tension between them, it behooves us as lawyers to understand the relationship between judicial activism and judicial independence. Marbury v. Madison is a good place to begin.

While Marbury is typically used to justify a court's prerogative to say what the law is, there is a discipline to the case that is either overlooked or not discussed in polite legal company. Chief Justice Marshall bases the Marbury decision upon the American people's original right to establish a constitution, the principles of which are ''fundamental'' and which are to be ''permanent''. The case itself involved three issues: (1) whether Mr. Marbury had a right to his commission as justice of the peace; (2) if so, whether there was a remedy available to him to secure his commission; and (3) whether the remedy was a writ of mandamus from the Supreme Court of the United States. Marshall said ''yes'' to the first two issues and ''no'' to the third issue.

The Chief Justice held that the Supreme Court lacked the power to issue a writ of mandamus for Mr. Marbury's commission because the Constitution did not provide for the exercise of such original jurisdiction even though an Act of Congress (the Judiciary Act of 1789) did. In ruling against the Supreme Court's having jurisdiction, John Marshall declared the obedience of courts to the Constitution, the Constitution being ''a rule for the government of courts, as well as of the legislature.''

To paraphrase Chief Justice Marshall, judges are subject to the Constitution; the Constitution is not subject to judges. The force behind the Marbury decision is the restraint and responsibility required of the judicial branch.

Now I have a couple of questions regarding what some see as attacks upon judicial independence. Does anyone think that the public is criticizing courts because the judges on those courts are thought to be following the Constitution? Or, are courts being criticized because some judges are seen as expounding politics instead of a constitution? It would certainly be independent of any court to contradict the Constitution, but it would also be unscrupulous and, to use John Marshall's word, ''immoral'' of them.

Roger J. Miner wrote an admonition to us lawyers that I ran across about seventeen (17) years ago: ''Should Lawyers Be More Critical of Courts?'' Judge Miner's reproof was more recently reprinted in The Colorado Lawyer: ''Judges'' Corner—Criticizing the Courts: a Lawyer's Duty.'' To his dismay, what Judge Miner had noticed was lawyers' ''reluctance to criticize judge-made law, specific judicial decisions, or the qualifications of individual judges''. He quoted Justice Robert H. Jackson to the effect that the public rightfully looks to lawyers (as the only group that knows how well judicial work is being done) ''to be the first to condemn practices or tendencies that they see departing from the best judicial traditions''. Does anyone think, as Judge Miner would, that the public has reason to be disappointed in us lawyers for not being properly critical of judges who deviate from their oaths to support the Constitution that governs them?

As lawyers, we need to understand what is going on here. To its credit, the established bar does not directly dispute the right of Americans to criticize their judiciary. However, only a very few lawyers have spoken out in defense of Chief Justice Marshall's insistence on judicial scruples—the established bar is more apt to rationalize, excuse, or even defend in the name of ''judicial independence'' the conduct of judges who act contrary to the language of the Constitution. It is almost as if Supreme Court decisions were infallible so that it would be irreverent of lawyers to challenge them very much.

Not only Chief Justice Marshall but Chief Justice Harlan F. Stone would not have it. Chief Justice Stone said, ''I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with the great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it.

The point is this: when a court takes it upon itself to engage in politics, social experimentation, or baseless lawmaking contrary to the Constitution, the American people, if not the established bar, tend to hold that court accountable. In holding judicial feet to constitutional fire, critics are not threatening judicial independence; they are reprehending those judges, those public servants, who overstep their roles and thereby become ''activist''.

The purpose of the Constitution's Article III lifetime tenure and undiminished compensation for Federal judges and the purpose of Colorado's constitutional and statutory provisions for judicial nominations, appointments, and retentions are to insulate judges from political pressures as much as practical . . . providing them with a measure of independence to decide cases with restraint and impartiality. Yet, if a judge commandeers the law, usurps the jurisdiction of the other governmental branches, or overpowers the rights of the people, is he not frustrating the purpose of judicial independence?

That brings me to my last question: isn't the real threat to judicial independence judicial activism itself? We needn't have come to this pass had we, as lawyers and judges, insisted on judges remaining faithful to ''the

best judicial traditions''. Too often we justified baseless decisions on the unsteady promise of political results or indulged the sentiment that the Constitution is whatever a court says it is. Incidentally, to that utterance of Charles Evans Hughes, Theodore Roosevelt rejoined that the Constitution belonged to the American people and not to the judges.

By not remarking the wrong of judicial activism all along, the established bar must now be careful not to excuse judicial activism in an ambiguous effort to preserve judicial independence. The risk of confusing judicial activism with judicial independence could compound our problem so that the public comes to see the whole thing as a mess of our own making. If that happened, the American people could demand direct political control over those who had Wayne Allard lost the self-control upon which Chief Justice Marshall insisted, those who became unaccountable to the law they had taken an oath to support.

To avoid such a misfortune, it might be a good idea to revisit the instruction manual. Perhaps we could think about whether the Constitution is our bedrock foundation or more like a nomad's tent pitched on shifting sands. We might ask ourselves whether we ought to dismiss the Constitution as an outdated 18th century document or recognize that it was designed in light of human experience and human nature to endure for all time. And we can mull over whether our Constitution should really be an adventure in judicial dead reckoning or whether, instead, the written Constitution provides a reliable compass, trusty sextant, and inspired chart for the American people.

My impression is that commentators and many in the public are way ahead of us lawyers and judges on these concerns. Nonetheless, I hope that we are able to help out here so that, as Judge Miner would prefer, ''the judiciary is strengthened, the rule of law is reinforced, and the public duty of the bar is performed.''

Very truly yours,

WILLIAM M. BANTA,
Attorney at Law.

Mr. ALLARD. Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I ask unanimous consent to have an item printed in the RECORD.

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

SENATE REPUBLICAN POLICY COMMITTEE: FELLOW JUDGES TESTIFY IN SUPPORT OF ALITO NOMINATION

On January 12, 2006, five sitting and two former judges from the U.S. Court of Appeals for the 3rd Circuit testified on behalf of Judge Samuel Alito's nomination to the Supreme Court. The judges included nominees of Presidents Lyndon Johnson, Richard Nixon, Ronald Reagan, George H.W. Bush, and Bill Clinton. Collectively they have served with Judge Alito for more than 75 years, watching him work and evaluating his intellect, character, independence, and judgment. Their collective endorsement should be taken seriously by Senators considering this nomination.

The judges included the following individuals. Judge Edward Becker, appointed by President Ronald Reagan in 1981, is a Senior Judge on the 3rd Circuit and formerly its Chief Judge. (Note: a Senior Judge continues to serve on the court and hear cases on a limited basis; he is not retired.) Judge Anthony Scirica, appointed by President Ronald Reagan in 1984, is the Chief Judge of the 3rd Circuit. Judge Maryanne Trump Barry has served on the 3rd Circuit since President Bill Clinton appointed her in 1999. Judge Barry also worked in the U.S. Attorney's office with Judge Alito in the late 1970s. Judge Ruggero Aldisert, appointed by President Lyndon Johnson in 1967, is a Senior Judge on the 3rd Circuit and formerly its Chief Judge. Former Judge John Gibbons, appointed by President Richard Nixon in 1970, served on the 3rd Circuit until 1990 when he retired to become a professor of law at Seton Hall. As a federal prosecutor, Judge Alito had argued cases before Judge Gibbons, and Judge Gibbons has stated that he has followed Judge Alito's work since 1990. Judge Leonard Garth, appointed by President Richard Nixon in 1973, is a Senior Judge on the 3rd Circuit. Judge Alito served as his law clerk in 1976–1977. Former Judge Tim Lewis, appointed by President George H.W. Bush in 1992, served on the 3rd Circuit for seven years before retiring to enter private practice, where he does significant work in civil rights and human rights law. Excerpts from their testimony follow.

Judge Becker on working with Judge Alito up close . . . ''There is an aspect of appellate judging that no one gets to see—no one but the judges themselves: how they behave in conference after oral argument, at which point the case is decided, and which, I submit, is the most critically important phase of the appellate judicial process. In hundreds of conferences, I had never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize. Rather, he expresses his views in measured and temperate tones.''

Judge Becker on Judge Alito's intellect and open-mindedness . . . ''Judge Alito's intellect is of a very high order. He's brilliant, he's highly analytical and meticulous and careful in his comments and his written work. He's a wonderful partner in dialogue. He will think of things that his colleagues have missed. He's not doctrinaire, but rather is open to differing views and will often change his mind in light of the views of a colleague.''

Judge Becker on whether Judge Alito is an ideologue . . . ''The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants. . . . His credo has always been fairness.''

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

Chief Judge Scirica on Judge Alito's open-mindedness . . . ''Like a good judge, he considers and deliberates before drawing a conclusion. I have never seen signs of a predetermined outcome or view, nor have I seen him express impatience with litigants or with colleagues with whom he may ultimately disagree. He is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives.''

Judge Barry on Judge Alito's service as U.S. Attorney . . . ''The tone of a United States Attorney's Office comes from the top. The standard of excellence is set at the top. Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency.''

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

Judge Aldisert on working with Judge Alito for 15 years . . . ''We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice.''

Judge Garth on Judge Alito's lack of an agenda . . . ''I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.''

Judge Garth on Judge Alito's personality . . . ''Sam is and always has been reserved, soft spoken and thoughtful. He is also modest, and I would even say self-effacing. And these are the characteristics I think of when I think of Sam's personality. It is rare to find humility such as his in someone of such extraordinary ability.''

Judge Gibbons on Judge Alito's independence from the executive . . . ''The committee members should not think for a moment that I support Judge Alito's nomination because I'm a dedicated defender of [the Bush] administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere. And we are certainly chagrined at the position that is being taken by the administration with respect to those detainees.

''It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. I would not ask him. And if I did, he would not tell me. I'm confident, however, that, as an able legal scholar and a fair-minded justice, he will give the arguments—legal and factual—that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.''

Judge Lewis on his own liberal politics . . . ''I am openly and unapologetically pro-choice and always have been. I am openly—and it's very well known—a committed human rights and civil rights activist and am actively engaged in that process as my time permits. . . .

''I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—'Well, why are you here today saying positive things about his prospects as a justice on the Supreme Court?'

''And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular, the United States Supreme Court.''

Judge Lewis on Judge Alito's honesty and integrity . . . ''As Judge Becker and others have alluded to, it is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues. And I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.''

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

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

Mr. KYL. Mr. President, I ask unanimous consent that the attached editorial by the Arizona Republic, dated January 24, be printed in the RECORD of this debate on the confirmation of Judge Samuel Alito to the U.S. Supreme Court. The editors' support for Judge Alito is welcome, and their statement that ''Judge Alito is a superior candidate for the high court regardless of his political leanings'' is absolutely true.

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

[From the Arizona Republic, Jan. 24, 2006]

ALITO: WISE IN THE WAYS OF ''WHYS''

If America is not on pins and needles over today's Senate Judiciary Committee vote on Samuel Alito for the U.S. Supreme Court, perhaps this Web site headline on Monday helps provide an explanation:

''Feingold unsure of Alito''—WSAW–TV, Wausau, Wis.

If one of the Senate's most solidly liberal members, Sen. Russ Feingold, D–Wis., remains uncertain about President Bush's nominee one day prior to his scheduled Judiciary vote, prospects for derailing the nomination in the full Senate would seem dim.

We'll see how the votes pan out. Still, it is worth wondering: Where did the drama go?

The most obvious answer among many is that Alito is a superior candidate for the high court regardless of his political leanings. After 15 years on the bench, Alito has established a lengthy track record as a fair jurist who has struck a proper balance between his own constitutional interpretations and those of other courts.

Even his obvious discomfort at the beginning of his Judiciary hearings worked to Alito's favor. The candidate is bookish and uncomfortable in the limelight? All the better for a position on the nation's most deliberative, most cerebral panel.

Many commentators have noted that the even-keeled Alito presents himself far differently from Robert Bork, the famously rejected conservative nominee of 1987.

Well, yes. Alito was not combative in the face of relentless grilling, as Bork was. And he wears no wicked-looking beard.

But it would seem that Alito's imminent success is less a matter of televised theatrics, facial adornment or even judicial philosophy than it is a reflection of the public's expectations of a jurist.

Unquestionably, the public wants jurists to be fair, and it seems to believe that Alito will live up to that standard. The public wants a jurist who respects the judgment of other courts, but it also wants one who understands that Job 1 is to interpret the Constitution.

Sometimes, Supreme Court judges have found those two directives in conflict. The public, and most of the senators who represent it, seems to believe Alito will find his way through those conflicts fairly and intelligently.

But most of all, Alito appears to have won over converts because he has demonstrated the trait that increasingly seems to distinguish great jurists from mediocre-to-good ones: He can explain why.

We all wish to know why. With all due respect to President Bush's previous nominee, Harriet Miers, it was not enough that—wink, wink—her vote on the ''right'' issues was ensured. Indeed, that constituted the most damning argument against her.

Alito, by contrast, has won support because senators believe that his decisions will be grounded and argued in the facts of the law, not in some predisposed political prejudice that is unsupported by the case before him.

And that is a powerful argument for Alito all by itself.

Mr. KYL. Mr. President, I rise in support of Judge Alito's nomination to the Supreme Court and urge my colleagues to quickly confirm him.

I begin by observing that the party-line vote in the Judiciary Committee yesterday raises a troubling question for the full Senate, and it is basic to our deliberations. What is the proper test for determining whether to confirm a nominee to the Supreme Court? Until very recently, the Senate has evaluated whether the nominee was qualified—that is, whether he or she possessed the requisite experience, integrity, and temperament to serve. But a new test has been proposed by Judiciary Committee Democrats: will the nominee provide assurances that he or she will rule a particular way on cases sure to come before the Court?

Before I discuss the ramifications of that troubling question, though, I would like to apply the traditional test—the proper test—to the nominee before us.

A Supreme Court Justice should be an experienced judge. Samuel Alito has more Federal judicial experience than all but one nominee in U.S. history, Horace Lurton, who was nominated by President Taft. In 15 years of service, Judge Alito has authored more than 360 opinions and participated in more than 4,800 decisions. It is an extensive record.

A Supreme Court Justice should be deeply familiar with American constitutional law. Judge Alito has spent his entire professional life grappling with constitutional jurisprudence—serving as a Federal prosecutor at both the trial and appellate level, as the government's lawyer before the Supreme Court, and as a constitutional lawyer in the Justice Department before becoming a judge. Nobody who watched Judge Alito's testimony would deny that he is a brilliant legal thinker with a deep and textured understanding of our Nation's jurisprudence.

A Supreme Court Justice should have unassailable integrity. Here, I look to those who know him best.

First, the American Bar Association, in finding him unanimously ''well-qualified'' to serve, conducted more than 300 interviews with people who know Judge Alito on a professional and personal basis. They have reported that the high praise for Judge Alito's integrity was ''consistent and virtually unanimous.'' I repeat, it was ''unanimous.''

Second, let's look at what the judges of the U.S. Court of Appeals for the Third Circuit had to say. Seven current and former judges testified on Judge Alito's behalf—judges who were nominated by Presidents Johnson, Nixon, Reagan, the first President Bush, and Clinton. Collectively, they have served with Judge Alito for more than 75 years. They praised his fairness, his integrity, his open-mindedness, his temperament, his intellect, and his devotion to the rule of law.

Finally, a Supreme Court Justice must know the difference between the judicial role and the legislative or executive function. This qualification is sometimes difficult to decipher, but there are several clues that can guide us.

First, a long judicial record helps, and Judge Alito gives us that. There is not a trace of judicial activism in his record.

Second, a judge cannot have a policy agenda. He or she must defer to the political branches on policy questions. Judge Alito agreed, testifying, ''We [judges] are not policymakers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have.'' Judge Alito's colleagues on the Third Circuit appeals court confirmed this. For example, Judge Aldisert testified that ''at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court, and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda.''

Third, a judge must not twist statutes or constitutional provisions to reach a result he favors. As Judge Alito testified, ''Judges don't have the authority to change the Constitution. The whole theory of judicial review . . . is contrary to that notion.'' In

other words, a judge must accept that the Constitution will sometimes require him to make rulings that he might disagree with. Politicians are free to vote their convictions; judges must put their personal views aside. I will have more to say about this issue in a few moments.

Fourth, the judge must have the right understanding of the ''living Constitution.'' Our Constitution must always remain alive to new situations that the Founders did not contemplate. But the judge must apply the constitutional provisions in the way that most closely approximates the meaning of the text and the underlying principles as understood when drafted. The Constitution is not infinitely malleable. It is not a blank slate for the judicial branch to draw upon. It has no ''trajectory'' or ''evolutionary theme.'' It is a text—words with meanings. If the Constitution can be twisted to mean anything, then it ultimately means nothing, and then we live under the rule of judges, not the rule of law.

Judge Alito respects the proper divisions within American constitutional government. As he explained in his testimony, the judiciary ''should always be asking itself whether it is straying over the bounds, whether it's invading the authority of the legislature [or] making policy judgments other than interpreting the law.'' He emphasized that judges have a duty to police themselves through what he called the ''constant process of re-examination on the part of the judges.'' If all judges engaged in this process of re-examination, the quality of justice in this Nation would improve dramatically.

Judge Samuel Alito is not going to legislate from the bench or bend the Constitution to suit any political preferences that he might have. He is not going to rely on foreign law, but will look to our American traditions. He is not going to apply the Constitution as he wishes it might be, but as it is written. In exercising this judicial restraint, Judge Alito will protect the people's ability to govern themselves—and that is ultimately what is at stake.

That is why I support Judge Alito. Here is a man who is the son of an immigrant, comes from a modest background, and has a keen sense of patriotic duty. He is highly intelligent, undeniably experienced, and imbued with character and personal integrity. He has a low-key, patient, and respectful personality—the model of what we have come to call the ''judicial temperament.'' He believes in judicial restraint and has proven it for the past 15 years. He deserves my vote and I will proudly give it to him.

This is the analysis we have applied in the past, and its application has resulted in confirmation for most nominees. It was certainly the analysis used to evaluate President Clinton's nominees to the Supreme Court. So it is in this context that I want to discuss what is evolving as a new test—a ''results-oriented'' test.

The minority members of the Judiciary Committee did not question Judge Alito's qualifications. Rather, they tried to get him to commit to certain results in cases that are sure to come before the courts. They want to see certain policy goals enacted into law. Now, we all want our policy goals to become law, but our aim should be enacting constitutional legislation, not relying on the courts to enact our policy preferences.

In my September statement supporting Judge Roberts, I explained that this same dynamic had played itself out during his hearings. It is apparent that there is now a fundamental difference between the majority and the minority parties on this matter. We believe the courts should not try to impose policy results in their decisions; they should just decide the questions of statutory interpretation and constitutional meaning.

For the Supreme Court, the results are—or should be—simply a function of the proper application of the Constitution and law to the facts of each case.

To the minority, however, that's not enough. As many minority Senators have expressed, they are not going to vote for a nominee who will not assure them that he will vote the way they want in future cases. I submit that that is wrong. As Judge Alito testified, ''Results-oriented jurisprudence is never justified because it is not our job to produce particular results.''

Yesterday's meeting of the Judiciary Committee illustrates that many Senators have adopted this results-oriented approach to the confirmation process. The wrong questions are being asked, and the wrong answers are being demanded. The right question is how the nominee will do his job, not what the nominee will decide. This fundamental point is getting more and more lost with each passing confirmation battle.

Let me give a few examples. Yesterday a Senator said that it was necessary to vote against Judge Alito because that Senator believes in a right to abortion and there is no guarantee that Judge Alito will agree with that position in a future case dealing with abortion regulations.

That Senator took the same approach when discussing the just-decided case of Gonzales v. Oregon, which dealt with the Attorney General's promulgation of regulations in response to a state physician-assisted suicide statute. The Attorney General had said that, despite the Oregon statute, physicians could not use Federally regulated drugs to kill patients.

The case, therefore, did not turn on the Court's views on physician-assisted suicide, but, rather, on the interpretation of the underlying statute. The majority made this clear in the first paragraph. Justice Kennedy explained:

> The dispute before us is in part a product of this political and moral debate, but its resolution requires an inquiry familiar to the courts: interpreting a federal statute to determine whether Executive action is authorized by, or otherwise consistent with, the enactment.

The Supreme Court had not ruled on the wisdom or appropriateness or constitutionality of physician-assisted suicide, but the Senator was critical of Chief Justice Roberts because he had not voted to uphold assisted suicide, and the Senator didn't think Sam Alito would either. One could fervently agree with the Senator on the policy issue, yet interpret the statute in a way that requires a different result. But, it appears, results are all that matter.

As another example from yesterday's committee meeting, a Senator said that protecting wetlands was very important, and wanted to make sure that Judge Alito would allow the Federal Government to protect them under the Clean Water Act. The Senator acknowledged that the underlying constitutional question was the extent of Congress's power to regulate non-navigable waterways which, arguably, are not in interstate commerce. That is a thorny constitutional question. But, rather than acknowledging that Congress might have gone too far in exercising its power to regulate interstate commerce, the Senator was troubled that Judge Alito's future votes on protecting wetlands could not be predicted.

Now, I don't mean to single out any one Senator, because the same thing happened throughout the committee meeting. Senator after Senator would bring up the results of decisions by Judge Alito without any regard as to why he reached a certain result, such as their procedural disposition, the proper standard of review, the governing case law of the Supreme Court or the Third Circuit, or the legal reasoning that Judge Alito used. It was all about results.

As a final example, another Senator wanted Judge Alito to tell him that it was unconstitutional for the President to take major military action against Iran or Syria absent prior congressional authorization. He was exasperated that Judge Alito wouldn't just prejudge the question, which the Senator called ''basic,'' and say that the President could not do so. But Judge Alito gave the judge's answer. It was anything but ''basic.'' Judge Alito explained that he needed to consider the political question doctrine first, then to analyze the scope of the President's Article II War Powers, the history of the use of force absent congressional authorization—it's a very complicated history—and then apply it to the facts before him. The Senator wanted a politician's answer, a policymaker's answer. In other words, he wanted to know how that case would turn out, before it was briefed and argued. But all we should be asking, is how he would approach the question. What principles would Sam Alito apply, not what kind of results Sam Alito will deliver.

Abortion, executive power in a time of war, congressional power, State sovereign immunity, the 4th amendment,

wetlands regulation, the death penalty—many Senators have constructed a confirmation standard that revolves completely around predictions about how cases related to issues such as these will come out. We cannot allow our public policy aspirations to cloud our view of the judicial function.

If our process evolves into results-oriented voting, votes will inevitably become partisan. Indeed, it appears that it has already become partisan. The confirmations of Ruth Bader Ginsburg and Stephen Breyer speak volumes about how this results-oriented approach is, in fact, a problem centered within the democratic caucus. Both of these nominees had a long history of liberalism. Both were Democrats with ties to the political left. Ginsburg was the former general counsel to the ACLU who had advocated taxpayer funding of abortion, and Breyer had been Senator KENNEDY's chief counsel and an academic promoter of an expansive regulatory state. Yet both received unanimous support from the Judiciary Committee. Justice Ginsburg received 96 votes on the floor, and Justice Breyer received 87 votes. They have served for more than a decade on the left side of the Supreme Court, exactly as Republicans suspected that they would when they voted to confirm them. But Republicans evaluated their judicial qualifications favorably, trusted their commitments to approach cases with an open mind, and gave deference to the President's choice. After all, he had won the election.

We haven fallen a long way since Justice Breyer was confirmed in 1994. The Republicans who put aside their policy goals and supported liberal Democratic nominees have been rewarded with unprecedented filibusters of qualified nominees to the lower courts and the adoption of a results-oriented confirmation standard for the Supreme Court.

I say to my Democrat colleagues—is this really the path you want to put us on? You have already dramatically increased the chance of future filibusters. Do we really want Senators to vote against any nominee who will not prejudge cases and guarantee results? I know that the most ideological activists on both sides of the spectrum would prefer that path, but do you? Does the Senate? Does the Nation?

As I said, for now this is a Democrat problem. But it is naive to think that, someday, Republicans won't decide that what is good for the goose is good for the gander. And while your ''no'' votes on Judge Alito will not keep him from the Supreme Court, I say to my Democratic friends—what if President Bush had lost the 2004 election but there were 55 Republicans in the Senate? If Republicans today were applying your results-oriented, litmus-test-based standard to a Democrat President's nominees, would it be possible to confirm anybody even vaguely as liberal as Ginsburg or Breyer. If we followed your path, the answer would clearly be ''no.'' This is a terribly dangerous road to travel.

We all know that the Supreme Court confirmation process has taken on political campaign-like elements, with television advertisements and grass roots activism. That development, plus this results-oriented approach to confirmation, represents the subtle rejection of the very idea of a non-political, independent judiciary. What else can we conclude when Senators won't vote for a nominee who even they say is qualified and has high integrity, just because they want to guarantee certain results out of the Court? That's not law. That's politics. It is the antithesis of the rule of law and constitutional government. Do we really just want policy makers in robes? I remember when President Clinton's former White House Counsel, Lloyd Cutler, testified before the Judiciary Committee. His answer was a resounding ''No.''

In conclusion, I remind the Senate of something Justice O'Connor said last September: the rule of law is ''hard to create and easier than most people imagine to destroy.'' That warning speaks directly to what we face today. If a partisan block of Senators continue down this path of politicization, it cannot be expected to apply to only one party. The ultimate loser will not be Republicans or Democrats, but the rule of law itself.

''Hard to create, and easier than most people imagine to destroy.'' My friends, please—take a step back. The man is qualified. He has high integrity. He is fair. He deserves your vote.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I rise today in support of the nomination of Judge Samuel Alito, Jr., to the U.S. Supreme Court.

One of the greatest honors and responsibilities of a Senator is a vote we cast to confirm judges. Our role is not one that I take lightly. It is with deep respect for the laws of this Nation and for the highest Court in our land that I stand before the Senate today.

As Senators, we are tasked with the specific duty in the checks and balances system of our Government. It is with our advice and consent that a President's nominee is confirmed or rejected. This is how it has worked since the Constitution was adopted. Our forefathers, with great brilliance and foresight, wanted to ensure that no one person wielded excessive power. However, at the same time, it is the President who selects a nominee. He earns that power as the elected leader of the United States. President Bush nominated Judge Alito. We are here to consider that nomination.

I had the opportunity to meet Judge Alito and I find he is extremely qualified to join the highest Court in this land. His experience, his temperament, his understanding of the role of the Court and his respect for the law make him an admirable candidate who I believe will serve this Nation well.

The single most important factor that went into my decision of whether to support Judge Alito has to do with the Justices' role on the Court. The job of the judiciary is to apply and interpret the Constitution and the laws of the land. Unfortunately, not everyone sees it that way. That is why judicial activism has become so rampant in this country. In no way is it the judiciary's purview to make laws. That is clearly the job of legislators. Legislators are to make the laws and judges apply them. Judge Alito understands this principle and has demonstrated so throughout his esteemed career.

In his testimony before the Senate Judiciary Committee he spoke about the limited role of the judiciary. Judge Alito stated it should always be asking itself whether it has strayed over the bounds, whether it is invading the authority of the legislature, for example, whether it is making policy judgments rather than interpreting the law. That has to be a constant process of reexamination of the judges.

During Judge Alito's confirmation hearing, Democrats tried to make the case that judicial precedent is more important than the Constitution itself. Most Americans believe the words of the Constitution should have real meaning. A strict constructionist approach to interpreting the Constitution is necessary for the consistent application of our laws. How can we as the legislative branch do our jobs effectively when the judicial branch is free to provide an expansive reading of the Constitution at any moment? I don't believe we can.

For this reason, we need judges who value the Constitution first. Precedent is a necessary tool to ensure consistent application of the laws, but precedent should not be held so high that we prohibit judges from revisiting bad precedent. The history of the Supreme Court supports this idea. If bad precedent could not be overturned, Plessy v. Ferguson would still stand and racial segregation would still be legal in this country. That thought is truly reprehensible. The Supreme Court, in fact, has overturned its own precedent at least 225 times. That is nearly once per year.

I support Judge Alito's nomination because his testimony demonstrates his understanding of the principle that the Constitution, and not precedent, is preeminent.

In addition to his clear and committed approach to interpreting laws and not being a judicial activist, I think the testimony and support of his colleagues speaks volumes about what we can expect from Justice Alito.

Judge Maryanne Trump Barry has served on the Third Circuit with Judge Alito since President Bill Clinton appointed her in 1999. She also worked in the U.S. Attorney's Office with Judge Alito in the late 1970s. About his service as U.S. attorney, she stated:

Samuel Alito set a standard of excellence that was contagious—his commitment to

doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency.

Judge Aldisert of the Third Circuit, appointed by President Johnson, has worked with Judge Alito for 15 years. He testified about the experience of those who have served with Judge Alito. Because of Judge Alito's work on the bench, he stated:

. . . we who are his colleagues are convinced that he will also be a great justice.

The character, the qualifications, and the commitment of Judge Alito are not in question by anybody in this room. His long history of public service has proven that. He has served our judicial system and our Nation with the utmost honor, and we can expect him to continue that legacy from our Supreme Court.

I urge all of my colleagues in the Senate to consider their vote and to avoid partisanship. Consider Judge Alito's qualifications. Consider his respect for the Constitution. Senator KYL from Arizona preceded me on the floor. He talked about the dangerous precedent that would be set if this body were to depart from the standard of judging nominees based on their experience in favor of a partisan approach. Republicans, back in the 1990s, voted for two people they knew would be liberal. The basis on which Judge Alito's confirmation is based will likely determine the basis by which all future nominees will be judged.

What I think is important to consider is not how someone will rule but rather on their judicial approach with respect to the words of the Constitution, at the writing of the Founders, at the principles on which America was founded. That is the judicial approach I want somebody to have on the Highest Court in the land. And that is the judicial approach I believe—no one knows for sure, but I believe—Samuel Alito has and how he will make judgments as an Associate Justice of the U.S. Supreme Court.

So I urge all my colleagues to support his nomination. Mr. President, 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. COLEMAN. 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. COLEMAN. Mr. President, I have come to the Senate floor to discuss the nomination of Judge Samuel Alito. My purpose is to share with my colleagues and the people of Minnesota my decision to vote to confirm Judge Alito and the reasons for it.

This is one of the most solemn and important events in the life of the Senate. From Minnesota, I watched and listened to the hearings closely. Judge Alito's intellect and character are nothing short of remarkable.

On day four of the hearings, January 12, 2006, four sitting and two former judges of the U.S. Court of Appeals for the Third Circuit testified on behalf of Judge Sam Alito's nomination to the Supreme Court. They spoke about his independence, judgment, intellect, and character.

I remember listening to Judge Timothy Lewis tell us that Judge Alito will be the type of Justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach. I think that is what we want in a judge.

What is interesting is that Judge Lewis is a Clinton appointee. He stated:

I am openly and unapologetically pro-choice and always have been.

Judge Lewis went on to state:

I am openly—and it's very well known—a committed human rights and civil rights activist and am actively engaged in that process as my time permits. . . .

I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—''Well, why are you here today saying positive things about his prospects as a justice on the Supreme Court?''

And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular, the United States Supreme Court.

It has been said that the most important decision in Government is ''who decides?'' With magnificent simplicity, article II, section 2 of the Constitution lays out the process for placing members on our Highest Court. It says:

. . . he [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint [justices] of the Supreme Court. . . .

For us, elected officials, the process of determining who will lead is long, drawn out, expensive, and sometimes very noisy. But for the selection of Justices, the Founders wanted the process to reflect the dignity of the office.

Unfortunately, we have witnessed a deterioration of the dignity and solemnity of that process in the last few years. Despite Chairman SPECTER's best efforts, the hearing before the Judiciary Committee seemed, at times, to me, at least in some ways, an exercise in futility.

I would like to know the breakdown between the amount of time Senators on the committee spent making speeches for the witness to hear and how much time they spent listening to him. The ''advice and consent'' process became ''lobby and confront.''

The Senate should examine the nominee, not dissect him or her.

I have read he was asked more than 700 questions. The Presiding Officer should know; he was there. He sat through part of that process. I believe he brought, and others try to bring, a sense of asking the nominee about the process that he would employ in making decisions. It was clear that what Judge Alito brought to the table was not one that says here is what I believe and as a result this is what I will do but, rather, what you would want a judge to do: What do the facts say, what does the law say, what does the Constitution say.

In being asked 700 questions, I think that is something like 500 more than Justice Ginsburg was asked. Senators on the committee who had previously counseled nominees not to answer specific questions on issues that will come before them on the Court on this occasion abused the nominee for not doing so. The American people know what this process is supposed to be about. The President nominates and the Senate confirms. The President, who was elected by all the people, did his job. Now it is time for us to do ours.

When we approach issues of greatest magnitude, the Senate should be at its very best. I like Stephen Covey's advice to leaders when he wrote:

The Main Thing is to keep the Main Thing the Main Thing.

Despite all the distractions and attempted detours, there is a main thing to be focused on. This main thing is not a particular issue or political agenda. This main thing should not vary based on whether your party is in the White House. I hope that in my time in the Senate, if there is a President of a different party, I will bring the same approach that I have tried to bring to the judges that President Bush has nominated. My consistent standard throughout my time in the Senate will be this: Is the nominee qualified by relevant experience, proper judicial temperament, and ethical standards which are beyond reproach? Does he bring a perspective that says a judge is to be a judge or referee, not to bring his or her personal opinions to the table to create law as he or she sees it but, rather, does what Judge Alito does, looks at the facts, looks at the law, the Constitution.

I would submit that a quick search for the votes and record of judicial nominations over the last 200 years would indicate this is the historical standard almost all Senators have taken. The current circumstance of microscopic examination, politicizing, and threats of filibusters is a major historical aberration. For the sake of the judiciary and the whole constitutional system, I hope we find our way back to the way things have been for over the last 200 years plus, rather than the last 5 years.

In my view, Judge Samuel Alito is extremely well qualified to serve on the Supreme Court. He has an extraordinary legal mind. There is no doubt about it. He has demonstrated in his years on the bench and in hundreds of cases that he views the judicial role as following the Constitution and interpreting the law, not making the law.

Judge Alito told us in his own words that ''no person in this country, no matter how high or powerful, is above the law, and no person in this country

is beneath the law.'' He also told us that ''our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.''

On results-oriented jurisprudence, Judge Alito stated:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policymakers. We shouldn't be implementing any sort of policy agenda or policy preferences we have.

In effect, this was the same standard that Judge Roberts applied. I recall he was asked a question whether he was ruling on behalf of the little guy. And the comment was, if the Constitution says the little guy deserves to win, he will. And if it says that he doesn't deserve to win, then he won't. That is what judges should do. That is the way they should operate.

Advice and consent was never intended as a rehash of the previous Presidential election. It was never intended as a means for the Senate to impose its policy agenda on a future court. I worry that we are walking down a dangerous path when Senators start looking at judges and in effect requiring them to say, yes, I will rule a certain way or otherwise you will not get my vote.

Advice and consent was never intended as a means to grandstand or placate interest groups. I will proudly vote to support Judge Alito's nomination. His career, his writings, and his class during this less-than-ideal confirmation process are proof that he will be an outstanding member of the highest Court. The President has done his job admirably. He has nominated an outstanding judge. The Senate has examined his qualifications. Now it is time for us to do our job and confirm Samuel Alito as an Associate Justice of the U.S. Supreme Court.

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. DURBIN. 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. DURBIN. Mr. President, pending before the U.S. Senate is the nomination of Judge Sam Alito from the Third Circuit to the U.S. Supreme Court. As I mentioned earlier in the day, it is a historic moment seldom seen on the floor of the Senate when we discuss the possible elevation of an individual to a lifetime appointment to the highest Court in the land.

The Supreme Court is the last refuge for America's rights and freedoms. It is an important institution for our values and our future. That is why during the course of the day many Members of the Senate have come to the floor to express their feelings about Judge Alito. It is largely broken down on partisan lines. Those on the other side of the aisle—the Republican side—are virtually all in support of Judge Alito. Most on the Democratic side oppose him.

I have listened to what many of the Republican Senators who have come to the floor have said. Almost every Republican Senator who has come to the floor today has made the argument that we should all vote for Judge Alito because in 1993, some 13 years ago, Justice Ruth Bader Ginsburg, a Supreme Court nominee of President Clinton, was confirmed overwhelmingly by the Senate. That appears to be talking point No. 1 that the White House generated not only in conversation today on the floor, but also at the hearing concluded recently in the Senate Judiciary Committee. There are some fundamental flaws in their reasoning and I will point out three:

First, as I mentioned this morning, Justice Sandra Day O'Connor, whose vacancy is being filled, has been the fifth and decisive vote on many issues central to our democracy. The Justice who takes her place is truly in the position to tip the scales of justice in America. In the last 10 years, 193 cases have been decided in the Supreme Court by the closest of votes, 5 to 4; and of the 193 cases, Justice Sandra Day O'Connor has been the deciding vote in 148; 77 percent of these closely divided decisions were decided by Justice Sandra Day O'Connor. Now, the Justice whom Ruth Bader Ginsburg replaced in 1993, Byron White, didn't play the same pivotal role Justice O'Connor has played as the decisive vote on so many important issues.

Second, President Clinton selected Justice Ginsburg after a real, authentic consultation with Republicans in the Senate. This morning, I saw Senator HATCH early in the day and I said his book sales must be up because everybody is quoting him. It is a book he wrote entitled ''Square Peg: Confessions of a Citizen Senator.'' In that book, Senator Orrin Hatch of Utah described how in 1993, as the top Republican on the Judiciary Committee, he received a telephone call from President Clinton to discuss possible Supreme Court nominees. Senator HATCH recounted in his book—and still stands by it—that he warned President Clinton away from a nominee whose confirmation Senator HATCH believed ''would not be easy,'' in his words. He wrote in his book that he suggested the names of Ruth Bader Ginsburg, whom President Clinton had never heard of, according to Senator HATCH, and Stephen Breyer. Senator HATCH wrote that he assured President Clinton that Ginsburg and Breyer ''would be confirmed easily.''

What a contrast to the situation we face today. President Bush sends the names of nominees to the Senate without previous consultation. In fact, I may be mistaken on this particular nominee, Judge Alito, but I do recall Senator SPECTER saying he learned of Harriet Miers' nomination when the news media announced it—or only shortly before. I think he said he was called within an hour or so before the news announcement. That is much different than the consultation that took place with Senator HATCH and President Clinton, where President Clinton went to the ranking Republican—not even the Chair at that moment—and asked him for advice and consultation on the next Supreme Court nomination.

Judge Alito was nominated not as a product of bipartisan consultation with the Senate but, rather, as a payoff—or at least a satisfaction to the radical right who had turned their back on Harriet Miers' nomination.

There is another crucial difference between Judge Alito and Judge Ginsburg. Despite some Republican Senators' efforts to rewrite history, Judge Ginsburg was viewed at the time of her nomination as a moderate and centrist judge based on her dozen years of service on the Federal bench. In a National Public Radio news story dated June 18, 1993, a reporter named Nina Totenberg said as follows:

> Why did the Republicans feel so comfortable with Judge Ginsburg? The answer is that her judicial record shows her to be the most conservative Carter-appointed judge on the U.S. Court of Appeals here in the District of Columbia.

She's considered a centrist, a swing vote. And in fact, a statistical analysis done in 1987 of that Court's voting pattern shows Judge Ginsburg voting substantially more often with the court's conservative Republican bloc of judges, led by then-Judge Robert Bork, than with the liberal Democrat judges.

Judge Alito, by contrast, has never been called a centrist judge. At least those who looked at his record have not called him that. He is not a judge who votes more often with his Democratic colleagues than his Republican colleagues. Far from it. Judge Alito is a staunch conservative and the most frequent dissenter on his court. When he dissents, it is almost always in a rightward and more conservative direction.

I spoke earlier about Judge Alito's track record on civil rights. I talked about some of the cases in which he showed a particular insensitivity to those who came before his court without the trappings of power. In fact, Judge Alito, in many of those cases, was the sole dissenting judge. Because Justice O'Connor was the fifth and deciding vote on so many cases involving civil rights and racial justice, Judge Alito will tip the scales of justice on those issues if he is confirmed.

At this point, I ask unanimous consent to have printed in the RECORD a letter of January 6, 2006, from the Leadership Conference on Civil Rights that has been submitted in opposition to the nomination of Judge Alito, signed by Dr. Dorothy Height, chairperson, and Wade Henderson, executive director.

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

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, January 6, 2006.

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

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of Judge Samuel A. Alito, Jr. as Associate Justice of the Supreme Court of the United States. The Supreme Court's jurisprudence over the past 50 years has often served to protect the fundamental constitutional rights of all Americans. Judge Alito's decisions, however, often stand in direct contrast to that jurisprudence and embrace a much more limited and narrow view of constitutional rights and civil rights guarantees. A careful examination of Judge Alito's record reveals a history of troubling decisions in the areas of civil rights, civil liberties, and fundamental freedoms, decisions that undermine the power of the Constitution and of Congress to, protect the civil and human rights of all Americans. LCCR believes that Judge Alito's record does not demonstrate an adequate commitment to protecting fundamental rights and, therefore, urges the Senate to reject his nomination.

The Supreme Court is the final arbiter of our laws, and its rulings can drastically impact the lives, liberties, and rights of all Americans. As such, LCCR believes that no individual should be confirmed to the Supreme Court unless he or she has clearly shown a strong commitment to the protection of civil rights and liberties, human rights, privacy, and religious freedom. The evidence reviewed to date shows that Judge Alito's record in these areas is highly troubling. His overall record reveals a jurist whose views are clearly to the right of where most Americans stand on a number of issues, including the reach of civil rights laws, the constitutional safeguards afforded those within our criminal justice system, and the power of Congress to protect Americans in the workplace and elsewhere.

In addition, LCCR is very troubled by the statements Judge Alito made in his 1985 application to be the Reagan administration's Deputy Assistant Attorney General in the Office of Legal Counsel. In particular, Judge Alito cited his disagreement with key rulings by the Supreme Court on legislative reapportionment, criminal justice and religious liberties, and added that he was ''particularly proud'' of his work to restrict affirmative action and limit remedies in racial discrimination cases. Although he now claims that these were just mere words on an application, his record as a jurist reveals something different. The ideological views taken in the application and during his time in the Reagan administration are exemplified throughout his judicial decision making, where he routinely favors a reading of statutory and constitutional law that limits the rights of individuals and the power of Congress to protect those individuals. The following is a summary of the reasons for LCCR's opposition:

JUDGE ALITO'S ''DISAGREEMENT'' WITH SUPREME COURT RULINGS ON REAPPORTIONMENT

In an essay attached to a 1985 application for a position within the Department of Justice, Judge Alito wrote that he had been motivated by his opposition to, among other things, the Warren Court's rulings on legislative reapportionment. Because those rulings first articulated the fundamental civil rights principle of ''one person, one vote,'' and paved the way for major strides in the effort to secure equal voting rights for all Americans, his stated opposition to them is extremely troubling. It is vital to understand the context in which these cases were decided.

Prior to the 1960s, as urban areas throughout the country experienced rapid population growth, many state and federal legislative districts were not redrawn, often leaving rural voters with far more representation per capita—and thus far more political power—than urban residents. In Florida, for example, just 12 percent of the population could elect a majority of the state senate. While unequal districts affected all voters, their impact was especially harsh in the South, where, along with discriminatory requirements like poll taxes and literacy tests, malapportionment virtually guaranteed the exclusion of racial minorities from the democratic process. Until 1962, the federal courts generally refused to intervene, dismissing such matters as ''political questions.''

The Supreme Court's ruling in Baker v. Carr broke new ground when the Court declared, for the first time, that the federal courts had a role to play in making sure that all Americans have a constitutional right to equal representation. In Wesberry v. Sanders, the Court examined Congressional districts in the State of Georgia, which had drawn its legislative map so that 823,680 people in the Atlanta are were all represented by one Congressman, while a rural Congressman represented only 272,154 people. The Court held that these disparities violated the Equal Protection Clause of the 14th Amendment, and ordered that the districts be redrawn more evenly. In Reynolds v. Sims, the Court applied the principle of ''one person, one vote'' to state legislatures, which, in many cases, had even more drastic malapportionment than Congressional districts. For example, the Reynolds case itself challenged Alabama's legislative districts, in which one county with more than 600,000 people had only one senator, while another county with only 15,417 people also had its own senator.

In articulating the concept of ''one person, one vote,'' the so-called ''Reapportionment Revolution'' cases equalized political power between urban and rural voters, and ensured that every citizen would have an equal voice in the legislative process. Along with the passage of the Voting Rights Act of 1965 and its subsequent amendments, the decisions also paved the way to far greater representation of racial and ethnic minorities, at both the state and federal levels of government. They also helped open the door for legal challenges to the ''at-large'' and ''multimember'' districts that many Southern states established in an effort to circumvent the Baker rulings and continue excluding African-American voters from the political process.

The Warren Court decisions that established the constitutional principle of ''one person, one vote'' were a catalyst for tremendous progress in our nation's efforts to secure equal voting rights for all Americans, and quickly became so accepted as a matter of constitutional law that they could fairly be described as ''superprecedent.'' Yet two decades later, long after most of the nation had come to embrace this progress, Judge Alito still boasted of his opposition to it. The fact that he would use his opposition as a ''selling tactic'' for a job in 1985 is disconcerting, and raises suspicions about his overall legal philosophy that deserve extensive scrutiny.

JUDGE ALITO'S NARROW READING OF ANTI-DISCRIMINATION AND OTHER WORKER PROTECTION LAWS

Judge Alito's record also raises concerns about whether he would be a strong enforcer of our nation's civil rights and labor laws. His decisions thus far in such cases show a pattern of narrow interpretations of the laws, placing greater burdens on civil rights plaintiffs to prove discrimination and making it harder for the government to protect workers.

In a number of cases involving race, gender, disability, and age discrimination, Judge Alito was clearly to the right of his colleagues on the Third Circuit. In Bray v. Mariott Hotels, for example, the Third Circuit ruled that an African-American plaintiff who had been denied a promotion had shown that racial discrimination might have been a factor, and that she was therefore entitled to take her case to trial. But Judge Alito dissented, writing an opinion that prompted the majority to charge that ''Title VII would be eviscerated if our analysis were to halt where the dissent suggests.'' In Sheridan v. E.I DuPont de Nemours and Co., a gender discrimination plaintiff sued after being denied a promotion. A jury ruled in her favor, but the trial judge threw out the verdict. The Third Circuit found that she had presented enough evidence to persuade the jury that discrimination was a factor, but Judge Alito was the lone dissenter in the en banc decision. Judge Alito acknowledged that additional evidence of discrimination, beyond proof that an employer's explanation for an adverse decision was pretextual, should not usually be required for a plaintiff to get to a jury, but he maintained that summary judgment might still be appropriate in some cases. The result Judge Alito would have reached in the Sheridan case, however—reversing a jury finding of sex discrimination that every other judge on the Third Circuit would have upheld—undermines the neutral standard he articulated. To reach this result, Judge Alito not only gave the employer the benefit of the doubt but failed to consider some of the most important evidence brought by Sheridan. Finally, in Nathanson v. Medical College of Pennsylvania, a prospective medical student filed suit under the Rehabilitation Act of 1973, claiming that the school failed to provide accommodations for a back injury. The trial court granted summary judgment in favor of the school, but a Third Circuit panel reversed on the Rehabilitation Act claim because there were different factual assertions that necessitated a jury trial. Judge Alito dissented, prompting his colleagues to write that under his standards, ''few if any Rehabilitation Act cases would survive summary judgment.

Judge Alito's record on anti-discrimination cases becomes more troubling when considered in light of his record prior to serving on the Third Circuit. As Assistant to the Solicitor General during the Reagan administration, Judge Alito co-authored several *amicus curiae* briefs that sought to eliminate affirmative action policies that were put in place to remedy past discrimination, discrimination which, in one case, persisted in contravention of at least three court orders over an eight-year period. In his 1985 application for a promotion within the Justice Department, Judge Alito later mischaracterized these cases as involving nothing more than challenges to ''racial and ethnic quotas.'' Judge Alito's involvement in the Reagan Justice Department's zealous campaign to undermine affirmative action remedies suggests that he adheres to an ideology that goes beyond mere conservatism on civil rights matters.

In cases involving other worker protections that deal with such matters as salary,

pensions and job safety, Judge Alito has also demonstrated a clear and unmistakable tendency to rule narrowly and against working people. Given a choice between reading a statute broadly, consistent with Congress' intent to provide workers with basic protections, or reading a statute in the narrowest way possible, he again shows a disturbing tendency to come down against workers. In Reich v. Gateway Press, for example, Judge Alito dissented from a ruling in which the Third Circuit found that employees of a group of related community newspapers were protected by the overtime rules of the Fair Labor Standards Act. The majority reasoned that while the law may not have covered each individual newspaper, which were small in size and circulation, the papers and all employment decisions were managed by one company and thus amounted to an ''enterprise'' that was subject to the overtime law. Judge Alito dissented, however, and would have denied this coverage, claiming that neither the statute nor the legislative history could support the majority's conclusion. In Belcufine v. Aloe, on the other hand, Judge Alito took a more expansive reading of the law, but in this case it was in order to benefit corporate officers at the expense of workers. Belcufine involved a state law that held corporate officers personally liable for unpaid wages and benefits. Judge Alito ruled, in a split decision, that the law could no longer be applicable, as a matter of policy, once a corporation has filed a bankruptcy petition. The dissenting opinion pointed out that nothing in the statute in question ''even remotely can be read to excuse the agents and officers'' from liability once a company files for bankruptcy.

JUDGE ALITO'S WILLINGNESS TO UNDERCUT FUNDAMENTAL PRIVACY AND DUE PROCESS RIGHTS

In cases involving criminal justice matters such as the Fourth Amendment, habeas corpus, and the right to effective assistance of counsel, Judge Alito has shown an excessive tendency to defer to police and prosecutors. This deference frequently comes at the expense of the constitutional rights and civil liberties of individual Americans, and it raises concerns about whether Judge Alito would help enable governmental abuses of power.

In Doe v. Groody, Judge Alito argued in dissent that police officers who conducted strip searches without a warrant could still be entitled to qualified immunity. The majority concluded, in a decision authored by Judge Chertoff, that strip searches of the suspect's wife and ten-year-old daughter went well beyond the police's warrant to search the home of a suspected drug dealer, and that the officers were therefore not entitled to claim qualified immunity as a defense to a subsequent lawsuit. As Judge Chertoff noted, holding otherwise would ''transform the judicial officer into little more than the cliche 'rubber stamp.' '' Judge Alito, in criticizing the majority for what he called a ''technical and legalistic'' ruling in favor of the plaintiffs, would have granted authority to the police to decide who could be searched and therefore, would have given the officers immunity for invading the privacy rights of the wife and daughter. In United States v. Lee, Judge Alito upheld the warrantless video surveillance by the FBI of a suspect's hotel suite. He justified his ruling on the ground that the FBI only turned on the surveillance equipment when an informant was present in the suite and could ''consent'' to the surveillance, but this ruling disregarded the fact that the equipment was capable of being used at any time and thus enabled the FBI to invade the suspect's privacy at any time. And in Baker v. Monroe Township, a woman and her children were searched as they were entering premises that were the subject of a search wacrant. The search warrant specified a location but there were no names included on the warrant, which led the majority to conclude that the warrant was deficient under the requirements of the Fourth Amendment. Judge Alito dissented, however, arguing that the lack of particularity in the warrant allowed the officers more leeway to search anyone on the premises.

Judge Alito's overly deferential attitude toward law enforcement at the expense of privacy rights was also evident before his appointment to the Third Circuit. In a 1984 memorandum, Judge Alito—then an attorney with the Justice Department—opined that the Attorney General and other government officials should have absolute immunity from civil liability for wiretapping the phones of Americans without a warrant. He urged the administration not to pursue such an argument in a pending Supreme Court case, but only on purely strategic grounds. The Supreme Court, in Mitchell v. Forsyth, went on to rule that absolute immunity did not apply in such situations, rejecting the broad, troubling view expressed in Judge Alito's memorandum.

Judge Alito's record is equally troubling in other areas of criminal justice, and shows the same excessive deference to law enforcement that can open the door to abuses. In another 1984 memorandum, Judge Alito argued in defense of a state law that had authorized Tennessee police to use deadly force against any fleeing felon suspect whom police have probable cause to believe had committed a violent crime or was armed or dangerous. In the case of Tennessee v. Garner, that law was invoked after police shot and killed an unarmed, 15-year-old, 5′4″ burglary suspect while he was climbing a fence. While Judge Alito did not recommend filing an amicus curiae brief in support of the police in the case, he still found the shooting to be constitutionally defensible. When given a choice between killing a possibly nonviolent suspect and allowing a possibly violent suspect to escape, Judge Alito argued that ''[r]easonable people might choose differently in this situation.'' The Supreme Court disagreed wiih Alito's farfetched analysis, finding ihe statute unconstitutional by a 6–3 margin.

Judge Alito's record also reveals a distressing tendency to deny habeas corpus claims of those in the criminal justice system. In Rompilla v. Horn, Judge Alito held that in ihe sentencing phase of a capital murder case, the failure of a defense attorney to investigate and present mitigating evidence, including ihe defendant's traumatic childhood, alcoholism, mental retardation, cognitive impairment and organic brain damage, did not amount to ineffective assistance of counsel in violation of the Sixth Amendment. His ruling was decried as ''inexplicable'' by the dissent and was overturned by the Supreme Court, which noted that some of the mitigating evidence was publicly available in the very courthouse in which the defendant was tried. Justice O'Connor concurred in reversing Judge Alito's ruling, describing the defense attorney's performance as ''unreasonable.'' In another case, Smith v. Horn, Judge Alito's dissent would have denied ihe habeas claims of a death row inmate. Judge Alito concluded that a jury instruction regarding the defendant's guilt, which the majority found the jury could have reasonable misunderstood, did not amount to a constitutional violation.

Finally, the case of Riley v. Taylor shows Judge Alito's reluctance to question prosecutors even where racism is alleged in the jury selection process. In that case, Judge Alito did not find a constitutional violation in the prosecution's apparent use of peremptory challenges to exclude black jurors from a death penalty case involving an African-American defendant. His dissent in the case illustrated a disregard for ihe impact of racially motivated peremptory jury strikes on African-American defendants. The majority had relied, in part, on statistical data to conclude that black jurors had been excluded, but Judge Alito took issue with the use of statistics, questioning the exclusion of black jurors as a statistical oddity and comparing it to the fact that five of the last six U.S. Presidents had been left-handed. His comments drew a sharp rebuke from the majority, who said that ''[t]o suggest any comparability to the striking of jurors based on their race is to minimize the history of discrimination against prospective black jurors and black defendants.

JUDGE ALITO'S TROUBLING RECORD ON IMMIGRATION LAW

Judge Alito's record in appeals of asylum and deportation orders reveals an abnormally strong tendency to let adverse Board of Immigration Appeals (BIA) and lower court rulings stand. For example, an analysis by The Washington Post found that Judge Alito has sided with immigrants in only one out of every eight cases he has handled, which, according to the Post, sets him apart even from most Republican-appointed judges. Judge Alito's record is more problematic in light of the recently growing criticism, by many other federal judges from both parties, of asylum rulings by the BIA and administrative immigration judges.

In asylum cases, Judge Alito has a strong tendency to rule against individuals who are seeking protection in the United States, even where evidence shows that they have been or would have been persecuted in their own countries. In Chang v. INS, Judge Alito dissented from the court's grant of asylum for a Chinese engineer who claimed he would face persecution if returned to his own country. Judge Alito found no reason to reverse the INS denial of asylum despite the fact that Chang had presented evidence that his wife and son already faced persecution and he was threatened with jail if he returned to China. Similarly, in Dia v. Ashcroft, Judge Alito dissented from a majority opinion granting asylum to an immigrant from the Republic of Guinea whose house had been burnt down and whose wife had been raped in retaliation for his opposition to the government. The majority noted that the immigration judge seemed to be searching for ways to deny asylum and find fault with the credibility of Dia. Judge Alito's dissent pushed for a higher standard. The majority criticized Judge Alito's dissent, noting that his proposed standard would ''gut the statutory standard'' and ''ignore our precedent.''

Judge Alito's excessive tendency to defer to the BIA is also evident from his record in deportation cases. In Lee v. Ashcroft, Judge Alita dissented when the court ruled that a false tax return is not an ''aggravated felony,'' an immigration law term that triggers mandatory deportation and bars most forms of humanitarian waivers. The court reasoned that Congress only intended for tax evasion to trigger mandatory deportation, but Judge Alito disagreed and pushed for a more expansive reading of the law. The majority noted that ambiguity in the law should be resolved in favor of the immigrant and that Judge Alita's interpretation was grounded in ''speculation.'' In Sandoval v. Reno, Judge Alito's dissent would have construed the Antiterrorism and Effective Death Penalty Act of 1996 to strip the federal courts of their ability to hear habeas corpus claims from aliens in custody challenging deportation orders. The Supreme Court ultimately rejected

Judge Alita's reading of the law, in INS v. St. Cyr, because such an interpretation would raise serious constitutional questions.

Also troubling is a 1986 letter Judge Alito wrote, in his capacity as Deputy Assistant Attorney General, to former FBI Director William Webster in which he suggested, inter alia, that ''illegal aliens have no claim to nondiscrimination with respect to nonfundamental rights,'' and that the Constitution ''grants only fundamental rights to illegal aliens within the United States.'' Judge Alito uses a strained reading of the 1976 Supreme Court ruling in Mathews v. Diaz to support this assertion, but oddly, he makes no mention of the 1982 ruling in Plyler v. Doe, which squarely ruled that a state could not discriminate against undocumented children in public education, even though education is not considered a fundamental constitutional right. As such, Judge Alito's letter raises questions about whether he would be willing to adequately protect undocumented immigrants from unconstitutional forms of discrimination.

JUDGE ALITO'S RESTRICTIVE VIEW OF THE ESTABLISHMENT CLAUSE

Judge Alito's record shows that he takes an overly narrow view of the First Amendment's Establishment Clause, a view that sets him apart from Justice O'Connor and the majority of her colleagues to serve on the Supreme Court. His record—along with his acknowledged disagreement with the Supreme Court's most noteworthy rulings in this area—raises concerns that he would not do enough to protect the religious liberties of an increasingly diverse America.

For example, in ACLU of New Jersey v. Black Horse Pike Regional Board of Education, Judge Alito voted—against an en banc majority of his colleagues on the Third Circuit—to uphold a public school policy that allowed high school seniors to vote on whether to include prayer during a graduation ceremony. By allowing a popular majority of public school students to waive the rights of a minority, Judge Alito's view—had it not also been subsequently rejected by the Supreme Court in a later case—would have essentially defeated the purpose of the Establishment Clause.

Judge Alito's ruling in ACLU of New Jersey v. Schundler (Schundler II) is equally troubling. In Schundler, the municipality of Jersey City, New Jersey had placed a crèche and menorah outside of City Hall. After a district court ruled that the display violated the Establishment Clause, the city added additional figures to the following year's display, including those of Santa Claus, Frosty the Snowman, a red sled, and Kwanzaa symbols. The district court eventually found that this modified display was also unconstitutional. Judge Alito reversed this decision, however, and upheld the modified display. In doing so, he minimized the fact that the display had only been modified in response to litigation and that the city had been attempting to promote religion through its holiday displays for decades—even though the Supreme Court considers such history to be highly relevant when determining whether a practice or policy violates the Establishment Clause.

JUDGE ALITO'S EFFORTS TO LIMIT CONGRESSIONAL AUTHORITY IN FAVOR OF ''STATES' RIGHTS''

Judge Alito's record demonstrates a troubling tendency to favor ''states' rights'' over the rights of ordinary Americans. During his tenure on the Third Circuit, he has engaged in an excessively narrow reading of the Commerce Clause and an excessively broad reading of state sovereign immunity under the 11th Amendment. In fact, his decisions show that he would go even further than the current Supreme Court in undercutting Congress' ability to protect Americans.

In United States v. Rybar, the Third Circuit upheld the conviction of a firearms dealer for the sale of outlawed machine guns, joining six other circuits in finding the federal law banning the transfer or possession of machine guns to be a valid exercise of Congressional authority under its power to regulate interstate commerce. But Judge Alito dissented, arguing that the Supreme Court's recent decision in United States v. Lopez, which invalidated Congress' gun-free school zone ban, made clear that Congress did not have such power. The majority distinguished Lopez because it dealt with a small geographic area—school zones—whereas the law at issue in Rybar applied nationwide. Judge Alito would have taken Lopez a step beyond to place further restrictions on Congress' power to use its Commerce Clause authority to protect Americans from machine gun violence. Judge Alito's extraordinarily narrow perspective of Congressional power expressed in his Rybar dissent raises serious concerns about whether he will uphold major and historically effective pieces of civil rights infrastructure such as the ban on discrimination in places of employment or public accommodation in the Civil Rights Act of 1964, and whether he will hold a restrictive view of Congress' power to move the country forward with additional civil rights laws such as hate crimes and non-discrimination legislation.

In Chittister v. Department of Community and Economic Development, Judge Alito's majority opinion would have denied a state employee the benefits of the Family and Medical Leave Act of 1993 (''FMLA''). In this case, a state employee had sued after being fired for taking medical leave that had been approved pursuant to FMLA. A jury ruled in Chittister's favor, but the trial court reversed the verdict on the ground that the state was immune from suit under the 11th Amendment. On appeal, Judge Alito affirmed the ruling, claiming that Congress had not abrogated state sovereign immunity. The Supreme Court later reached an opposite conclusion from Judge Alito's holding in its 2003 decision in Nevada Department of Human Resources v. Hibbs. The Court held that state employees could in fact sue their employers under the FMLA, a decision that has subsequently been read by some courts to validate the constitutionality of the entire law.

JUDGE ALITO'S MEMBERSHIP IN ''CONCERNED ALUMNI OF PRINCETON''

In the same job application essay described above, Judge Alito also stated that he was ''a member of the Concerned Alumni of Princeton University. a conservative alumni group'' (''CAP''). Throughout its existence, CAP was notorious for its outspoken, inflammatory rhetoric opposing Princeton's decision to enroll female students. Indeed, CAP reportedly advocated limiting the percentage of women admitted to the school. CAP also derided Princeton's efforts to increase the number of minority students; the group argued that children of alumni were more deserving of admission. In the group's magazine, Prospect, one of the organization's founders fondly recalled that Princeton had once been ''a body of men, relatively homogenous in interests and backgrounds,'' but that he now worried about the future of the University ''with an undergraduate student body of approximately 40% women and minorities, such as the Administration has proposed.'' In 1975. an alumni panel reviewed admission issues and condemned CAP's characterization of Princeton's policies. The panel, which included current Senate Majority leader Bill Frist, determined that CAP ''presented a distorted, narrow and hostile view of the university that cannot help but have misinformed and even alarmed many alumni.'' It is unclear when Judge Alito joined the group or what role he played in its activities. But his membership in the organization is troubling, given the group's outspoken hostility towards the inclusion of women and minorities at Princeton University, and it raises serious questions about the level of his commitment to gender and racial equality.

Also troubling is Judge Alito's current effort, following his nomination to the Supreme Court, to now deny he ever had any affiliation with the group. In a questionnaire he recently submitted to the Senate Committee on the Judiciary, Judge Alito stated that ''[a] document I recently reviewed reflects that I was a member of the group [Concerned Alumni of Princeton] in the 1980s. Apart from that document, I have no recollection of being a member, of attending meetings, or otherwise participating in the activities of the group.'' This supposed lack of any recollection of being a member of CAP seems difficult, at best, to reconcile with the statement he made in his 1985 job application essay—a statement in which he not only cited his membership in CAP, but deliberately used this claim of membership in an effort to bolster his conservative credentials.

CONCLUSION

The stakes could not be higher. The Supreme Court is closely divided on cases involving many of our most basic rights and freedoms. Judge Alito has been nominated to fill the seat of retiring Justice Sandra Day O'Connor, who was the crucial deciding vote in so many of those cases. The American people want and deserve to know that any new Supreme Court justice will be committed to protecting individual rights, and will put our freedoms ahead of any political agenda. Unfortunately, Judge Alito's record not only fails to show such a commitment, but also raises serious doubts.

In addition, we also have doubts about whether Judge Alito will, at his confirmation hearings, address the above concerns in a fully open and candid manner. For instance, Judge Alito has given numerous shifting and conflicting reasons for why he did not, as he promised to Senators before being confirmed to the Third Circuit, recuse himself from cases involving the Vanguard companies, in which he had financial holdings. Furthermore, Judge Alito has also recently tried to dismiss a number of troubling statements in his 1985 job application, such as his disagreement with the Warren Court's reapportionment cases, by suggesting that his statements should not be taken seriously because he was simply applying for a job. Finally, as discussed above, Judge Alito has also attempted to deny any affiliation with the radical group Concerned Alumni of Princeton, even though he himself proudly claimed to be a member in 1985. These incidents raise doubts about whether Judge Alito's responses to tough questions about his record and his legal philosophy can be completely believed when his confirmation hearings begin next week.

For the above reasons, we must oppose his confirmation as Associate Justice. We appreciate your consideration of our views. If you have any questions, please feel free to contact LCCR Deputy Director Nancy Zirkin at (202) 263–2880 or LCCR Counsel Rob Randhava at (202) 466–6058. We look forward to working wilh you.

Sincerely,

DR. DOROTHY I. HEIGHT,
Chairperson.

WADE HENDERSON,
Executive Director.

Mr. DURBIN. Mr. President, there is another aspect of Judge Alito's record that is equally troubling, and that is his failure to show that he will protect the average American from the overreaching hand of government.

I question whether he is dedicated to protecting the privacy rights of individuals from government officials in many critical areas of our lives. For example, I share the concern of many of my colleagues about Judge Alito's decision to allow a police officer to conduct a strip search of an innocent 10-year-old girl. The police officer, who did not have a valid search warrant in the opinion of a majority of the judges on Judge Alito's court, took the 10-year-old girl and her mother into a bathroom, ordered them to empty their pockets, and then ordered the young girl and the mother to lift their shirts and drop their pants—a 10-year-old girl. A majority of the judges on Judge Alito's court said that went too far; the search warrant did not authorize it. Judge Alito saw it differently. He was the only judge on the court to say that the Constitution permitted this search.

The majority opinion in this case, incidentally, was written by Michael Chertoff. If the name is familiar, it is because then-Judge Chertoff, a conservative Republican, today is in the President's Cabinet as the head of our Department of Homeland Security. Judge Chertoff, writing the majority opinion, said that what was done was wrong, and Judge Alito's decision was wrong.

In the context of reproductive freedom, I am troubled about whether Judge Alito accepts some of the basic rights of personal privacy. One of the cases which we should not forget was decided some 41 years ago by the Supreme Court. The case was Griswold v. Connecticut.

As hard as it may be to believe, there was a law in the State of Connecticut and in many other States, including my home State of Illinois, at that time which made it a crime for a married couple to buy birth control devices or for a doctor to prescribe them or for a pharmacist to fill the prescription. It was a crime for married couples to engage in family planning by buying any type of birth control device. It is hard to believe. That was America in the 1960s.

The Supreme Court took a look at this case and said that is wrong. There is built into our rights as a citizen the right of privacy, and that privacy goes to those intimate, personal decisions made by individuals—in this case, husbands and wives—in the State of Connecticut. They struck down the Connecticut statute.

I asked Judge Alito what he thought about this Griswold decision and this right of privacy. He was willing to say that Griswold is settled law. But, of course, Griswold v. Connecticut and the right of privacy was the basis of a decision made a few years later in Roe v. Wade. In that particular case, the Supreme Court built on this concept of a right of privacy and said that for a woman making the most important and personal decision of her life, in terms of the continuing of a pregnancy, she had a protected status in certain stages of the pregnancy. That was a decision which was handed down over 30 years ago—33, as a matter of fact.

So we asked Judge Alito if he accepted that Griswold v. Connecticut, which established the right to privacy, was settled law in America, and did he also accept that Roe v. Wade, which followed, was settled law? He repeatedly refused to provide us with that assurance about this landmark decision.

What a contrast to John Roberts, who, just a few months before when he was nominated for the Chief Justice position on the Supreme Court and was asked the same question, said that he believed Roe v. Wade was settled precedent in America. That is a defining difference between these two nominees and an important one.

If Judge Alito is confirmed, there are very serious questions about what will happen with the right of privacy in America, not just for the women who could be affected by these decisions but for everyone.

It wasn't that long ago, a little over a year ago, that the Congress was embroiled in a controversy over something that many families face every day in America. You will remember the Terri Schiavo case, a sad situation where some chemical imbalance led to Terri Schiavo going into a coma. Her life was sustained by extraordinary means for 15 years while her husband argued that she never wanted it that way. She had made it clear not to take extraordinary measures to keep her alive.

There was a battle within the family. Her parents saw it differently, and they went to court regularly to fight this out. Time and again, the Florida courts reached the decision that what Terri Schiavo's husband said would be controlling and that her wishes would be honored and that extraordinary measures to keep her alive would be discontinued, and then the case would be appealed.

Finally, the day came when all appeals had been resolved, and it was apparent a decision would finally be made to remove the life support she was receiving. It was at that moment when a group—a political group—inspired some Members of Congress to get involved. They started arguing it was the time, at that moment, for the Federal courts to step into the hospital room and for the Federal judges to make decisions overriding the State courts, overriding the stated wishes of Terri Schiavo, overriding the wishes of her husband.

There is hardly a person in the Senate who hasn't faced a similar family decision when someone you love is near the end of their life and the doctor comes in and says there are several things we can do. I know in my family, my mother made it very clear to me she didn't want any of that life support, extraordinary effort made. I was determined to honor her wishes. She passed away very quickly with a heart attack, and we never had to face that decision, but we knew what she wanted. Her sons said they would stand by her wishes. Most people feel the same way. Do you know why, Mr. President? Because it is an extremely private, personal, and family issue. But in the case of Terri Schiavo, there were those in the U.S. Congress, particularly in the House of Representatives, who wanted the Federal Government to step in at that moment.

So when we talk about diminishing the right of privacy in America, it goes far beyond the contentious issue of abortion. It goes to issues involving the last wishes of a person who is dying. It goes to issues involving protecting our privacy and our records, our computers, our medical records, our financial records, and our credit history. The right of privacy has become a large part of American life, and I am concerned when Judge Alito has drawn distinctions in saying there are some elements of this right of privacy that he still is not certain are settled law in America.

Another fear I have about Judge Alito is that he will not be respectful of the time-honored system of checks and balances in this country when it comes to Presidential power. If confirmed, Judge Alito will have to decide what limits, if any, the Constitution places on the President's authority over all of us.

Based on his record, I am concerned that Judge Alito will not be willing to stand up to a President who is determined to seize too much power over our personal lives. In speeches to the ultraconservative Federalist Society which Judge Alito bragged about belonging to in the 1980s, Judge Alito has said he is a ''strong proponent'' of the so-called ''unitary Executive theory,'' another phrase you won't find in the Constitution. He even criticized the Supreme Court, specifically Chief Justice Rehnquist, for failing to defer to this theory. During his hearings, Judge Alito said he still supports key elements of the theory today and indicated he will follow it, to some degree, in making his decisions.

The same unitary executive theory has been the basis for many claims by the Bush administration that they had the Executive power to make some of the most controversial decisions of their Presidency, including the war on terrorism, the use of torture, and the power to eavesdrop on our phone conversations without court approval, as required by law.

Based on the unitary executive theory, the Bush administration has claimed the right to seize American citizens and imprison them indefinitely without charge. In the Hamdi case, the Supreme Court, in an opinion written by Justice Sandra Day O'Connor, rejected this policy. Only one Justice

voted to uphold the administration's decision. That Justice, Clarence Thomas, based his dissent on the unitary executive theory, the same general theory to which Judge Alito says he subscribes.

It appears that if Judge Alito is approved for the Court, he will join Justice Thomas and Justice Scalia as only the third Supreme Court Justice who has announced public support for this fringe theory called the unitary executive theory which gives more and more power to the President and less restraint of law on his activities.

The Supreme Court is supposed to be a check on the power of the President. The Court's role is to interpret the Constitution, not to advance some marginal theory of the Federalist Society or any other special interest group. During his hearings, Judge Alito did attempt to distinguish his position on the unitary executive theory from the Bush administration's, but he refused to say whether he disagreed with Justice Thomas' dissent in Hamdi, and he repeatedly refused to say whether this President or any President has the right to disregard a law passed by Congress.

Several Senators asked Judge Alito about this directly, and several times he gave the same carefully worded response—and I quote it:

> The President must take care that the statutes of the United States that are consistent with the Constitution are complied with.

Here is what we don't know about that statement: If the President claims that a law is not consistent with the Constitution, can he ignore the law with impunity? And if Judge Alito is on the Supreme Court, is that how he would rule? That certainly is the way he answered the question.

Presidents often issue formal statements when they sign a law. When Judge Alito was an attorney in President Reagan's Justice Department, he advocated the use of Presidential signing statements to, in his own words, ''increase the power of the Executive to shape the law.'' In this way, Sam Alito argued ''the President will get in the last word on questions of interpretation.''

The Framers of our Constitution didn't see it the same as Judge Alito. They said Congress was to have the last word.

The Bush administration has adopted Judge Alito's proposal. In more than 100 Presidential signing statements, the Bush administration has cited unitary executive theory and pledged to uphold the law if it doesn't conflict with this theory.

Just 3 weeks ago, we saw a good illustration. The White House issued a Presidential signing statement claiming that the President could set aside the McCain torture amendment which Congress passed overwhelmingly in December. Under what rationale could a President ignore a law that passed in this Chamber 90 to 9? The White House claimed the President has the power under the ''unitary Executive theory.'' So hold on to your seats, America. If Judge Alito goes onto the Court pushing this theory that was inspired by the Federalist Society saying this President has extraordinary powers no President has ever had, it will consolidate more power in the executive branch than our Founding Fathers ever imagined.

Does any President have the power to ignore the McCain torture amendment or FISA, the law that requires court approval to wiretap American citizens? Based on his record, I am fearful that Judge Alito, facing these questions, is more likely to defer to the President's power than defend our fundamental constitutional rights.

I will speak more to this issue about wiretaps in a moment.

I also fear that Judge Alito, if confirmed, would blur the traditional line between church and state. In his 1985 job application essay, he indicated his disapproval of the Warren Court decisions on the establishment clause of the Constitution.

What is the establishment clause? In the first amendment, the Constitution makes clear that we have the freedom of religious belief. Of course, that means each of us has the right under the law, under our Constitution, to believe any religious belief or to hold to no religious belief. That is our basic freedom. It says:

> Congress shall make no law respecting an establishment of religion. . . .

This was an understandable part of our Constitution because many of our Founding Fathers hailed from England, which had an official national church. They wanted to make it clear that there would be a separation, a clear wall of separation between church and state, as Thomas Jefferson said in the early 1800s.

The Warren Court, led by Earl Warren, as Chief Justice, struck down government-sponsored prayer and government-sponsored devotional Bible reading in public schools, arguing that it violated the establishment clause. The decisions by the Warren Court were nearly unanimous. They stood for the proposition, as the Constitution said, that our government must be neutral toward religion in order to maintain this healthy separation of church and state. This concept of government neutrality is the bedrock of today's mainstream establishment clause thinking, and it is led by none other than Justice Sandra Day O'Connor. Yet from a review of Judge Alito's 15 years on the Federal bench, it is clear that Judge Alito has serious reservations about whether government should be neutral toward religion, as our Constitution requires.

I think we ought to reflect on this long and hard. We live in a country of diverse religious belief. We try to show respect for each person's religious belief, and we make it clear that our government won't pick favorites among religions. We can only look overseas to other countries that are torn with strife over religious divisions to understand the wisdom of our Founding Fathers, a wisdom that should be honored by our Supreme Court.

The rulings of Judge Sam Alito on the Third Circuit raise questions as to whether he will continue to protect the separation of church and state that has served America so well.

Let me speak for a moment about a timely issue which is not only in the headlines but really relates directly to this confirmation consideration of Judge Alito. Like many Americans, I am deeply concerned about recent revelations that sometime in 2001, President Bush authorized the National Security Agency to begin spying on Americans in the United States without court approval. This is an apparent violation of law.

Let me say at the outset, this is not about whether we should wiretap terrorists. Of course, we should. We should use every legal tool available to put an end to Osama bin Laden's deadly franchise.

Under a law called the Foreign Intelligence Surveillance Act, or FISA, the President has broad authority to wiretap suspected terrorists. The FISA Court has been virtually a rubberstamp for Presidents asking for wiretap orders. In fact, over 19,000 requests have been made of this court to wiretap suspected terrorists, and the administration has been denied only 4 times. 19,000 requests, 4 denials.

Within the FISA law there is an emergency exception so if there is a suspicion that a conversation about to take place needs to be wiretapped to protect America, the Government can move quickly, without court approval, so long as they go through the regular process within 72 hours. So the Government can act if they suspect that a conversation would lead to terrorism and endanger Americans.

So the President has authority, under this Foreign Intelligence Surveillance Act, to engage in the activities he has described to the American people: time-sensitive electronic surveillance on suspected terrorists.

What this debate really is about is the President's constitutional obligation to follow the laws of the land. Legal scholars, former Government officials from both political parties, and the nonpartisan Congressional Research Service have all concluded that the NSA program appears to violate the law.

Even President Bush has recognized it is improper to wiretap Americans in the United States without court approval. Listen to what President Bush said in a speech to the American people on April 20, 2004. I quote it verbatim:

> Now, by the way, any time you hear the U.S. Government talking about wiretapping, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we are talking about chasing down terrorists we are talking about getting a court order before we do so.

That is the end of the quote, April 20, 2004, after the President had initiated this NSA wiretapping that is not approved by law and does not use a court order.

When President Bush concluded over 4 years ago that he wanted to eavesdrop on Americans without the court approval required by law, he had an obligation to come to Congress and ask us to change the law.

Congress has always been a willing partner when the President has requested additional authority to fight terrorism. I can recall the President, within days of 9/11, asking for an authorization for the use of force by this Congress to go after Osama bin Laden and al-Qaida, which I readily voted for. There was unanimous support for a bipartisan resolution which passed the Senate.

Shortly thereafter, the President came to Congress and asked us to pass the PATRIOT Act. It was an act that gave the Government more authority, more tools, more legal ways to go after terrorism in the United States. It was overwhelmingly approved with only one dissenting vote in the Senate. Within the PATRIOT Act, the President asked for some changes in this FISA law to make it easier to wiretap terrorists.

So the administration at this point seems to concede the point that they were bound by this law and were looking for changes so they could use it, in their words, more effectively. We tried to accommodate them as much as we possibly could. When the White House asked Congress to pass this bill, we cooperated with them. Members of Congress from both sides of the aisle were happy to work with the President to keep America safe.

That is not what the President has done here. Instead, we have learned that the President has not followed even the law that he asked us to change. He claims the power to eavesdrop on the phone conversations of Americans and e-mails without any court approval, without any legal authority.

That raises fundamental questions. Is this President or any President above the law? Does the President have the authority to disregard laws passed by Congress, whether it is the question of torture or eavesdropping? Can Congress place any limits on the President's power over our lives?

Today I joined the distinguished minority leader, Senator HARRY REID, and my colleagues, Senators KENNEDY and FEINGOLD, and sent a letter to President Bush. We have urgently requested that the President notify us immediately of the changes in the law that he believes are necessary to permit effective surveillance of suspected terrorists and why the changes are needed.

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

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

U.S. SENATE.

Washington, DC, January 25, 2006.

President GEORGE W. BUSH,
The White House,
Washington, DC.

DEAR PRESIDENT BUSH: We strongly support efforts to do everything possible, within the limits of the law, to combat terrorism. We are therefore gravely concerned that sometime in 2001, in apparent violation of federal law, you authorized the National Security Agency (NSA) to eavesdrop on Americans in the United States without court approval.

When you concluded over four years ago that existing law did not provide you sufficient authority to conduct this program, you had an obligation to propose changes in the law to Congress. Rather than doing so, you have apparently chosen to ignore the law. We urgently request that you notify us immediately what changes in the law you believe are necessary to permit effective surveillance of suspected terrorists, and why these changes are needed.

The Foreign Intelligence Surveillance Act (FISA) gives the government broad authority to wiretap suspected terrorists. Federal law provides that FISA and the criminal wiretap statute "shall be the exclusive means by which electronic surveillance . . . and the interception of domestic wire, oral, and electronic communications may be conducted." 18 U.S.C. §2511(2)(f). FISA makes it a crime, punishable by up to five years in prison, to conduct electronic surveillance except as permitted by statute. 50 U.S.C. §1809.

In fact, you have recognized that it is improper to subject Americans in the United States to warrantless wiretapping. In a speech on April 20, 2004, you said: "Now, by the way, any time you hear the United States government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so."

You and officials in your administration have repeatedly asserted that FISA does not provide adequate authority to monitor suspected terrorists. However, FISA authorizes monitoring suspected terrorists, who are the purported targets of NSA's warrantless wiretaps. Moreover, FISA includes an emergency exception for situations where there is insufficient time to obtain judicial approval before beginning a wiretap. This exception allows the government to commence electronic surveillance immediately, as long as it seeks a court order within 72 hours. 50 U.S.C. §1805(f). During the course of its existence, the FISA court has approved over 19,000 wiretap applications from the government while disapproving only four.

It therefore appears that your administration has sufficient authority under FISA to engage in the activities you have described—time-sensitive electronic surveillance of suspected terrorists.

Officials in your administration have asserted that the government's internal process for preparing and authorizing a FISA application is too burdensome and slow to monitor suspected terrorists effectively. To be clear, your administration's bureaucratic and paperwork delays are not an excuse for violating the law. As the nonpartisan Congressional Research Service (CRS) concluded: "To the extent that a lack of speed and agility is a function of internal Department of Justice procedures and practices under FISA, it may be argued that the President and the Attorney General could review these procedures and practices in order to introduce more streamlined procedures to address such needs." CRS Memorandum, Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information, by Elizabeth A. Bazan & Jennifer K. Elsea.

If you or officials in your administration believe that FISA, or any law, does not give you enough authority to combat terrorism, you should propose changes in the law to Congress. You may not simply disregard the law.

In your December 19, 2005 press conference, you called FISA "a very important tool." FISA is more than a tool; it is a law, and we are a nation of laws. Under Article 1 of the Constitution, Congress has the power to make laws. Under Article 2 of the Constitution, you must take care that the laws are faithfully executed.

In order to win the war on terrorism, we must maintain the high ground by respecting the rule of law as embodied in our Constitution. To do otherwise makes us weaker as a nation and harms our national security. The Supreme Court long ago rejected the notion that there is a wartime exception to the Constitution's separation of powers. As the Court concluded in the historic Youngstown Steel case: "The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. . . . The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times." 343 U.S. 579, 587–89 (1952).

In light of the very serious nature of this matter, we request that you respond to this letter as soon as possible, and, in any case, no later than February 1, 2006.

Sincerely,

HARRY REID,
U.S. Senator.
EDWARD M. KENNEDY,
U.S. Senator.
RICHARD J. DURBIN,
U.S. Senator.
RUSSELL D. FEINGOLD,
U.S. Senator.

Mr. DURBIN. The President cannot continue to simply disregard the law.

At a press conference on December 19, 2005, President Bush called FISA "a very important tool." I would say to the President, FISA is more than a tool. It is a law, and we are a nation of laws.

Our Constitution separates powers between different branches of Government. Under article I of the Constitution, Congress has the power to make laws. Under article 2 of the Constitution, the President must take care that the laws are faithfully executed.

The Supreme Court has faced questions like this in the past, questions regarding the powers of the President in the midst of a war. During the Korean war, President Harry Truman violated the law by seizing America's steel mills to aid the war effort. In the historic Youngstown Steel case, the Court rejected President Truman's actions and concluded:

> The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. . . . The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times.

In order to win the war on terrorism, we must maintain the high ground by respecting our Constitution and respecting the laws of the land. To do otherwise makes us weaker as a nation and harms our national security.

And that is what is at stake with this Supreme Court nomination. Judge Sam Alito, from his early days in the Reagan administration, through the rulings in his court and his testimony before the Judiciary Committee, time and again seems to defer to the Executive's assertions of power. At this moment in history, like none other in recent times, that is a critical and timely issue. We have to ask the question, would this judge on the Court protect our basic privacy and personal freedom or would he give to this President power to ignore the law?

Last week Attorney General Gonzales issued a long memo supporting the administration's position on the NSA spying program. That memo went so far as to suggest that this administration is not even bound by the PATRIOT Act. It suggests that the President can use the powers authorized by the PATRIOT Act without even the limited checks and balances contained in the PATRIOT Act, regardless of what Congress says.

So what has happened is the administration has gone from the question of torture to this whole question of eavesdropping, and now has suggested that this President has the authority to do whatever he cares to do in the name of his power as Commander in Chief.

The Supreme Court in the past has not agreed with Presidents who have tried to seize that much power. President Truman learned that the hard way. I am hopeful this Supreme Court will respect the Constitution and respect the laws of the land and restrain this President or any President who tries to move that far and that fast.

So it comes down to this with the Alito nomination. I am afraid as we look carefully at his record it is clear that he would allow the Government to go too far, to intrude on our personal privacy and our freedoms. I am afraid that he would take the country in the wrong direction when it comes to women's rights and civil rights. I am afraid that his record, as I mentioned earlier on the floor today, is evidence that when he is given a choice between ruling in court for an established institution—whether it is a business or a government—or standing with a consumer or an individual, he consistently rules for the established institution. I am afraid that the 1985 memo, which became a large part of his recent hearing, still guides Judge Alito in many respects in his heart of hearts.

I think the fact that Harriet Miers was rejected by so many conservative groups and the President had to withdraw her nomination has to be taken into consideration here. Judge Sam Alito came as her successor, as the nominee. The same groups that had rejected her accepted Sam Alito. They know or believe they know what I have spoken of this evening, that his is a philosophy that is outside the mainstream, that is not consistent with the values of this country and not consistent with the fine record written by Justice Sandra Day O'Connor.

Mrs. BOXER. Mr. President, yesterday in Burbank, CA, I gave a major address before my constituents announcing my opposition to the nomination of Samuel Alito to the Supreme Court of the United States.

Today I am announcing my opposition to the nomination of Samuel Alito to the Supreme Court of the United States.

According to article II of the Constitution, Justices of the Supreme Court may not be appointed by the President without the advice and consent of the Senate. So it is our solemn duty to consider each nomination carefully, keeping in mind the interests of the American people.

This nomination is particularly crucial because the stakes have rarely been so high.

First, consider the context in which this nomination comes before us. The seat that Judge Alito has been nominated for is now held by Justice Sandra Day O'Connor, who came to the Court in 1981.

For years, Justice O'Connor has provided the tie-breaking vote and a commonsense voice of reason in some of the most important cases to come before the Court, including a woman's right to choose, civil rights, and freedom of religion.

Second, consider the tumultuous political climate in our Nation. President Bush understood that in 2000 when he promised to govern from the center, and be ''a uniter, not a divider.'' Sadly, this nomination shows that he has forgotten that promise because it is not from the center and it is not uniting the Nation.

The right thing to do would have been to give us a justice in the mold of Justice O'Connor, and that is what the President should have done.

Let me be clear: I do not deny Judge Alito's judicial qualifications. He has been a government lawyer and judge for more than 20 years and the American Bar Association rated him well qualified. He is an intelligent and capable person. His family should be proud of him and all Americans should be proud that the American dream was there for the Alito family.

But after reviewing the hearing record and the record of his statements, writings and rulings over the past 24 years, I am convinced that Judge Alito is the wrong person for this job.

I am deeply concerned about how Justice Alito will impact the ability of other families to live the American dream to be assured of privacy in their homes and their personal lives, to be secure in their neighborhoods, to have fair treatment in the workplace, and to have confidence that the power of the executive branch will be checked.

As I reviewed Judge Alito's record, I asked whether he will vote to preserve fundamental American liberties and values.

Will Justice Alito vote to uphold Congress's constitutional power to pass laws to protect Americans' health, safety, and welfare? Judge Alito's record says no.

In the 1996 Rybar case, Judge Alito voted to strike down the Federal ban on the transfer or possession of machine guns because he believed it exceeded Congress's power under the Commerce Clause. His Third Circuit colleagues sharply criticized his dissent and said that it ran counter to ''a basic tenet of the constitutional separation of powers.'' And Judge Alito's extremist view has been rejected by six other circuit courts and the Supreme Court. Judge Alito stood alone and failed to protect our families.

In a case concerning worker protection, Judge Alito was again in the minority when he said that Federal mine health and safety standards did not apply to a coal processing site. He tried to explain it as just a ''technical issue of interpretation.'' I fear for the safety of our workers if Judge Alito's narrow, technical reading of the law should ever prevail.

Will Justice Alito vote to protect the right to privacy, especially a woman's reproductive freedom? Judge Alito's record says no.

We have all heard about Judge Alito's 1985 job application, in which he wrote that the Constitution does not protect the right of a woman to choose. He was given the chance to disavow that position during the hearings and he refused to do so. He had the chance to say, as Judge Roberts did, that Roe v. Wade is settled law, and he refused.

He had the chance to explain his dissent in the Casey decision, in which he argued that the Pennsylvania spousal notification requirement was not an undue burden on a woman seeking an abortion because it would affect only a small number of women, but he refused to back away from his position. The Supreme Court, by a 5 to 4 vote, found the provision to be unconstitutional, and Justice O'Connor, co-writing for the Court, criticized the faulty analysis supported by Judge Alito, saying that ''the analysis does not end with the one percent of women'' affected . . . ''it begins there.''

To my mind, Judge Alito's ominous statements and narrow-minded reasoning clearly signal a hostility to women's rights, and portend a move back toward the dark days when abortion was illegal in many states, and many women died as a result. In the 21st century, it is astounding that a Supreme Court nominee would not view Roe v. Wade as settled law when its fundamental principle a woman's right to choose—has been reaffirmed many times since it was decided.

Will Justice Alito vote to protect Americans from unconstitutional searches? Judge Alito's record says no.

In Doe v. Groody in 2004, he said a police strip search of a 10-year-old girl was lawful, even though their search warrant didn't name her. Judge Alito said that even if the warrant did not actually authorize the search of the

girl, ''a reasonable police officer could certainly have read the warrant as doing so . . .'' This casual attitude toward one of our most basic constitutional guarantees—the fourth amendment right against unreasonable searches—is almost shocking. As Judge Alito's own Third Circuit Court said regarding warrants, ''a particular description is the touchstone of the Fourth Amendment.'' We certainly do not need Supreme Court Justices who do not understand this fundamental constitutional protection.

Will Justice Alito vote to let citizens stop companies from polluting their communities? Judge Alito's record says no.

In the Magnesium Elektron case, Judge Alito voted to make it harder for citizens to sue for toxic emissions that violate the Clean Water Act. Fortunately, in another case several years later, the Supreme Court rejected the Third Circuit and Alito's narrow reading of the law. Judge Alito doesn't seem to care about a landmark environmental law.

Will Justice Alito vote to let working women and men have their day in court against employers who discriminate against them? Judge Alito's record says no.

In 1997, in the Bray case, Judge Alito was the only judge on the Third Circuit to say that a hotel employee claiming racial discrimination could not take her case to a jury.

In the Sheridan case, a female employee sued for discrimination, alleging that after she complained about incidents of sexual harassment, she was demoted and marginalized to the point that she was forced to quit. By a vote of 10 to 1, the Third Circuit found for the plaintiff.

Guess who was the one? Only Judge Alito thought the employee should have to show that discrimination was the ''determinative cause'' of the employer's action. Using his standard would make it almost impossible for a woman claiming discrimination in the workplace to get to trial.

Finally, will Justice Alito be independent from the executive branch that appointed him, and be a vote against power grabs by the president? Judge Alito's record says no.

As a lawyer in the Reagan Justice Department, he authored a memo suggesting a new way for the President to encroach on Congress's lawmaking powers. He said that when the President signs a law, he should make a statement about the law, giving it his own interpretation, whether it was consistent with what Congress had written or not. He wrote that this would ''get in the last word on questions of interpretation'' of the law. In the hearings, Judge Alito refused to back away from this memo.

When asked whether he believed the President could invade another country, in the absence of an imminent threat, without first getting the approval of the American people, of Congress, Judge Alito refused to rule it out.

When asked if the President had the power to authorize someone to engage in torture, Alito refused to answer.

The administration is now asserting vast powers, including spying on American citizens without seeking warrants—in clear violation of the Foreign Intelligence Surveillance Act—violating international treaties, and ignoring laws that ban torture. We need Justices who will put a check on such overreaching by the executive, not rubberstamp it. Judge Alito's record and his answers at the hearings raise very serious doubts about his commitment to being a strong check on an 'imperial President.'

In addition to these substantive matters, I remain concerned about Judge Alito's answers regarding his membership in the Concerned Alumni of Princeton and his failure to recuse himself from the Vanguard case, which he had promised to do.

During the hearings, we all felt great compassion for Mrs. Alito when she became emotional in reaction to the tough questions her husband faced in the Judiciary Committee. Everyone in politics knows how hard it is for families when a loved one is asked tough questions. It is part of a difficult process, and whoever said politics is not for the faint of heart was right.

Emotions have run high during this process. That is understandable. But I wish the press had focused more on the tears of those who will be affected if Judge Alito becomes Justice Alito and his out-of-the-mainstream views prevail.

I worry about the tears of a worker who, having failed to get a promotion because of discrimination, is denied the opportunity to pursue her claim in court.

I worry about the tears of a mentally ill woman who is forced by law to tell her husband that she wants to terminate her pregnancy and is afraid that he will leave her or stop supporting her.

I worry about the tears of a young girl who is strip searched in her own home by police who have no valid warrant.

I worry about the tears of a mentally retarded man, who has been brutally assaulted in his workplace, when his claim of workplace harassment is dismissed by the court simply because his lawyer failed to file a well-written brief on his behalf.

These are real cases in which Judge Alito has spoken. Fortunately, he did not prevail in these cases. But if he goes to the Supreme Court, he will have a much more powerful voice—a radical voice that will replace a voice of moderation and balance.

Perhaps the most important statement Judge Alito made during the entire hearing process was when he told the Judiciary Committee that he expects to be the same kind of Justice on the Supreme Court as he has been a judge on the Circuit Court.

That is precisely the problem. As a judge, Samuel Alito seemed to approach his cases with an analytical coldness that reflected no concern for the human consequences of his reasoning.

Listen to what he said about a case involving an African-American man convicted of murder by an all-White jury in a courtroom where the prosecutors had eliminated all African-American jurors in many previous murder trials as well.

Judge Alito dismissed this evidence of racial bias and said that the jury makeup was no more relevant than the fact that left-handers have won five of the last six Presidential elections. When asked about this analogy during the hearings, he said it ''went to the issue of statistics . . . (which) is a branch of mathematics, and there are ways to analyze statistics so that you draw sound conclusions from them. . . .''

That response would have been appropriate for a college math professor, but it is deeply troubling from a potential Supreme Court Justice.

As the great jurist and Supreme Court Justice Oliver Wendell Holmes, Jr. wrote in 1881, ''The life of the law has not been logic; it has been experience . . . The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.''

What Holmes meant is that the law is a living thing, that those who interpret it must do so with wisdom and humanity, and with an understanding of the consequences of their judgments for the lives of the people they affect.

It is with deep regret that I conclude that Judge Alito's judicial philosophy lacks this wisdom, humanity and moderation. He is simply too far out of the mainstream in his thinking. His opinions demonstrate neither the independence of mind nor the depth of heart that I believe we need in our Supreme Court Justices, particularly at this crucial time in our Nation's history.

That is why I will oppose this nomination.

MORNING BUSINESS

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

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

GSRI HEALTHY LIVING STUDY—THE NEW NORMAL? WHAT GIRLS SAY ABOUT HEALTHY LIVING

Mr. FRIST. Mr. President, America is confronting a childhood obesity crisis, and over the past 25 years, the percentage of overweight girls has more than doubled—to 16 percent of girls ages 6 to 19, up from 6 percent in 1974.

To support the search for a solution, the Girl Scout Research Institute

asked girls directly how they define health and what motivates them to lead a healthier lifestyle. The results are captured in a new report, titled The New Normal? What Girls Say About Healthy Living.

This new report brings the voice of girls to the forefront of the conversation on childhood obesity for the first time and finds that girls are in many ways ahead of the curve, using a varied, complex set of norms to define health.

Today's girls are defining ''health'' on their own terms, placing the same value on emotional well-being and self-esteem as they do on diet and exercise. For girls, being healthy is more than just eating right and exercising; it is also about feeling good about oneself and being supported by family and peers.

Girls say that efforts to reduce childhood and adolescent obesity that focus solely on nutrition or physical activity miss the mark.

The study lays out four key findings:

One, girls aspire to be ''normal healthy,'' a concept they often associate with appearing normal and being supported by peers and family. Girls tended to view any diet or lifestyle choice as healthy as long as it doesn't harm their appearance or their relationships with friends and family. Overall, 65 percent of girls say their lifestyle is ''healthy enough for my age,'' while just 16 percent describe their lifestyle as ''very healthy.'' Although about two-thirds, 65 percent, correctly identify themselves as being either normal weight or overweight, one in three girls has a distorted idea about her weight. Older girls also tended to be less satisfied with their weight than younger girls.

Two, girls have a holistic view of health and describe emotional health as important as physical health. Virtually all girls agree that emotional health is as important as physical health—and 88 percent of 11- to 17-year-old girls believe that feeling good about yourself is more important than how you look. More than a third of girls ages 11–17 reported eating more when they are ''stressed out'' and overweight girls are more than twice as likely as girls who are not overweight to report eating more in times of stress.

Three, girls already know what is healthy, but many don't use the information they have to make healthy choices. Obstacles at home include a decline in the frequency of family meals and increased television watching and computer use as girls get older. A third of girls experience sit down to a family meal no more than twice a week. More than 60 percent of teenage girls skip breakfast at least once a week and nearly 20 percent skip it every day.

Obstacles at school include reliance on vending machines, poor taste and quality of school lunches, optional physical education classes, and a lack of access to more informal physical activities are all barriers. Many girls ages 11–17 say they do not play sports because they do not feel skilled or competent, 40 percent, or because they do not think their bodies look good, 23 percent.

Four, girls cite their mothers not only as role models but also as leading sources of nutritional information and emotional reinforcement. Mothers exert tremendous influence. Girls tend to mirror their mothers' activity levels, weight and body image. And given the increasingly poor diet and sedentary lifestyle of today's adults, it is clear that efforts to improve the health of girls must also target parents—especially mothers.

Continuing a 93-year tradition begun by founder Juliette Gordon Low, Girl Scouts offers an array of successful initiatives and age-appropriate curricula in health, nutrition, and fitness—including more than 60 badges and awards related to healthy living. And the findings of The New Normal? What Girls Say About Healthy Living, will continue this tradition in helping inform GSUSA's ongoing program and policy work.

To turn this research into action today, Girl Scouts is encouraging all girls and their families to engage in advocacy at the local level. Advocacy is a critical component in educating and influencing key policy and decision makers as well as the general public about what girls need to lead healthy lives. To bring girls' voices to the discussion about health in their communities, Girl Scouts is calling on all girls to become involved in the development and implementation of their local School Wellness Policy.

Ninety-five percent of schools must establish a school wellness program consisting of nutrition and physical activity goals by the first day of the 2006–2007 school year. We want girls to take action through advocacy on this timely and important issue so that as schools address the wellness of our Nation's children and youth, the unique girl-perspective is fully considered.

IN MEMORY OF JOHN ROBERT MURREN, M.D.

Mr. REID. Mr. President, I rise today to remember Dr. John Robert Murren, a renowned oncologist, cancer researcher, and a beloved husband, father and son.

I first met Dr. Murren 3½ years ago. He visited me in my Capitol office with his brother and sister-in-law, Jim and Heather Murren. In this meeting, they shared with me their vision for a new world-class cancer research facility in Nevada.

Like so many Americans, the Murrens had been touched by cancer. They had witnessed first-hand the devastation caused by cancer and were motivated to do something to lessen the toll of this horrible illness. As such, the Murrens resolved to combine Heather and Jim's business skills and extensive network with John's medical expertise to create a cutting-edge comprehensive cancer institute in Nevada. In 2002, they founded the Nevada Cancer Institute and built a 142,000 square foot facility in Las Vegas that is dedicated to researching, preventing, detecting, and curing cancer. Dr. John Murren served on the institute's board of directors as well as an adjunct faculty member. Dr. Murren's death will inspire those he left behind to make the Nevada Cancer Institute even better. John would want this.

Dr. John Murren's vision for the Nevada Cancer Institute was based on an impressive medical foundation. He earned his B.A. in chemistry and history from Duke University cum laude followed by his M.D. in 1984 from the Loyola-Stritch School of Medicine in Chicago. He completed his internship and residency in Internal Medicine at St. Vincent's Hospital in New York where he was chief resident. In 1988, Dr. Murren accepted a postdoctoral fellowship in medical oncology at the Yale-New Haven Hospital where he was an attending physician as well as an associate professor of medicine. Since 1992, he had been awarded grant funding to study cancer drug therapies yielding invaluable contributions to the understanding of the effectiveness of cancer drug therapies, particularly chemotherapy.

Dr. Murren was the chief of the Yale Medical Oncology Outpatient Clinic and director of the Lung Cancer Unit at the Yale Cancer Center in New Haven, Connecticut. At Yale, Dr. Murren had the largest clinical practice at the Cancer Center and treated thousands of patients and their families over a distinguished career. His clinical research widely published. He sat on several peer-review boards and was sought out worldwide for his expertise. He was also a member of the board of trustees of the Frisbee Foundation.

In addition to his clinical, educational, and research endeavors, Dr. Murren served on the Clinical Research Subcommittee of the American Association of Cancer Research and the American College of Surgeons Cancer Committee. He also served as cochair of Novel Therapeutics for the American Association of Cancer Research National Meeting in 2001. He was a member of the Research Grants Council in Hong Kong and was an active lecturer and writer.

The loss of Dr. Murren will be felt beyond medical and scientific circles. Dr Murren is survived by Nancy, his wife; John, his son; Jean Perkins Murren, his mother; Jim and Michael, his brothers and Kathie, his sister as well as sisters-in-law: Heather Hay Murren and Mary Kay Murren and brothers-in-law George Koether as well as Jeff and Bill Hughes and wives, family and mother-in-law, Doris Hughes, as well as several nieces and nephews.

Dr. Murren will be missed by his community in Fairfield, CT, where he

led an active life. He was a parishioner of St. Thomas Roman Catholic church there, and he enjoyed reading, skiing, tennis, and watching his son, John, play ice hockey.

No one is immune to cancer not even those individuals who, like Dr. Murren, dedicate their life's work to cancer research and treating individuals suffering from cancer. If we in Congress want to honor the life of Dr. Murren and the 1 million Americans who will be diagnosed with cancer this year, then we must invest more Federal money into cancer research. Otherwise, we will continue to lose too many of our family members and friends to this devastating illness.

In closing, I extend to his family, friends, and associates, my sympathy on the passing of a good American, Dr. John Murren. It is my wish that his legacy will be a country that defeats the dreaded disease we call cancer.

HONORING OUR ARMED FORCES

SERGEANT TOBIAS MEISTER

Mr. GRASSLEY. Mr. President, I rise today to honor an heroic American who has fallen while serving his country in Operation Enduring Freedom in Afghanistan. First Sergeant Tobias Meister died December 28, 2005, when a bomb was detonated near his humvee just south of Asadabad, Afghanistan. First Sergeant Meister was part of the Sand Springs based 486th Civil Affairs Battalion and was assigned to the Army Reserve's 321st Civil Affairs Brigade based in San Antonio, TX. My deepest sympathies go out to his wife Alicia, his 1 year old son Will, his parents David and Judy, his brother and many more family and friends.

First Sergeant Meister was born in Kingsley, IA and graduated from Remsen-Union High School in 1994. He was employed by Horizon Natural Resources, an oil and gas firm, after he had successfully completed a business administration degree with a concentration in international business from the University of Texas at San Antonio.

Tobias Meister joined the Iowa National Guard in 1992 and served as an infantryman before transferring to the U.S. Army Reserve in 1998. He was named Drill Sergeant of the Year in 2002, the award for the Nation's top Army Reserve drill sergeant. He will be remembered for his patriotism, his love for his country and his fellow soldiers. As written by comrades on his website, he had ''so much passion for what he was doing, so much patriotism it was a privilege and an honor to work with him.'' I urge all of my colleagues here and all Americans to extend their prayers to the family of a truly heroic American, First Sergeant Tobias Meister.

ROLAND CARROLL BARVELS

Mr. JOHNSON. Mr. President, I rise today to pay tribute to Roland Carroll Barvels who died in Iraq on January 18, 2006. Roland was employed with DynCorp International and was assigned to the Civilian Police Advisory Training Team in Iraq. He was helping to train and equip a 350,000-member Iraqi security force. Sadly, he was killed when a roadside bomb struck his convoy near Basra.

Prior to joining DynCorp in November 2005, Barvels answered his Nation's call to duty to protect and defend this great country. After serving for 12 years in the military, he became a police officer. Beginning his career in Minnesota, Barvels eventually served in law enforcement for nearly 20 years including his most recent position with the Aberdeen Police Department.

Friends and former co-workers at the Aberdeen Police Department remember Roland with deep admiration. One colleague remarked, ''During his time at the police department, he diligently patrolled the streets of our city providing safety and security to the citizens in our community. Roland possessed an incredible ability to talk to people and [to] make anyone he talked to feel at ease.''

Roland Barvels bravely served our country in so many ways. His wife and children are in the thoughts and prayers of my family during this difficult time. It is my sincere hope that they will take comfort knowing Ronald's long and distinguished career of protecting those most in need is truly admirable, and his dedication to helping others is an inspiration to us all.

I join with all South Dakotans in expressing my deepest sympathy to the family and friends of Roland Barvels. He will be missed, but his service to our Nation will never be forgotten.

SPECIALIST MATTHEW C. FRANTZ

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Lafayette. Matthew Frantz, 23 years old, died on January 20 when an improvised explosive device detonated near his vehicle during a patrol near Al Huwijah in Iraq. With his entire life before him, Matthew risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Following in the family tradition of service, Matthew had been committed to joining the military since he was in the second grade. A 2001 graduate of Lafayette Jefferson High School, his teachers recalled how eager he was to join the service, as well as what a decent and friendly student he was. One of his teachers told a local news outlet, ''Matt was very excited about being part of the military. It was what he wanted to do. He was just a young man that wanted to serve his country.'' Matthew had been in the military for nearly 2 years, but this was his first deployment to Iraq. He arrived there only 4 months ago as a counterintelligence specialist.

Matthew was killed while serving his country in Operation Iraqi Freedom. He was a member of the 1st Special Troops Battalion in the 101st Airborne Division based at Fort Campbell, KT. This brave young soldier leaves behind his father and mother, James and Marilyn Frantz; his brothers, Chris and Eric, who also serve in the military; and his fiance, Amalia Cerbin.

Today, I join Matthew's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Matthew, a memory that will burn brightly during these continuing days of conflict and grief.

Matthew was known for his dedication to his family and his love of country. Today and always, Matthew will be remembered by family members, friends, and fellow Hoosiers as a true American hero, and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Matthew's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Matthew's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Matthew C. Frantz in the official record of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy, and peace. When I think about this just cause in which we are engaged and the unfortunate pain that comes with the loss of our heroes, I hope that families like Matthew's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Matthew.

SERGEANT CLIFTON YAZZIE

Mr. BINGAMAN. Mr. President, I humbly rise today to pay tribute to SGT Clifton Yazzie. Sadly, this outstanding and brave young man was killed in Hawijah, Iraq, on January 20, 2006.

As a cross-country runner and basketball player in high school, SGT Yazzie was not known for his innate athletic ability. Instead, his coaches and teammates remember him as a consummate team player who worked to improve his skills in every practice and every game. He enlisted after the

terrible attacks of September 11, 2001, fully knowing that his country would soon be going to war abroad. His quiet demeanor and steadfast service is at the core of what the American military service is about: honor, duty, humility, and loyalty.

His wife Michelle, children Chaynitta and Cayden, and parents Clifford and Jeanette will be in all of our thoughts. He and Michelle, who met at a high school dance, had been planning to renew their vows this spring.

He was on his second tour of duty as an infantryman in the 1st Brigade Combat Team, 101st Airborne Division. We can never fully express our gratitude for our veterans' service; I ask that we stop now to honor Sergeant Yazzie and acknowledge his sacrifice, and that of his family and friends, for our Nation.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On October 4, 2002, Gwen Araujo was killed by three men in Hayward, CA. Araujo was beaten up, tied, and then strangled. The apparent motivation for this crime was that Araujo was a transgendered teen.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that are born out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

RECOGNIZING MARTIN LUTHER KING DAY

Mr. KYL. Mr. President, earlier this week, our Nation celebrated Martin Luther King Day. The Reverend Dr. Martin Luther King, Jr., would have been 77 years old on January 16. It was a day to reflect on the life of a man admired for the dream he dreamed for America, and for his words and deeds in pursuit of it.

He dreamed, as he famously said, ''that one day this nation will rise up and live out the true meaning of its creed: 'We hold these truths to be self-evident: that all men are created equal.' '' Dr. King argued, in words that stir the heart, that racial segregation must end in the South and that Black Americans must be granted their citizenship rights throughout the land and throughout our institutions: in education, in employment, in housing, and in the voting booth.

His role in the push for full voting rights for African Americans is well known but bears repeating. In the spring of 1965, a national television audience was shocked by broadcasts of State troopers and sheriff's deputies brutally repulsing voting rights protesters in Selma, AL. Hours later, Dr. King declared: ''No American is without responsibility.'' He went to Alabama and led a march, under Federal protection, from Selma to the State capital. The event garnered national support and provided momentum for congressional passage of the Voting Rights Act later that year.

Dr. King appreciated the blessings of freedom; he wanted them for his people, and for all people. We remember this Protestant minister's eloquence and also his sense of spiritual mission—he was an ecumenical religious leader who brought people of all faiths, all races, together in mutual respect for one another.

As Taylor Branch, his biographer, put it: ''His oratory fused the political promise of equal votes with the spiritual doctrine of equal souls.''

His belief in nonviolent protest convinced those who listened to him that here was the high road to vindicating the rights of Black people in this country. It is a bitter fact that he lost his life to violence—he was only 39 when an assassin's bullet cut him down in Memphis—and it makes us understand his great courage in taking on the burden of leadership.

In officially celebrating the life of Dr. King, we celebrate the end of legal segregation and the many inroads we have made against racism and discrimination. Of course, there is more we must do to make sure all Americans enjoy the blessings of freedom. He would tell us that, if he were here. He would also insist that we continue on in his way: with passion and with civility, calling on our fellow human beings to act on their best instincts, not their worst.

Dr. King, who won the Nobel Peace Prize in 1964, is a model here and around the world—from China, and the 1989 antigovernment protests in Tiananmen Square, to South Africa, where apartheid rule gave way in 1990 without provoking the civil war many had feared. In encouraging the holding of free elections and the formation of institutions of civil society in faraway places today, we promote the idea that Martin Luther King put forward so well: that the nonviolent settling of differences among men is the bedrock of democracy.

Let us all take inspiration from the King legacy this week, Mr. President, and every week.

MEDICARE PRESCRIPTION DRUG BENEFIT IMPLEMENTATION

Mr. FEINGOLD. Mr. President, on January 1, 2006, the administration launched the Medicare prescription drug benefit, a program long touted by President Bush as the vehicle that would provide affordable, easily accessed prescription drugs for seniors. The program has fallen far short of that goal so far. The outcries that I have heard from pharmacists, beneficiaries, and health care providers over the past few weeks make clear that the implementation of the program has been a disaster. This program has not provided either affordable or easily accessed drugs to many Medicare beneficiaries. Instead, it has presented many seniors and the disabled with frustration, confusion, expensive medications, and sometimes no medications at all. It is unacceptable for individuals to go without lifesaving medications, yet this is what has been happening across the country since this program commenced. This situation is an emergency, and Congress needs to address it right away.

Since the beginning of January, I have received panicked phone calls from people in my State saying that they were unable to receive drugs that they have been routinely getting at their pharmacy every other month. Many calls were from people who could not receive essential drugs such as insulin, antipsychotics, or immunosuppressants for transplant patients. At the same time as I was hearing from people suffering from pain because they did not receive their pain medications, I received press releases from the Centers for Medicare and Medicaid that expressed satisfaction with the launch of the program and boasted of the millions of participants in the program. There may be millions participating in the program, but too many of them cannot receive their drugs, and too many pharmacists are unable to comply with the complicated regulations in the program. CMS should be focusing its efforts on addressing this emergency rather than disseminating public relations messages.

All anyone needs to do is visit their local pharmacy in order to see the problems with the benefit firsthand. There, they are likely to see harried pharmacists on the phone with Medicare or private drug plans. Chances are high that they are on hold. There are often long waiting lines of people in need of medications, sometimes in desperate need, and there are customers being charged incorrectly for their prescriptions. Sometimes they are charged so much that they cannot afford it because the costs exceed what they have in the bank or what their credit limits will allow. Tragically, many of the most vulnerable beneficiaries have been forced to walk out of the pharmacies without their drugs.

It is clear that, in many respects, the plan and the contingency plans for implementation have failed. For instance, the drug plan automatically enrolled millions of individuals eligible for both Medicare and Medicaid into drug plans, and although these individuals were supposed to be notified of this, many were not. Imagine the surprise when

these people visited the pharmacy this month thinking that they would receive their medications for the same price they paid in December. Some of these dually eligible individuals were victims of data glitches that resulted in the pharmacists being unable to verify enrollment in any insurance, and they were told to pay for the full costs of their drugs. Some were charged the wrong amount even though their insurance was verified. These bills reached into the thousands of dollars at times. I was disheartened to learn that some of the beneficiaries paid for the drugs on their credit cards, their only other option being to go without their medications. Those with little income will be paying for these drugs for months, with interest, and this is a sad burden for the Federal Government to place on the neediest in society.

While my office did its utmost to help those who called, I wonder how many Wisconsinites did not call my office, did not have relatives to help them, or were unable to get through to the help lines that had waiting times of up to 5 days. How many people are being forced into emergency rooms in order to get their medications? How many people are being injured because of lack of medications? Have any deaths occurred as a result of the extraordinary bureaucratic hurdles in this program? The Centers for Medicare and Medicaid Services needs to find answers to these questions and address this crisis immediately.

Fortunately, many State governments, including Wisconsin's, came to the aid of the public when the Federal Government would not by enacting emergency provisions. Now, these States are depending on the Federal Government to return the favor and reimburse them for funds that were spent out of tight State budgets. To date, the administration has refused to compensate States. I will work to try to make sure that Congress quickly addresses this problem, passes legislation, and reimburses the States.

The health of our Nation's citizens is not a partisan issue, and we all must join together to assist the most needy. I voted against this program in 2003 and have since made numerous attempts to try to improve the program. Since mid-December, I have sent three letters to the administration, urging that the most pressing problems with the Medicare drug benefit be addressed. While these efforts were not supported by Republicans, I want to make new efforts that I hope the other side of the aisle will support. We cannot sustain a great nation if we do not care for the elderly, the sick, the disabled, and the homebound. These are the populations that this drug plan is supposed to be serving, and I fear that they have been dismally let down the past few weeks. Let us not wait any longer. Congress is in session, we are in a position to come to their aid, and I hope that we will do the right thing and quickly bring relief to the suffering.

SALMON RECOVERY

Mr. CRAIG. Mr. President, today, as you may know, Jim Connaughton, chairman of the White House Council on Environmental Quality, called for a comprehensive and collaborative approach to salmon recovery in the Pacific Northwest. While I may not agree completely with Chairman Connaughton's statement, we must stop ignoring what is going on. It is about time that someone speaks out about the reality of the situation in the Northwest in regards to salmon recovery. He proposed to end outdated hatchery programs and to stop harvest levels and practices that impede recovery of salmon listed under the Endangered Species Act, ESA. He also outlined a comprehensive collaborative process to promote a shared goal and responsibility of salmon recovery. As early as next week, the National Oceanic and Atmospheric Administration's fisheries service, NOAA Fisheries, will launch a collaborative review of how harvest and hatcheries are affecting the recovery of ESA-listed salmon and steelhead.

There has been no clear direction in the past, and CEQ is taking the first step to provide a meaningful direction. We have sat back and idly watched while the region moved from injunction to injunction and lawsuit to lawsuit. In fact, over the past 2 years, two injunctions have been ordered and more lawsuits are being filed. This situation just fosters mistrust and the inability to meet common goals and objectives.

Our past practices have focused on keeping the fish in the river and in abundant numbers so that we can have our cake and eat it, too. In no other place in the world do we treat an ESA-listed species this way. We don't raise bald eagles only to use their feathers for our clothes, so why do we spend hundreds of millions of dollars—each year—to recover the species, and then allow a majority of them to be killed through harvesting? The people who pay for these absurd practices are the Northwest ratepayers.

Here are some facts that the region should know. The total cost of fish mitigation in the Northwest from 1978 to 2005 has been approximately $7 billion. Fish costs now make up to 30 percent of the Bonneville Power Administration's power rates, 30 cents of every dollar paid for BPA-managed power. Snake River Fall Chinook are the most impacted ESA-listed species in the Columbia River system. These fish drive BPA's fish and wildlife program. Approximately 40 percent to 60 percent of this species is harvested.

Last summer, Judge Redden ordered a change in river operations that resulted in an approximately $75 million dollar hit to the region's ratepayers. This means that depending on how many fish survive, summer spill costs between $225,000 and $3 million per fish, and consequently, ratepayers are left with the bill. Even at $225,000 per fish, that is a lot of money. Judge Redden, once again, second-guessed the region's fish managers and made the decision to increase spill this spring and summer. This will result in another cost to the ratepayers of approximately $60 million dollars.

Management of the river by the courts is not management at all. I would like to help the management agencies—the appropriate managers of the river system—to succeed in their efforts to manage the river, in partnership with local, State, and tribal governments.

Why not trust the experts who have the scientific knowledge to make those decisions and help empower the region to work together instead of giving up and having the court systems make management decisions? How are we to succeed in the future if we keep allowing others to make our decisions for us?

When will this silliness stop? When will the region take ownership and responsibility for the river? And when will we work together as a region and get serious about salmon recovery? CEQ made the first step today.

I will work with other Members of Congress to finally face these challenges and to help provide direction and be more accountable to the public and to recovery of the species. If we are serious about recovery, we need to start acting serious and not avoid the tough questions.

I would like to challenge my colleagues to come together in a bipartisan way to help the region get back on track.

TRIBUTE TO WILLIAM B. BONVILLIAN

Mr. LIEBERMAN. Mr. President, I rise today to express my profound gratitude and heartfelt best wishes to a dear friend and dedicated American, William B. Bonvillian, who has served as my legislative director and chief counsel since I first took office in the U.S. Senate in January 1989. It is truly a bittersweet occasion to bid farewell this week to an outstanding and valued staff member with whom I have worked for 17 years in this hallowed institution that we both dearly cherish and respect. I can only say that, as Bill embarks on his new venture as director of federal relations for the Massachusetts Institute of Technology, MIT, my loss is most surely MIT's gain.

Bill came to my Senate office as an accomplished and respected attorney who had previously served in the executive branch from 1977–1980 as Deputy Assistant Secretary of the U.S. Department of Transportation, where he was involved in major legislation relating to transportation deregulation and funding issues. However, our long association actually goes back much further than that, to the early 1970s. Bill was my first intern when I was elected to the State Senate; we rode from New Haven to the State Capitol in Hartford

in my old copper-colored Pinto several times a week after his classes at Yale Divinity School. Later, I hired him for a summer position with our State Senate committee investigating State construction issues. After I was elected to my first term here in the U.S. Senate, I sought to rehire Bill, who was by then a partner at a national law firm working on corporate, real estate, transportation, and administrative law matters. I was beyond delighted when Bill agreed to leave his partnership to reenter public service.

Bill's record of service in the U.S. Senate has been one of enormous distinction. When I look back with pride on the many legislative initiatives I undertook with Bill's advice and assistance, I recall with great admiration his determination, tenacity, and passionate involvement in crafting legislation. He built a stellar reputation on both sides of the aisle for his skill in nurturing innovative ideas and negotiating and advancing measures through an often complex legislative process. Bill's intuitive skills and strong leadership abilities have helped result in the successful passage of many crucial policy initiatives for which I have fought. Bill has played a key role in formulating and enacting vitally important legislative policy in the areas of science and technology; economic growth; innovation, research, and development in the fields of defense, manufacturing, health, and bioterrorism protection programs; and ensuring America's global competitiveness.

In addition, Bill's extensive and tireless work has resulted in many other significant legislative victories in our years together, including those pertaining to environmental and wilderness protection; energy security; defense and foreign policy; health and social welfare; campaign finance reform; media safeguards for children; education; and transportation and our Nation's infrastructure. Bill also had a firm hand in the landmark law that led to the creation of the U.S. Department of Homeland Security and new intelligence reform initiatives to ensure the protection of our citizens. His ability to forge a consensus on these and countless other complex issues is unequaled. Bill's influence has been felt throughout the halls of Congress, and he has left a great legacy here.

I would like to highlight key legislation, grouped by subject area, on which Bill and his legislative team have assisted me over the years. I note that many of these bills or parts of them have gone on to become laws:

Economic Growth—National Innovation Act, S. 2109 (2005); National Nanotechnology R&D Act, P.L. 108–153 (2003); R&D Doubling Act, S. 2046 (2000) and predecessor bill, S. 1305 (1997); Individual Development Accounts, S. 2023 (2000); Enterprise Zone Act, S. 1032 (1991)

Defense, Homeland Security, and Foreign Policy—Rebuild the Army (increasing Army end-strength), S. 1397 (2005); Intelligence Reform Act, P.L. 108–458 (2004); 9/11 Commission Act, P.L. 107–306; Homeland Security Department Authorization, S. 2452 (2002); Establishment of the Quadrennial Defense Review, S. Amdt. 4156 to S. 1745 (1996); Bosnia Intervention, S.J. Res. 44 (1995); Gulf War Resolution, H.R. 2100 (1991)

Environment, Conservation, and Energy Security—Vehicle and Fuel Choices for America Act, S. 2025 (2005); Climate Change Act, S. 1151 (2005) and prior climate bills dating back to 1991; Clean Air Act of 1990, S. 1630 (1990); Conte Connecticut River National Fish and Wildlife Refuge Act, S. 821 (1991); Weir Farm National Historic Site, S. 2059 (1990)

Health and Social Programs—American Center for Cures, S. 2104 (2005); Bioshield II, S. 975 (2005)

Education—Technology Talent, S. 1549 (2001); 3R Act (No Child Left Behind), S. 303 (2001); Federal Charter School Assistance, S. 1513 (1994)

Media and Values—Parental Choice in Television Act (V-Chip), S. 632 (1995)

Government Reform—e-Government Act, S. 803 (2001); Congressional Accountability Act, S. 2071 (1994)

Transportation—Intermodal Surface Transportation Efficiency Act (ISTEA), P.L. 102–240 (1992).

We have been extremely fortunate to work with a person of Bill's character and caliber. He has graciously shared his wealth of knowledge and wise counsel with legislative aides, fellows, and other staff members. He helped us form our innovative Legislative Fellows Program, in particular, which has helped us build a strong, substantive, policy- and idea-oriented office. Under Bill's leadership as legislative director, I have consistently had a professional staff of which I am very proud. I think it is the equal of any on Capitol Hill.

Somehow, despite the long hours his work has involved, Bill finds the time to nurture his abiding interest in an array of subjects, from art to history, and this is part of what makes Bill so very interesting to be around. On many occasions, Bill led our new staffers and fellows on unique, memorable tours of the Capitol, where he regaled us with his vast knowledge of the Capitol's architecture, art collections, and historical vignettes of Congress and our democracy.

And now to add to these many accomplishments, Bill has an exciting opportunity to focus his efforts on science and technology innovation and policy, issues of deep concern to him and of critical importance to our Nation and the world. I have no doubt that Bill will distinguish himself in this endeavor just as he has throughout his Senate career.

I sincerely thank Bill's wife, Janis Ann Sposato, for her understanding of the long hours and enormously demanding schedule so often posed by the Senate legislative calendar, even as they juggled the demands of parenting and their public service careers. It has been a pleasure to see Janis and Bill's sons, Raphael and Marcus, grow from childhood into the fine young men they are today.

It has been a memorable journey. Through it all, Bill has maintained his clear vision of a better future for all, a sense of humor, and calm demeanor in the eye of any approaching storm. In all of his interactions with staff, visiting constituents, and other parties with whom he has come in contact, he has always given generously of his time and talent. I could not have made a better choice for my legislative director than I did in 1989 when I asked Bill to take on the challenges we have faced together.

I am proud to call Bill a trusted adviser and lifelong friend. The office will be a different place without him. My staff and I will miss him a great deal, but we wish him success, health, and happiness always. I sincerely thank and congratulate Bill Bonvillian on his outstanding, loyal, and dedicated service to the U.S. Senate.

TRIBUTE TO ROGER WILLIAMS

Mr. HATCH. Mr. President. I rise today to pay special tribute to America's pre-eminent, piano-playing patriot, Mr. Roger Williams. Roger is to American music what the Grand Canyon is to the American landscape.

Roger has enjoyed decades of success and the title ''Pianist to the Presidents,'' because he has had the honor to perform for eight of our Nation's Commanders In Chief. In 2004, Roger celebrated his birthday alongside Jimmy Carter because the two share the exact same birth date.

Despite his advancing years, Roger's ivory-tickling fingers continue to thrill audiences. In November, he broke his own record for marathon piano-playing with a 14-hour performance at Steinway Hall in New York City. The marathon was to raise awareness of the importance of music education and to commemorate the 50th anniversary of his classic, ''Autumn Leaves.'' This song is the only piano instrumental that has ever reached No. 1 on the Billboard singles charts.

According to Billboard Magazine, Roger is the greatest-selling pianist of all time, with 18 Gold and Platinum albums to his credit. He is the first pianist to receive a star on the Hollywood Walk of Fame, and is—so far—the only recipient of the Steinway Lifetime Achievement Award. Williams has played the music for soundtracks to films of three generations and in 2004 he released his 116th album. His records ''Born Free,'' ''The Impossible Dream,'' ''Almost Paradise,'' and the theme from ''Somewhere in Time'' are only some of his hits, which span 4 decades.

Not only a virtuoso, Roger is also a man of great virtue. He is a champion of music education in all schools and California Governor Arnold Schwarzenegger named him ''Champion for Youth 2004.'' Roger regularly

donates his time and talent to charitable efforts and non-profit organizations, including spots on the televised ''Hour of Power'' ministry since 1974.

I am grateful that I had the privilege of friendship with Roger Williams. He is a great man, a superlative musician, and a true American. As a musician myself, albeit one who is fairly low on the pecking order, I commend Roger for his talent, hard work, and dedication to his craft. His music will continue to bless the lives of literally millions for generations.

TRIBUTE TO PAUL MICHAEL WARNER

Mr. HATCH. Mr. President, I rise today to pay tribute to a wonderful man, brilliant lawyer, and dedicated public servant—Mr. Paul Michael Warner. Paul has been serving as the United States Attorney for the District of Utah for almost 8 years, and will be stepping down this week to continue his work in other capacities within the legal system. As he embarks on a new chapter of life, I wanted to take this opportunity to honor him for the leadership he has provided, and commend him for his dedication to our country's legal system.

Paul was nominated by President Bill Clinton on July 29, 1998 to be the United States Attorney for Utah. He was unanimously confirmed by the United States Senate just one month later and by the end of August he had assumed the full duties of this important position. After President George W. Bush took office, he recognized the tremendous leadership Mr. Warner was providing and reappointed him to this position. He was then reconfirmed once again by the United States Senate and has continued to serve with strength and honor.

Prior to being appointed United States Attorney, Paul first joined this office in 1989 and has served in various positions including: First Assistant United States Attorney, interim U.S. Attorney, Violent and Hate Crimes Coordinator, and the Chief of the Criminal Division. For 7 years before joining the U.S. Attorney's Office, he worked in the Utah Attorney General's Office as the Chief of the Litigation Division and as an Associate Chief Deputy to the Attorney General.

Throughout his many years of service within the criminal justice system, Paul has established himself as an effective leader in the fight against crime. He has always greatly valued cohesive working relationships with Federal, State, and local law enforcement personnel. I believe that without exception, he has become a highly respected and trusted prosecutor and able administrator.

While serving in the Bush Administration, Paul was appointed the Chairman of U.S. Attorney General John Ashcroft's Advisory Committee of U.S. Attorneys. He also previously chaired the Subcommittee on Terrorism for this Committee, and continues as an ex-officio member of the Committee to this day.

Paul's legal career began when he graduated with the first class of the J. Reuben Clark Law School at Brigham Young University—BYU—in 1976. He later went on to receive a masters' degree in public administration from the Marriott School of Management at BYU.

Following graduation from law school, Paul served 6 years as a trial lawyer in the Judge Advocate General Corps of the United States Navy. In 1983, he enlisted with the Utah Army National Guard, Judge Advocate Branch, where he rose to the rank of Colonel. He is currently serving as the State Staff Judge Advocate, supervising a staff of 17 attorneys. He is also the past president of the Utah National Guard Association. The leadership and work he has provided to the military has been invaluable as he has worked on cases not only important to our Nation, but to the men and women who fight to preserve our freedoms.

Paul has also been involved in many professional organizations including serving as a Master of the Bench in the American Inns of Court, and Chairman of the Board of Visitors for the BYU Law School. He has also been honored by numerous military and civilian organizations with awards including: the United States Army's Meritorious Service Medal with two oak leaf clusters, the 2004 Honored Alumni of the Year for the BYU Law School, the Utah State Bar's 2004 Dorothy Merrill Brothers Award for the Advancement of Women in the Legal Profession, the Federal Bar Association's Distinguished Service Award for 2003, and the NAACP's 2002 Community Relations Award for Civil Rights.

Throughout my years of working with Paul I have always been impressed with his utmost integrity and honesty. He has a strong desire to do what is right. He has garnered the respect and admiration of the staff he has led, and has served as a mentor and friend to many future leaders in Utah's legal community. He diligently strives to treat all parties with dignity and fairness, and his work has been an example of his commitment to individual rights and the rule of law.

His work within the legal community has been lauded, but perhaps his most important accomplishments have occurred within his family and neighborhood. Paul is a devoted husband to Linda, and wonderful father to four children. He has been a friend to many from all walks of life, and all persuasions. His work has been an outstanding example of someone who has dedicated his life to helping others while upholding the principles and ideals embodied in the foundation of our country the Constitution.

I am grateful for the service Paul Warner has rendered throughout his years of public service—but most importantly as the United States Attorney for Utah. He is a truly dedicated public servant, strong leader, and special friend. I want to wish him well as he travels new pathways in life. I know that he will continue to guide and enrich the lives of those who have the privilege of working with him; and will remain steadfast in his commitment to enhancing and furthering the important work of our judicial system.

TRIBUTE TO W. CLEON SKOUSEN

Mr. HATCH. Mr. President. I rise today to pay special tribute to a man I deeply admire, W. Cleon Skousen. Cleon was a giant of a man. He was an exceptionally bright scholar; a wonderful husband, father, and grandfather; a special friend; and a true patriot in every sense of the word.

Sadly, Cleon recently passed away leaving a tremendous void in the lives of all who knew him. Cleon played a significant role in the political and governmental arena throughout Utah, our Nation, and even the world. I can state without any equivocation today that Cleon loved America. He truly loved our country and its citizens. He deeply respected our Founding Fathers, and he had the utmost reverence for the document that is the basis of all of our freedoms—our Constitution.

When I first met Cleon, I was a young, enthusiastic, go-getter who wanted to make a difference in our Nation's Capitol. Shortly before I announced that I would be running for the U.S. Senate in 1976 as a political novice and virtually unknown candidate—Cleon was one of the first people of political significance and substance who agreed to meet with me and discuss my candidacy.

A few short years before this time, Cleon had organized a nonprofit educational foundation named ''The Freemen Institute,'' to foster ''constitutionalist'' principles including a drastic reduction in the size and scope of the Federal Government, and a reverence for the true, unchanging nature of our Constitution. I knew that he had strongly held beliefs and I was very interested in what he had to say.

We found in each other at that first meeting many areas of common ground and a shared love for the principles that make America the strongest bastion of freedom on Earth. Cleon quickly agreed to help, and throughout the coming months he became a true champion of my candidacy. He sent a letter to 8,000 of his ''friends'' stating that I was running for the Senate ''for the express purpose of waging a fight to restore constitutional principles in this country.'' I was humbled by his support, and I felt a true need to fulfill his expectations of me and to never let him down.

From that first campaign, to every day I have served in the U.S. Senate—Cleon has been there for me, through highs and lows—buoying me up, giving suggestions, discussing principles and issues, and above all else being a true,

supportive friend. I can never overstate what his support has meant to me throughout my years of service.

A natural outgrowth of the successful Freemen Institute was the founding of the National Center for Constitutional Studies which Cleon started to further the study of our Founding Fathers and the U.S. Constitution. He traveled the globe and spoke to literally hundreds of thousands of people each year for many years to promote the ideals of this center.

The mission of the center was so aptly described by our Nation's first President, George Washington, when he said: ''A primary object. . . should be the education of our youth in the science of government. In a republic, what species of knowledge can be equally important? And what duty more pressing than communicating it to those who are to be the future guardians of the liberties of the country?''

Cleon took this mission very seriously and spent many hours each week educating and imparting his knowledge of his years of study to people throughout our Nation, and even the world. He cultivated friendships far and wide and became to many the ''Master Teacher.''

As we all know, Cleon was a prolific author and writer. His books, ''The First 2000 Years, The Making of America,'' and ''The Five Thousand Year Leap'' have been used by foundations, and in forums across America for many years. His writings and words leave an indelible legacy of knowledge and beliefs that have touched many people and will continue to inspire and educate generations to come.

Many have yearned for even a morsel of his years of study. He was learning, studying and writing until the end. I loved an account I recently read in the Deseret News from the Rev. Donald Sills, a Baptist minister who became close friends over many years with Cleon. He spoke of his knowledge and study and recalled a time when he found Cleon sitting on the steps of the Jefferson Memorial in Washington, DC. When he asked Cleon what he was doing just sitting there, Cleon's fitting response was, ''I'm talking to Tom Jefferson.''

Cleon had a strong desire for good government, and a true love for our Savior Jesus Christ and our Heavenly Father. He believed that our country was founded on pure principles and that our Heavenly Father had a hand in guiding our historic and profound beginnings. He firmly believed, as many believe, that God governs the affairs of men. He was not shy about sharing this belief with all who would listen. The words he shared on this subject were not unlike the words spoken by Benjamin Franklin as he arose on the floor to speak at a particularly trying time during the Constitutional Convention. He pled with his peers to call upon the Father of them all for wisdom and guidance as they continued to contemplate and draft this most important document.

His words remind me so richly of Cleon when Mr. Franklin stated: ''I have lived, Sir, a long time; and the longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings that 'except the Lord build the house, they labor in vain that build it,' I firmly believe this. . .''

And Cleon firmly believed it. He had a true testimony of our Savior's works and our Father's infinite wisdom and love. He wrote of it. He testified of it. And he lived a life following their teachings.

The wonderful, strong leader General George S. Patton once said: ''It is foolish and wrong to mourn the men who died. Rather we should thank God that such men lived.''

I don't believe it is foolish to mourn the loss of this great man—but I do thank my Heavenly Father that W. Cleon Skousen lived, and that he touched my life in so many ways. His example, passionate beliefs, and wonderful mind will never be forgotten. His journey was full and brought rich rewards to people throughout the world.

I am grateful that I had the privilege of knowing W. Cleon Skousen and working with him. He is a great man, and true American. His life's work has touched literally thousands, and his memory will live on through the wonderful words and teachings he leaves behind.

Mr. President, I would like to close with a poem that I wrote for him:

W. CLEON SKOUSEN

His life seemed like 2000 years
By those who feared the truth,
To us who've loved him through our tears
And even from our youth,
This quiet, simple, gentle man,
Who taught us sacred things,
He helped us all to understand
The memories of a thousand springs.

Within this caring, pleasant soul
God's glory was refined,
Experiences had made him whole
For he had peace of mind,
So many lives he touched each day
Explaining holy things,
In writings left along the way
A treasure fit for kings.

He loved the prophets of the Lord,
The Founding Fathers too,
And Israel's most sacred word,
God's children whom he knew,
His precious Jewell, of greatest worth,
He'll love eternally,
He loved his family here on earth
In loving majesty.

So many others one by one,
This giant among men,
He leaves us now, his work now done,
We know we'll meet him once again.

FIFTIETH ANNIVERSARY OF THE FOUNDING OF L–3'S COMMUNICATION SYSTEMS-WEST

Mr. HATCH. Mr. President, today it is an honor and a privilege to rise and congratulate the men and women of L–3's Communication Systems-West on the 50th anniversary of that company's arrival in Utah.

I realize that many outside of the state of Utah might not have heard of L–3's Communication Systems-West, but no one can dispute the strategic advantages that this company has provided to our Nation's men and women in uniform. Much of the work that Communication Systems-West performs is of a highly classified nature. However, I can say that the real-time, world-wide dissemination of images and information gathered by the U–2 and our new unmanned aerial vehicles, such as Global Hawk and the Predator, is only possible because of the hard work by the people at Communication Systems-West. For example in 2001, Communication Systems-West was awarded the Collier Award for producing the airborne integrated communications system for the Global Hawk. As my colleagues may know, the Collier Trophy is the National Aeronautic Associations' highest honor for that year's greatest American aeronautical achievement.

Other examples of Communication Systems-West outstanding work can be found in the SATCOM Tri-Band Satellite Earth Terminals and the ROVER III Remote Operations Video Enhanced Receiver system that are deployed with our forces today. As a stalwart division for L–3, the employees of Communication Systems-West were honored in 2005 to receive the L–3 Chairman's Award for Best Operating Performance.

It is not an exaggeration to say that the technologies created and built by Communication Systems-West have won battles for the United States and, equally as important, saved countless American lives.

However, the leadership of Communication Systems-West's 2,300 employees, including 1,000 engineers, is not limited to the battlefield. It is also found in their dedication to their community. Communication Systems-West partners with Utah's universities to assist in placing new graduates in promising and creative careers. The company is an active member of the Mathematics, Engineering, and Science Achievement, or MESA, consortium. MESA, of course, provides resources to aid minority and female students entering technological fields of study. As a contributor to the Ames and Challenger advanced education programs for high school students interested in technology sciences, Communication Systems-West continues to bring a bright future to the next generation of students.

Finally, Communication Systems-West also supports it home-town National Guardsmen and Reservists by fully paying the salaries of its employees who have been activated to fight the War on Terrorism.

Communication Systems-West and its employees have been an integral part of Utah for a half-century, and we

all are immensely proud of the contributions they have made to our country and our State. I congratulate them and wish them 50 more years of success and prosperity in the great State of Utah.

CONCEPT2

Mr. LEAHY. Mr. President, like most Americans, I start off the year with my new year's resolution to work harder at getting in shape. As always, my first stop is the Concept2 rowing machine in the Senate gym. I have used it for years, and always think of Vermont when I do.

The rowing machines are made in Vermont, and last fall the Burlington Free Press had an excellent article about the company and its founders. I ask that a copy of the article be printed in the RECORD.

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

[From the Free Press, Oct. 14, 2005]

WHAT A CONCEPT

(By Matt Crawford)

MORRISVILLE.—Peter and Dick Dreissigacker will be on Boston's Charles River next weekend, rowing their way toward the finish line in the annual Head of the Charles regatta.

The Dreissigacker brothers are two members of an eight-man team called the Motley Rowing Club—a team that captured third place in its division during last year's race. If the Motley team is beaten again, part of the blame can be placed squarely on the broad shoulders of the Dreissigackers.

What Nike is to running, what Orvis is to fly-fishing, what Burton is to snowboarding, Concept2 is to rowing. Concept2 is a Morrisville-based company that employs 55 people, and it is run and owned by Misters Peter and Dick Dreissigacker. The company leads the world in producing oars used by crews and sculling teams and controls a significant portion of the global indoor rowing machine market, too. ''Their products are found around the world,'' said Alex Machi, director of rowing at Middlebury College. ''They easily dominate the oar manufacturing business.''

How two Connecticut brothers maneuvered their internationally successful company into the center of the rowing universe from a small town in northern Vermont is a remarkable tale, one that continues to evolve on rivers and ponds and indoor gyms around the world . . .

''The challenge,'' said Peter, ''is trying to continue to improve on what we've got.''

Dick Dreissigacker, now 58, was a member of the 1972 U.S. Olympic Rowing Team and a Brown University product. He drifted out to California to take a rowing coaching position at Stanford, a school Peter, who's four years younger, was attending.

Dick was looking for a ''secret weapon'' after the 1972 Olympics and began to explore ways to improve oars, which had been crafted out of wood pretty much since humans started rowing boats through water. ''There were quite a few companies making composite boats,'' said Peter, ''but nobody was making oars.''

By 1976, the Dreissigackers had built a prototype of a composite oar and began making them in the back of a bread truck. They looked at places around the country and decided to buy an old barn in Morrisville, partly because they were from the Northeast, and started producing oars. By the 1980 Olympics, composite oars—made of carbon fiber and epoxies and glues—were standard, thanks to the work of the Dreissigacker boys.

The company makes ''sweep'' oars, oars for sculling and oars for a small niche of rowers who specialize in trans-Atlantic crossings. Oars range in price from about $200 to more than $400 each, and there are custom orders, blade and shaft repairs and stylized custom painting jobs that keep the company's employees busy. Dick says there are two other companies that are viewed as competitors with the Dreissigackers, but Concept2 controls about two-thirds of the world's competitive oar market.

In 1991, the Dreissigackers struck again, changing the shape of the oar blades to a bigger, ''hatchet'' style, a change that exploded through the rowing scene. At the 1992 Olympics in Barcelona, Spain, said Peter, ''boats were on the water, changing their blades to our style.'' There was some discussion of banning the bigger blade, which was more efficient and more effective, but the style quickly became the sport's standard. Two Middlebury teams and a University of Vermont women's team will be using Concept2 oars when they compete at the Head of the Charles next weekend. ''If 75 or 80 percent of the teams at the Head of the Charles are using our oars,'' said Dick, ''then almost 100 percent of those teams will have trained on our indoor trainers. They're pretty much the standard.''

The Dreissigackers started making the indoor machines in the mid-1980s, the first versions little more than bike wheels and chains. Now the machines—their fourth version—come equipped with computers to monitor an athlete's performance and sell for $850. There are hundreds of them in the Morrisville factory, stacked up and awaiting the start of the Christmas buying season.

The first indoor rowing machines were called rowing ergometers, or ''Ergs,'' for short, and the Dreissigackers even developed a formula that allows the machines to measure rowing ability—a number that the rowing world now refers to as ''Erg scores.'' ''It's kind of like an athletic SAT score,'' said Dick, who attributes Peter's higher Erg score to the fact that he's four years younger, even though Dick rows almost every day of the summer on a lake at his cottage in Albany. There's a gym for Concept2 employees at the company's headquarters, and yes, it is filled with rowing machines. No longer in the barn, the company moved in 1984 to a more industrial location, not far from the center of Morrisville. The factory today is more than 45,000 square feet.

Sarah Tousignant, a senior at the University of Vermont and president of the school's women's rowing team, knows how important Concept2's Erg machines are. The Catamounts train six days a week on the Lamoille River using Dreissigacker oars. They'll soon move inside for the winter and shift onto Ergs. ''We just ordered 12 new Ergs from them,'' she said.

Most of the Head of the Charles athletes will be using Dreissigacker oars, and nearly all will have trained and honed their skills on Dreissigacker indoor machines. So even if the Motley crew team gets beaten to the finish line on the Charles River next weekend, the Dreissigackers still win. With the Boston Red Sox out of baseball's playoffs, the eyes of the sporting world turn to Boston this month for one thing: The Head of the Charles Regatta.

A stretch? Consider that more than 7,000 athletes from around the globe will compete in 24 race events in the 41st annual Head of the Charles on Oct. 22–23. It is the world's largest two-day rowing event. Rowing teams from the University of Vermont and Middlebury College will be among the competitors, as will brothers Dick and Pete Dreissigacker from Morrisville.

The Dreissigackers, both former Olympics rowers, have been competing in the Head of the Charles since 1978. In a way, they'll be in the majority of boats on the river, given that most of the competitors will be using oars made by the Dreissigackers' Concept2 company. ''It's pretty much the most prestigious fall race,'' said Sarah Tousignant, women's team president of UVM rowing. ''It's the race that everybody looks forward to and holds in high regard.'' The Head of the Charles was first held Oct. 16, 1965. As many as 300,000 spectators are expected to be on hand for the weekend.

ADDITIONAL STATEMENTS

CHINESE LUNAR NEW YEAR

• Mrs. BOXER. Mr. President, I take this opportunity to recognize the Chinese Lunar New Year. 2006 is the Year of the Dog.

The Chinese calendar is based on the cycles of the sun and the moon, and the Chinese Lunar New Year is the most important of Chinese festivals. Celebration begins on the first day of the first moon of the lunar calendar and ends on the full moon 15 days later, with the Lantern Festival. In order to prepare for the new year, families perform several rituals to cleanse the home and the spirit, to sweep away misfortune and to welcome in the new year with good luck, health, happiness and prosperity.

The Chinese lunar calendar is associated with a 12-year animal zodiac. According to ancient Chinese legend, Buddha asked all the animals to meet him on the Chinese Lunar New Year. Twelve animals came, and Buddha rewarded each animal by naming a year after each one. The 12 animals—Rat, Ox, Tiger, Rabbit, Dragon, Snake, Horse, Sheep, Monkey, Rooster, Dog and Pig—represent a cyclical concept of time. He told each animal that the people born in their year would inherit some of the personality traits of that animal. It is said that those born in the Year of the Dog tend to be loyal, kind, and generous.

America is rich with the cultural traditions of many countries. In California, the Chinese-American community plays a vibrant and important part of our State's history. Celebrating the Chinese Lunar New Year allows us to embrace this significant and most important cultural festival of the Chinese calendar.

I hope that the Chinese Lunar New Year brings good health, happiness, peace and prosperity to all. I give my very best wishes for an auspicious New Year.•

TRIBUTE TO THE NORTHERN KENTUCKY UNIVERSITY CHEERLEADERS

• Mr. BUNNING. Mr. President, I pay tribute to the Northern Kentucky University cheerleaders. The squad was

named the national champions in the Universal Cheerleaders Association-sponsored competition earlier this year.

The Northern Kentucky University cheerleading squad was awarded their first national title. The title was in the small unit coed category of NCAA Division II competition. They captured this championship at Walt Disney World in Orlando, FL on January 14, 2006.

The citizens of northern Kentucky are proud to have these national cheerleading champs living and learning in their community. Their example of hard work and determination should be followed by all in the Commonwealth.

I congratulate the members of the squad for their success. I also want to congratulate their coaches, along with their peers, faculty, administrators, and parents for their support and sacrifices they have made to help them meet their achievements and dreams. They all represent Kentucky honorably.●

CATHEDRAL CHOIR SCHOOL OF DELAWARE

● Mr. CARPER. Mr. President, today I rise to honor an outstanding group of young choir members who have brought joy and musical harmony to countless people in Delaware and around the world.

The Cathedral Choir School of Delaware has been chosen to perform on January 25, 2006, for an audience at the White House that will include First Lady Laura Bush. They will also be presented with the Coming Up Taller Award. This award is the Nation's highest honor for afterschool and out-of-school programs that use arts and humanities to enrich the lives of children. Created in 1998, this awards program is a project of the President's Committee on the Arts and the Humanities in partnership with Institute of Museum and Library Services, the National Endowment for the Arts and the National Endowment for the Humanities.

Cathedral Choir School has had an enormous positive impact on the lives of the students who pass through its halls. The more than 50 students, ranging in age from 7 to 17, who attend the school are encouraged to learn the enduring values of discipline, responsibility, leadership and teamwork.

With more than 800 alumni since its inception in 1883, the Cathedral choir school has had a positive impact on both the lives of the students who have had the privilege of participating in this choir school and the lives of those around them. By training Delaware's young people in life skills and community involvement, the Cathedral Choir School has consistently enhanced the lives of all that it touches.

I would like to acknowledge the hard work and dedication that the paid staff and volunteers of the Cathedral Choir School have demonstrated over the years. Under the direction today of Dr. Darryl Roland, these dedicated men and women have helped the lives of countless children. During his time of overseeing the Cathedral Choir School, Dr. Roland has served as a shining example of what is possible when good and caring adults decide to make a positive difference in the lives of children.

I would especially like to acknowledge the commitment and enthusiasm that the individual members of the choir have shown during their time with the choir. These outstanding young people have made a personal commitment to themselves and to their communities to challenge themselves and try their best to live up to the high standards of the Cathedral Choir School. The rehearsals and after-school music training are done with a sense of love for artistic expression. It takes a special type of person to share that gift with the rest of us.

The faculty and students of the Cathedral Choir School are to be commended and applauded for their extraordinary efforts. Their dedication and love of music continues to serve as an example of what is possible when young people are given the opportunity to follow their dreams. All of Delaware is proud of them.●

HONORING THE LIFE OF MAURICE GUERRY

● Mr. CRAPO. Mr. President, this past December Idaho unexpectedly lost a generous and gracious man who will be missed terribly by all who had the pleasure of experiencing his welcoming spirit and warm heart.

Maurice was a sheep rancher from Three Creek, ID, who was known for his ready smile, charm and unequivocal love for his wife, family and the land on which he made his livelihood. I had the distinct privilege of working with him a number of times on collaborative land management endeavors and remember well that he made an extraordinary effort to get those who thought themselves at odds to find common ground and work together. He saw the wisdom and value of this approach and was respected for it.

With his sheep dog keeping a sharp eye from the back of his truck, Maurice diligently cared for his land and was known to carry candy with him to share in case he met someone on one of the remote roads near his ranch. He and his wife, Marlene, would put together a dinner party for dozens at the drop of a hat, welcoming strangers with open arms. He was especially close to his fellow Basque friends.

Maurice had a soul of generosity, gentleness, and wisdom and knew the value of hard, honest work. This legacy is his gift and it lives on in his family and friends. My prayers are with them during this difficult time.●

TRIBUTE TO DOUGLAS W. BOOK

● Mr. GRASSLEY. Mr. President, I was saddened to learn of the sudden passing of Forest City Chief of Police Douglas ''Doug'' Book on January 13. Doug leaves behind a remarkable career in law enforcement that spans over three decades. He has had an immense impact not only in his community of Forest City but throughout the entire State of Iowa.

Doug Book began his career as a full-time patrolman in 1968 and quickly rose amongst the ranks of his department until he was appointed chief of police in 1973. He served faithfully in this capacity until his passing. In addition to his dedicated service to his community, Doug also served Iowa as the head of the North Central Iowa Narcotics Task Force for the past 10 years. Doug also served as chairman of the Iowa Law Enforcement Academy Board and as president of the Iowa Association of Chiefs of Police and Peace Officers.

Doug's constant support and guidance for his fellow officers did not stop at Iowa's borders but spilled over to other departments in New York City. Chief Book joined a group of Iowa police officers as part of a critical incident stress management team that helped New York City police officers cope with the aftermath of the September 11 terrorist attacks.

One of Doug's colleagues described him simply as a ''good guy, a good cop, and a good friend.'' His friends and family should be very proud of what he has done for so many people. Chief Book's devotion, hard work, and dedication to duty will be sorely missed.●

40 YEARS OF EXEMPLARY FEDERAL SERVICE

● Mr. INOUYE. Mr. President, on February 3, 2006, Mr. Ray H. Jyo, Deputy District Engineer for Programs and Project Management/Chief, Programs and Project Management Division, Honolulu Engineer District, HED, U.S. Army Corps of Engineers, will retire from the Government following nearly 40 years of exemplary service to Hawaii, the Pacific Region, the military and the Nation.

Born and raised in Hawaii, Mr. Jyo is a registered professional engineer and a member of the American Society of Military Engineers, who served in numerous engineering and executive management positions in the U.S. Army. He holds a bachelor's of science degree in civil engineering from the University of Minnesota. He has attended the Senior Officials in National Security Program, the John F. Kennedy School of Government, Harvard University and the Emerging Issues in Public Management Training at the Brookings Institute.

Over the course of his 40-year career, Mr. Jyo has served with pride and distinction. I have witnessed his steadfast dedication and hard work to improve

and safeguard the lives of our citizens and servicemembers.

Mr. Jyo has demonstrated the highest values and ideals in his many accomplishments throughout his distinguished Federal service. Upon retirement, he will have served the Federal Government for 39 years, 11 months and 13 days. He has succeeded at every job position in his career, which covers every facet of the design/construction/management continuum of the construction industry. He has used his considerable leadership and management skills on behalf of the Army Corps and the Nation to achieve much success.

As the chief of the Far East Surveillance Branch from 1982 to 1986, Mr. Jyo pioneered the regionalization concept at the Pacific Ocean Division, POD. His program managers monitored engineering, design and construction efforts at the Japan and Far East Districts with the focus of providing valued-added service to the districts and our regional partners with the Army and Air Force. Mr. Jyo's branch became the ''strike'' arm of POD's rapid deployment force which led and provided hands-on project management and technical assistance to the districts. His teams would deploy to the districts to support them during times of peak workload or during crisis situations making them invaluable to District operations. He also had the responsibility of keeping U.S. Army, Pacific and Pacific Air Forces informed and involved in our large construction program overseas. Many of the principles and policies he pioneered are still being followed at POD today. During this timeframe, Mr. Jyo led by example when he deployed to Ft. Drum for 2 months to lead the planning and programming efforts to provide quality facilities for the 10th Mountain Division.

During his tenure as the chief, Technical Engineering Division, 1986 to 1987, Mr. Jyo provided quality technical services to all the districts in POD. In addition, he instituted the concept of life-cycle technical services by sending his technical reviewers to the field to assist the construction offices in coming up with viable solutions to sticky construction problems. This formed the basis of the latter consolidation of the technical review and quality assurance staffs at POD. Responsive to the customer, Mr. Jyo has consistently strived to provide high-quality technical services and products in a responsive manner.

As the chief of Military Division, Mr. Jyo led the planning, engineering, and construction of the military program POD-wide. Through his leadership and experience, POD has become the proven leader in project execution and accomplishment.

As the acting director of Engineering and Construction Directorate, Mr. Jyo forged a solid link between engineering, design, and construction quality. He brought all of POD's technical assets together to work toward common goals to provide responsive service and engineering and construction excellence to POD. The Engineering and Construction Directorate was the largest directorate at POD and included the operational elements of design, construction, engineering services, environmental, cost engineering as well as design and construction quality assurance. Mr. Jyo maintained technical excellence by pioneering innovative design and procurement tools, such as the construction indefinite delivery-indefinite quantity contracting for Tripler Army Medical Center, later to be applied across the division programs, and such technical tools as the Computer Aided Drafting and Design, CADD, and Geographical Information Systems (GIS). By combining the technical elements of design, engineering and construction quality assurance into one division, he unified the quality function and created ''life cycle'' accountability for a design/construction continuum. Mr. Jyo truly was an innovator and made POD a better organization.

Since 1997, Mr. Jyo has been the deputy district engineer for programs and project management for the Honolulu District. He has continued to utilize his leadership skills to accomplish considerable successes on their behalf. He has executed programs and projects in a team-oriented matrixed organization. He has led the effort to incorporate a quality management system into the district along with International Organization for Standardization 9001 certification. He has instituted a learning organization with a system of After Action Reviews and Lessons-Learned. He is successfully leading the district through its biggest construction program with highly visible programs such as the Stryker Brigade Combat Team and C–17 implementation in Hawaii. Under his leadership, the Honolulu District has achieved the highest customer satisfaction rating in its history.

Mr. Jyo is a recognized representative of the Corps in the Pacific Region. He has established lasting relationships with the Hawaii Congressional Delegation as well as the Governors of Guam and the Commonwealth of the Northern Marianas Islands. Mr. Jyo's efforts have made lasting impacts on the abilities of our service men and women to fight the global war on terror, bolster the region's economy while ardently protecting the environment.

Mr. Jyo played an instrumental role in expanding the civil works and capital improvement programs to Guam, American Samoa, Kwajalein, and the Commonwealth of the Northern Mariana Islands. In addition, Mr. Jyo oversaw the construction of the Alenaio Stream Flood Control project in Hilo, HI, which was completed in 1997 at a cost of $16 million. During the storm of November 2000, the improvements prevented approximately $13 million in damages and remains fully functional today.

Prominent projects on the island of Oahu include the construction and renovation of military housing and improving facilities at Hickam AFB, Wheeler, Schofield, Aliamanu, and Fort Shafter. In 1989, HED began the design of the $110 million Hale Koa—Phase 2 recreational hotel at Fort DeRussy in Waikiki. Upon its completion in 1994, the Fort DeRussy area was transformed into a visually pleasing enhancement of Waikiki for the benefit of the military and civilian communities.

His lifelong contributions and achievements to the Army are considerable. His recognized leadership and ability to forge lasting relationships and his clear vision describes an outstanding individual who has dedicated his life to public service. Ray Jyo's distinguished career may be coming to an end, but his loyalty to the goals of the Army and the Nation will carry on. On behalf of a grateful Nation, thank you for your service and for a job well done.●

TRIBUTE TO PAMELA ALTMEYER-ALVEY

● Mr. LUGAR. Mr. President, I rise today to congratulate a distinguished Hoosier, Mrs. Pamela Altmeyer of Indianapolis, IN, who this year celebrates 25 years of leadership at Gleaners Food Bank of Central Indiana.

Mrs. Altmeyer is a 1964 graduate of Ben Davis High School in Indianapolis and studied at Vincennes University, the University of Indianapolis, and the University of Wisconsin at Madison. She has 35 years of experience in managing nonprofit organizations and is a valuable contributor as a member of numerous boards of important community associations.

Gleaners Food Bank was formed in 1980 in a garage in Indianapolis and, under the leadership of Mrs. Altmeyer and other dedicated individuals, has grown into the largest nonprofit provider of assistance to needy families in our State. Over the last 12 months, Gleaners has distributed nearly 11 million pounds of food and other critical grocery products to 400 hunger relief charities in 29 central Indiana counties. Since inception Gleaners has distributed over 173 million pounds of product to Hoosiers in their time of need.

I have had the joy of working closely with Mrs. Altmeyer and Gleaners Food Bank in procuring resources for needy Hoosiers. I believe that, both as a Nation and as individuals, we can do more to improve the lives of those in need. I am deeply grateful for Mrs. Altmeyer's important service and leadership as well as for the remarkable work done by her colleagues at Gleaners Food Bank of Central Indiana.●

BIRTH OF KATHERINE RILEY LUGAR

● Mr. LUGAR. Mr. President, I am pleased to share the news of the birth

of Katherine Riley Lugar on December 28, 2005, at Sibley Memorial Hospital in Washington, DC. Katherine was a healthy 8 pounds, 1 ounce at birth. Her parents are David Riley Lugar, son of Richard and Charlene Lugar; and his wife, Katherine Graham Lugar, daughter of Lawrence and Jane Graham. Katherine was born at 4:20 p.m. and in the next few hours was joined in the hospital delivery room by Jane Graham, Richard and Charlene Lugar, and David's brother, John Lugar with his wife, Kelly. We shared together a wonderful experience. On the next day, Katherine met her sister, Elizabeth Merrell Lugar, who was born at Sibley Memorial Hospital on May 25, 2004. The two girls and their parents are now safe and healthy in their McLean, VA, residence.

Katherine and David were married on June 3, 2000, in St. David's Episcopal Church in Austin, TX. Katherine, a graduate of the University of Colorado, is Vice President of Federal Government Relations for St. Paul Travelers. David Lugar, who came with us to Washington, along with his three brothers, 29 years ago, graduated from Langley High School in McLean, VA, and Indiana University. He is a partner of Quinn Gillespie & Associates. Both Katherine and David are well known to many of our colleagues and their staff members. We know that you will understand our excitement and our joy that they and we have been given this divine blessing and responsibility for a glorious new chapter in our lives.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5221. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's Report on Fiscal Year 2005 Competitive Sourcing Efforts; to the Committee on Finance.

EC–5222. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the semi-annual report on the continued compliance of Azerbaijan, Kazakhstan, Moldova, the Russian Federation, Tajikistan, Ukraine and Uzbekistan with the 1974 Trade Act's freedom of emigration provisions, as required under the Jackson-Vanik Amendment; to the Committee on Finance.

EC–5223. A communication from the President of the United States of America, transmitting, pursuant to law, a report relative to entering a free trade agreement with the Republic of Peru; to the Committee on Finance.

EC–5224. A communication from the Inspector General, Department of the Treasury, transmitting, the report of a draft bill entitled ''Enhanced Protection of the Internal Revenue Service and Its Employees Act of 2005''; to the Committee on Finance.

EC–5225. A communication from the Secretary of Labor, transmitting, pursuant to law, a report relative to the impact of the Andean Trade Preference Act on U.S. trade and employment from 2003 to 2004; to the Committee on Finance.

EC–5226. A communication from the Regulations Officer, Office of Disability and Income Security Programs, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Medicare Part D Subsidies'' (RIN0960–AG03) received on January 4, 2006; to the Committee on Finance.

EC–5227. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Annual Cumulative List of Changes in Plan Qualification Requirements'' (Notice 2005–101) received on January 4, 2006; to the Committee on Finance.

EC–5228. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Consent Procedures for Changes Under Simplified Service Cost and Simplified Production Methods'' (Rev. Proc. 2006–11) received on January 4, 2006; to the Committee on Finance.

EC–5229. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Annual Update of No-Rule Rev. Proc.'' (Rev. Proc. 20006–3) received on January 4, 2006; to the Committee on Finance.

EC–5230. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—October 2005'' (Rev. Rul. 2005–79) received on January 4, 2006; to the Committee on Finance.

EC–5231. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''RIC Commodity Swaps'' (Rev. Rul. 2006–1) received on January 4, 2006; to the Committee on Finance.

EC–5232. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—January 2006'' (Rev. Rul. 2006–4) received on January 4, 2006; to the Committee on Finance.

EC–5233. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revocation of Rev. Rul. 74–503'' (Rev. Rul. 2006–2) received on January 4, 2006; to the Committee on Finance.

EC–5234. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Japanese YKs'' (Rev. Rul. 2006–3) received on January 4, 2006; to the Committee on Finance.

EC–5235. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''TD: Refunding Regulations under Section 141'' ((RIN1545–AU98) (TD9234)) received on January 4, 2006; to the Committee on Finance.

EC–5236. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 1374 Effective Dates'' ((RIN1545–BD95) (TD9236)) received on January 4, 2006; to the Committee on Finance.

EC–5237. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance under Sec. 7874 for Determining Ownership by Former Shareholders or Partners of Domestic Entities'' ((RIN1545–BE94) (TD9238)) received on January 4, 2006; to the Committee on Finance.

EC–5238. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Acceptance Agent Revenue Procedure'' (Rev. Proc. 2006–10) received on January 4, 2006; to the Committee on Finance.

EC–5239. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Internal Revenue Code section 482: Allocation of Income and Deductions Among Taxpayers'' (Rev. Proc. 2006–9) received on January 4, 2006; to the Committee on Finance.

EC–5240. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Reporting Requirements under Temporary Income Tax Regulations on Conversions to Roth IRAs'' (Rev. Proc. 2006–13) received on January 4, 2006; to the Committee on Finance.

EC–5241. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Automatic Accounting Method Change Procedures for Intangibles'' (Rev. Proc. 2006–12) received on January 4, 2006; to the Committee on Finance.

EC–5242. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Updating Rev. Proc. 2006–7 and 2005–1'' (Rev. Proc. 2006–7) received on January 4, 2006; to the Committee on Finance.

EC–5243. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Transition Relief for Certain Partnerships and Other Pass-Thru Entities under section 470'' (Notice 2006–2) received on January 4, 2006; to the Committee on Finance.

EC–5244. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Information Reporting for Distributions with Respect to Securities Issued by Foreign Corporations''

(Notice 2006–3) received on January 4, 2006; to the Committee on Finance.

EC–5245. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Weighted Average Interest Rate Update Notice—Pension Funding Equity Act of 2004'' (Notice 2005–96) received on January 4, 2006; to the Committee on Finance.

EC–5246. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Cash or Deferred Arrangements under section 401(k) and Matching Contributions section 401(m)'' ((RIN1545–BE05) (TD9237)) received on January 6, 2006; to the Committee on Finance.

EC–5247. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Time for Filing Employment Tax Returns and Modifications to the Deposit Rules'' ((RIN1545–BE00) (TD9239)) received on January 6, 2006; to the Committee on Finance.

EC–5248. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Republication of Rev. Proc. 2005–6'' (Rev. Proc. 2006–6) received on January 6, 2006; to the Committee on Finance.

EC–5249. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Republication of Rev. Proc. 2005–8'' (Rev. Proc. 2006–8) received on January 6, 2006; to the Committee on Finance.

EC–5250. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Republication of Rev. Proc. 2005–5'' (Rev. Proc. 2006–5) received on January 6, 2006; to the Committee on Finance.

EC–5251. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Republication of Rev. Proc. 2005–4'' (Rev. Proc. 2006–4) received on January 6, 2006; to the Committee on Finance.

EC–5252. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Heavy Equipment Dealers Use of Replacement Cost Method to Value Heavy Equipment Parts Inventory'' (Rev. Proc. 2006–14) received on January 16, 2006; to the Committee on Finance.

EC–5253. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Representation of Parties; Recognition, Disqualification, and Reinstatement of Representative'' (RIN0960–AG15) received on January 16, 2006; to the Committee on Finance.

EC–5254. A communication from the Assistant Bureau Chief, Enforcement Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Review of the Emergency Alert System'' ((EB Docket No. 04–296) (FCC05–191)) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5255. A communication from the Legal Advisor/Chief, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, et. al.—Order on Reconsideration and Report and Order'' (FCC05–202) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5256. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Grand Portage, Minnesota)'' (MB Docket No. 04–339) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5257. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Fruit Cove and St. Augustine, Florida)'' (MB Docket No. 05–244) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5258. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Victoria, George West, and Three Rivers, Texas)'' (MB Docket No. 03–56) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5259. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Caseville, Pigeon, Harbor Beach, and Lexington, Michigan)'' (NM Docket Nos. 01–229 and 01–231) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5260. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Greenville, LaGrange and Waverly Hall, Georgia)'' (MB Docket No. 04–339) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5261. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Holdenville and Pauls Valley, Oklahoma)'' (NM Docket No. 01–180, RM–10200 and RM–11018) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5262. A communication from the Trial Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents; Announcement of Reporting Threshold for Calendar Year 2006'' (RIN2130–AB65) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5263. A communication from the Trial Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Track Safety Standards; Inspection of Joints in Continuous Welded Rail '' (RIN2130–AB71) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5264. A communication from the Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Technical Amendments to Standards for Development and Use of Processor-Based Signal and Train Control Systems; Correction'' (RIN2130–AA94) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5265. A communication from the Paralegal, Federal Transit Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Organizations, Functions, and Procedures'' (RIN2132–AA79) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5266. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–600, 700, 700C, and 800 Series Airplanes'' ((RIN2120–AA64) (2005–0573)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5267. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Learjet Model 45 Airplanes'' ((RIN2120–AA64) (2005–0572)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5268. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems Limited Model BAe 146 and Model Avro 146–RJ Airplanes'' ((RIN2120–AA64) (2005–0571)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5269. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Wellington Municipal Airport, KS'' ((RIN2120–AA66) (2005–0261)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5270. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Sheldon Municipal Airport, IA'' ((RIN2120–AA66) (2005–0260)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5271. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Jet Routes J–8, J–18, J–19, J–58, J–104, and J–244; and VOR Federal Airways V–60, V–190, V–263, and V–611; Las Vegas, NM'' ((RIN2120–AA66) (2005–0262)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5272. A communication from the Attorney-Advisor, United States Coast Guard, Department of Homeland Security, transmitting , pursuant to law, the report of a rule entitled ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission'' (RIN1625–AA93) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5273. A communication from the Attorney, United States Coast Guard, Department

of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents'' ((RIN1625–AA27) (Formerly RIN2115–AG07) (USCG–2001–8773)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5274. A communication from the Attorney-Advisor, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Reporting Marine Casualties'' ((RIN1625–AA04) (USCG–2000–6927)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5275. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zones; Oahu, Maui, Hawaii, and Kauai, HI'' (RIN1625–AA87) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5276. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York'' (RIN1625–AA11) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5277. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Chicago New Year's Celebration, Lake Michigan, Chicago, IL'' (RIN1625–AA00) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5278. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Anchorage Regulations; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes'' (RIN1625–AA01) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5279. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulations (including 2 regulations): [CGD01–00–228], [CGD13–05–023]'' (RIN1625–AA09) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5280. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulations (including 2 regulations): [CGD01–05–110], [CGD11–05–035]'' (RIN1625–AA09) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5281. A communication from the Assistant Secretary for Legislative Affairs, Department of Homeland Security, transmitting, pursuant to law, a report stating that the Coast Guard implemented no new rules in 2005 concerning the Edible Oil Regulatory Reform Act; to the Committee on Commerce, Science, and Transportation.

EC–5282. A communication from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries, Quota Transfer'' (I.D. 112305D) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5283. A communication from the Acting Deputy Assistant Administrator, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Sea Turtle Mitigation Measures'' ((RIN0648–AQ91)(I.D. 072105B)) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5284. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments'' (I.D. 112305B) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5285. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area'' (I.D. 112105A) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5286. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Herring Fishery; Closure of Directed Fishery for Management Area 1A'' (I.D. 112505B) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5287. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Temporary Rule; Quota Transfer (Summer Flounder Commercial Quota Transfer Between NC and VA)'' (I.D. 112905B) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5288. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Supplemental Oxygen'' (RIN2120–AI65) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5289. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''FAA Accident and Incident Data System Records Expunction Policy'' (RIN2120–ZZ77) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5290. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revocation of Class E Airspace; Eagle, CO'' ((RIN2120–AA66) (2005–0258)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5291. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment and Revision of Area Navigation Routes; Western United States; Correction'' ((RIN2120–AA66) (2005–0257)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5292. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D and Class E Airspace; Salina Municipal Airport, KS; Correction'' ((RIN2120–AA66) (2005–0256)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5293. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (119)'' ((RIN2120–AA65) (2005–003)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5294. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (38)'' ((RIN2120–AA65) (2005–0034)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5295. A communication from the Deputy Secretary, Department of the Interior, transmitting, pursuant to law, the Department's Competitive Sourcing Report for Fiscal Year 2005; to the Committee on Energy and Natural Resources.

EC–5296. A communication from the Principal Deputy Assistant Secretary, Bureau of Indian Affairs, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Reindeer in Alaska'' (RIN1076–AE37) received on January 6, 2006; to the Committee on Indian Affairs.

EC–5297. A communication from the Administrator, Food and Nutrition Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Child and Adult Care Food Program: Age Limits for Children Receiving Meals in Emergency Shelters'' (RIN0584–AD56) received on January 6, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5298. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 05–318—05–332); to the Committee on Foreign Relations.

EC–5299. A communication from the Director, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Reservists' Education: Revision of Eligibility Requirements for the Montgomery GI Bill—Selected Reserve'' (RIN2900–AL69) received on January 6, 2006; to the Committee on Veterans' Affairs.

EC–5300. A communication from the Chairman and President (Acting), Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to the Kingdom of the Netherlands; to the Committee on Banking, Housing, and Urban Affairs.

EC–5301. A communication from the Federal Register Certifying Officer, Financial Management Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Withholding of District of Columbia, State, City and County Income or Employment Taxes by Federal Agencies'' (RIN1510–AB06) received on January 6, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5302. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to the proliferation of weapons of mass destruction that was declared in Executive Order 12938 of November 14, 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–5303. A communication from the Acting Director, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report that funding for the State of Georgia as a result of the emergency conditions resulting from the influx of evacuees from areas struck by Hurricane Katrina beginning on August 29, 2005, and continuing, has exceeded $5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC–5304. A communication from the President of the United States of America, transmitting, pursuant to law, a report relative to the continuation of the emergency with respect to the Government of Cuba's destruction of two unarmed U.S.-registered civilian aircraft; to the Committee on Banking, Housing, and Urban Affairs.

EC–5305. A communication from the Secretary of Commerce, transmitting, pursuant to law, a six-month report prepared by the Department of Commerce's Bureau of Industry and Security on the national emergency declared by Executive Order 13222 of August 17, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–5306. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process that was declared in Executive Order 12947 of January 23, 1995; to the Committee on Banking, Housing, and Urban Affairs.

EC–5307. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation that was declared in Executive Order 13159 of June 21, 2000; to the Committee on Banking, Housing, and Urban Affairs.

EC–5308. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to the Western Balkans that was declared in Executive Order 13219 of June 26, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–5309. A communication from the Assistant to the Board, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled ''Home Mortgage Disclosure Act'' (Docket No. 1245) received on January 3, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5310. A communication from the Associate General Counsel for Legislation and Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Electronic Submission of Applications for Grants and Other HUD Financial Assistance'' ((RIN2501–AD02)(FR–4875–F–02)) received on January 3, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5311. A communication from the Associate General Counsel for Legislation and Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937'' ((RIN2501–AD19)(FR–5036–F–01)) received on January 3, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5312. A communication from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Anti-Money Laundering Programs—Special Due Diligence Programs for Certain Foreign Accounts'' (RIN1506–AA29) received on January 4, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5313. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''Requirements for Insurance; Purchase of Assets and Assumption of Liabilities'' (RIN3133–AD14) received on January 8, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5314. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''Fidelity Bond and Insurance Coverage for Federal Credit Unions'' (12 CFR Parts 713 and 741) received on January 8, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5315. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''Audit Requirements for Credit Union Service Organizations'' (12 CFR Part 712) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5316. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''Security Program and Appendix B—Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice'' (12 CFR Part 748) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5317. A communication from the Assistant to the Board, Federal Reserve Board, transmitting, pursuant to law, the report of a rule entitled ''Regulation E—Electronic Fund Transfers'' (Docket No. R–1247) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5318. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((Doc. No. FEMA–B–7455)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5319. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((Doc. No. FEMA–7899)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5320. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''List of Communities Eligible for the Sale of Flood Insurance'' ((Doc. No. FEMA–7782)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5321. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((Doc. No. FEMA–7905)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5322. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((Doc. No. FEMA–7897)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5323. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((Doc. No. FEMA–7895)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5324. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' ((70 FR 55031)(44 CFR Part 67)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5325. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' ((70 FR 57791)(44 CFR Part 67)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5326. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((Doc. No. FEMA–D–7579)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5327. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((Doc. No. FEMA–P–7646)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5328. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((70 FR 57788)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5329. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((70 FR 55029)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5330. A communication from the Counsel for Legislation and Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Eligibility of Adjustable Rate Mortgages'' ((RIN2502–AI26)(FR–4946–F–02)) received on January 18, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5331. A communication from the Assistant to the Board, Federal Reserve Board, transmitting, pursuant to law, the report of

a rule entitled ''Regulation E—Electronic Fund Transfers'' (Dockets R–1210 and R–1234) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5332. A communication from the Secretary of Labor, transmitting, the report of a draft bill which would amend the Mine Safety and Health Administration's (''MSHA'') civil money penalty system by permitting MSHA to levy a maximum civil penalty of $220,000 for certain violations (termed ''flagrant'' violations) that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury; to the Committee on Health, Education, Labor, and Pensions.

EC–5333. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' (29 CFR Parts 4022 and 4044) received on January 8, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5334. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Valuations of Benefits: Mortality Assumptions'' (RIN1212–AA55) received on January 8, 2006; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of January 18, 2006, the following reports of committees were submitted on January 24, 2006.

By Mr. MCCAIN, from the Committee on Indian Affairs, without amendment.

S. 1219. A bill to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc. (Rept. No. 109–213).

EXECUTIVE REPORT OF COMMITTEE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 18, 2006, the following executive report of committee was submitted on January 24, 2006:

By Mr. SPECTER for the Committee on the Judiciary.

Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

Under authority of the order of the Senate of January 18, 2006, the following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. REID (for himself, Mr. DURBIN, Ms. STABENOW, Mr. SCHUMER, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mrs. CLINTON, Mr. CONRAD, Mr. DAYTON, Mr. DORGAN, Mr. FEINGOLD, Mr. HARKIN, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. OBAMA, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, and Mr. WYDEN):

S. 2180. A bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LAUTENBERG (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. COLEMAN, Mrs. FEINSTEIN, Mr. PRYOR, Mr. DEWINE, Mrs. BOXER, Mr. MENENDEZ, Ms. COLLINS, Mr. DAYTON, Mr. REED, Mr. JEFFORDS, Mrs. LINCOLN, Mr. LEAHY, Mr. WYDEN, Ms. STABENOW, Mr. JOHNSON, Mr. KENNEDY, Mr. DORGAN, Mr. LIEBERMAN, Mrs. CLINTON, Mr. CHAFEE, and Mr. DODD):

S. 2181. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State prescription drug expenditures for covered part D drugs for Medicare beneficiaries; to the Committee on Finance.

By Mr. ISAKSON:

S. 2182. A bill to terminate the Internal Revenue Code of 1986, and for other purposes; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. REID, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON, Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER):

S. 2183. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

Under authority of the order of the Senate of January 18, 2006, the following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SANTORUM (for himself and Mr. KYL):

S. Res. 349. A resolution condemning the Government of Iran for violating the terms of the 2004 Paris Agreement, and expressing support for efforts to refer Iran to the United Nations Security Council for its noncompliance with International Atomic Energy Agency obligations; to the Committee on Foreign Relations.

By Mr. LEAHY (for himself and Mr. KENNEDY):

S. Res. 350. A resolution expressing the sense of the Senate that Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force does not authorize warrantless domestic surveillance of United States citizens; to the Committee on the Judiciary.

By Mr. BAYH:

S. Res. 351. A resolution responding to the threat posed by Iran's nuclear program; to the Committee on Foreign Relations.

By Mr. COLEMAN (for himself, Mr. SCHUMER, Mr. LAUTENBERG, Mr. ALLEN, Mr. DEWINE, Mr. BROWNBACK, Mr. NELSON of Nebraska, Mr. NELSON of Florida, and Mrs. FEINSTEIN):

S. Con. Res. 76. A concurrent resolution condemning the Government of Iran for its flagrant violations of its obligations under the Nuclear Non-Proliferation Treaty, and calling for certain actions in response to such violations; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER:

S. 2184. A bill to amend title XVIII of the Social Security Act to provide residents of long-term care facilities with assistance with respect to prescription drug coverage under part D of such title for the resident; to the Committee on Finance.

By Mr. HAGEL (for himself, Mr. HARKIN, Mr. JEFFORDS, Mr. ROBERTS, Mr. SCHUMER, Mr. LIEBERMAN, Mr. WARNER, Mr. DAYTON, Mr. KERRY, Mr. CHAFEE, Mr. KENNEDY, Ms. MIKULSKI, Ms. SNOWE, Mr. DODD, Mr. REED, Ms. COLLINS, Mrs. MURRAY, Mr. BINGAMAN, Mr. COLEMAN, and Mr. JOHNSON):

S. 2185. A bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN (for himself, Mr. NELSON of Nebraska, Mr. ALLARD, Mr. ENZI, Mr. BURNS, Mr. COBURN, and Mr. THOMAS):

S. 2186. A bill to establish a commission to strengthen confidence in Congress; to the Committee on Rules and Administration.

By Mr. ISAKSON:

S. 2187. A bill to amend the International Revenue Code of 1986 to provide economic incentives for the preservation of open space and conservation of natural resources, and for other purposes; to the Committee on Finance.

By Mr. SANTORUM:

S. 2188. A bill to suspend temporarily the duty on hydrazine hydrate; to the Committee on Finance.

By Mr. SANTORUM:

S. 2189. A bill to suspend temporarily the duty on certain fungicides containing zinc dimethyldithiocarbamate; to the Committee on Finance.

By Mr. SANTORUM:

S. 2190. A bill to extend the temporary suspension of duty on 11-aminoundecanoic acid (monomer 11); to the Committee on Finance.

By Mr. SANTORUM:

S. 2191. A bill to extend the temporary suspension of duty on thiophanate-methyl; to the Committee on Finance.

By Mr. SANTORUM:

S. 2192. A bill to extend the temporary suspension of duty on thiophanate-methyl fungicide 70% wettable powder; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 2193. A bill to amend the Internal Revenue Code of 1986 to establish fairness in the treatment of certain pension plans maintained by churches, and for other purposes; to the Committee on Finance.

By Mr. STEVENS:

S. 2194. A bill for the relief of Nadezda Shestakova; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 2195. A bill for the relief of Ilya Shestakov; to the Committee on the Judiciary.

By Mrs. CLINTON (for herself, Mr. REID, and Mr. BINGAMAN):

S. 2196. A bill to authorize the Secretary of Energy to establish the position of Assistant Secretary for Advanced Energy Research, Technology Development, and Deployment to implement an innovative energy research, technology development, and deployment program; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. HUTCHISON (for herself and Mr. CORNYN):

S. Res. 352. A resolution commending the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship; considered and agreed to.

By Mr. FRIST (for himself, Mr. REID, Mr. MCCONNELL, Mr. MCCAIN, Mr. COLEMAN, and Mr. LUGAR):

S. Res. 353. A resolution expressing concern with the deliberate undermining of democratic freedoms and justice in Cambodia by Prime Minister Hun Sen and the Government of Cambodia; considered and agreed to.

By Mr. FRIST (for himself and Mr. REID):

S. Con. Res. 77. A concurrent resolution to provide for a joint session of Congress to receive a message from the President on the State of the Union; considered and agreed to.

ADDITIONAL COSPONSORS

S. 58

At the request of Mr. INOUYE, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 58, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 382

At the request of Mr. ENSIGN, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 484

At the request of Mr. WARNER, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 756

At the request of Mr. BENNETT, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 756, a bill to amend the Public Health Service Act to enhance public and health professional awareness and understanding of lupus and to strengthen the Nation's research efforts to identify the causes and cure of lupus.

S. 832

At the request of Mr. BINGAMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 832, a bill to amend the Internal Revenue Code of 1986 to provide taxpayer protection and assistance, and for other purposes.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 914

At the request of Mr. ALLARD, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 914, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 932

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 932, a bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

S. 941

At the request of Ms. COLLINS, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 941, a bill to amend the Cooperative Forestry Assistance Act of 1978 to establish a program to provide assistance to States and nonprofit organizations to preserve suburban forest land and open space and contain suburban sprawl.

S. 960

At the request of Mr. ENZI, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 960, a bill to amend the Packers and Stockyards Act, 1921, to prohibit the use of certain anti-competitive forward contracts.

S. 983

At the request of Mr. DEMINT, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 983, a bill to amend the National Labor Relations Act to protect employer rights.

S. 1060

At the request of Mr. COLEMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1060, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids.

S. 1112

At the request of Mr. BAUCUS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1139

At the request of Mr. SANTORUM, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1167

At the request of Mr. VOINOVICH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1167, a bill to provide that certain wire rods shall not be subject to any antidumping duty or countervailing duty order.

S. 1173

At the request of Mr. DEMINT, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1173, a bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.

S. 1263

At the request of Mr. BOND, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 1263, a bill to amend the Small Business Act to establish eligibility requirements for business concerns to receive awards under the Small Business Innovation Research Program.

S. 1294

At the request of Mr. LAUTENBERG, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1294, a bill to amend the Telecommunications Act of 1996 to preserve and protect the ability of local governments to provide broadband capability and services.

S. 1353

At the request of Mr. REID, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1353, a bill to amend the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis Registry.

S. 1354

At the request of Mr. FEINGOLD, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1354, a bill to establish commissions to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and Jewish refugees during World War II.

S. 1357

At the request of Mr. HARKIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1357, a bill to protect public health by clarifying the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services and to enforce the Hazard Analysis and Critical Control Point (HACCP) System requirements, sanitation requirements, and the performance standards.

S. 1449

At the request of Mr. SMITH, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1449, a bill to amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage bond financing, and for other purposes.

S. 1495

At the request of Mr. MCCAIN, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 1495, a bill to prohibit Federal agencies from obligating funds for appropriations earmarks included only in congressional reports, and for other purposes.

S. 1516

At the request of Mr. LOTT, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1516, a bill to reauthorize Amtrak, and for other purposes.

S. 1524

At the request of Mr. CRAPO, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 1524, a bill to repeal the sunset on the reduction of capital gains rates for individuals and on the taxation of dividends of individuals at capital gain rates.

S. 1723

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1723, a bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program to ensure waterfront access for commercial fisherman, and for other purposes.

S. 1791

At the request of Mr. SMITH, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1800

At the request of Ms. SNOWE, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1800, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit.

S. 1807

At the request of Ms. SNOWE, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1807, a bill to provide assistance for small businesses damaged by Hurricane Katrina or Hurricane Rita, and for other purposes.

S. 1821

At the request of Mr. REID, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1821, a bill to amend the Public Health Service Act with respect to preparation for an influenza pandemic, including an avian influenza pandemic, and for other purposes.

S. 1841

At the request of Mr. NELSON of Florida, the names of the Senator from Nebraska (Mr. NELSON), the Senator from Colorado (Mr. SALAZAR) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1864

At the request of Mr. BURNS, his name was added as a cosponsor of S. 1864, a bill to amend the Internal Revenue Code of 1986 to treat certain farming business machinery and equipment as 5-year property for purposes of depreciation.

S. 1900

At the request of Ms. STABENOW, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1900, a bill to amend title XVIII of the Social Security Act to stabilize the amount of the medicare part B premium.

S. 1907

At the request of Mr. JOHNSON, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1907, a bill to promote the development of Native American small business concerns, and for other purposes.

S. 1915

At the request of Mr. ENSIGN, the names of the Senator from Michigan (Ms. STABENOW), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. DODD) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 1915, a bill to amend the Horse Protection Act to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

S. 1930

At the request of Mr. REID, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1930, a bill to expand the research, prevention, and awareness activities of the National Institute of Diabetes and Digestive and Kidney Diseases and the Centers for Disease Control and Prevention with respect to inflammatory bowel disease.

S. 1934

At the request of Mr. SPECTER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 1956

At the request of Mr. BROWNBACK, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1956, a bill to amend the Federal Food, Drug, and Cosmetic Act to create a new three-tiered approval system for drugs, biological products, and devices that is responsive to the needs of seriously ill patients, and for other purposes.

S. 1966

At the request of Mrs. DOLE, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 1966, a bill to establish a pilot program to provide grants to encourage eligible institutions of higher education to establish and operate pregnant and parenting student services offices for pregnant students, parenting students, prospective parenting students who are anticipating a birth or adoption, and students who are placing or have placed a child for adoption.

S. 2084

At the request of Mr. NELSON of Florida, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2084, a bill to direct the Consumer Product Safety Commission to issue regulations concerning the safety and labeling of portable generators.

S. 2123

At the request of Mr. ALLARD, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 2123, a bill to modernize the manufactured housing loan insurance program under title I of the National Housing Act.

S. 2128

At the request of Mr. MCCAIN, the names of the Senator from Maine (Ms. SNOWE), the Senator from Minnesota (Mr. COLEMAN), the Senator from Florida (Mr. NELSON) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 2128, a bill to provide greater transparency with respect to lobbying activities, and for other purposes.

S. 2154

At the request of Mr. OBAMA, the names of the Senator from Indiana (Mr. LUGAR), the Senator from Minnesota (Mr. COLEMAN), the Senator from New York (Mr. SCHUMER) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 2154, supra.

S. 2158

At the request of Ms. COLLINS, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2158, a bill to establish a National Homeland Security Academy within the Department of Homeland Security.

S. 2170

At the request of Mr. FRIST, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2170, a bill to provide for global pathogen surveillance and response.

S. 2178

At the request of Mr. SCHUMER, the names of the Senator from Maine (Ms. SNOWE), the Senator from North Dakota (Mr. DORGAN), the Senator from Washington (Ms. CANTWELL), the Senator from Indiana (Mr. BAYH) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2179

At the request of Mr. OBAMA, the names of the Senator from New York (Mrs. CLINTON), the Senator from Colorado (Mr. SALAZAR), the Senator from Florida (Mr. NELSON) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2180

At the request of Mr. REID, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of S. 2180, a bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes.

At the request of Mr. JEFFORDS, his name was added as a cosponsor of S. 2180, supra.

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 2180, supra.

At the request of Mr. SARBANES, his name was added as a cosponsor of S. 2180, supra.

S. 2183

At the request of Mr. ROCKEFELLER, the names of the Senator from Illinois (Mr. OBAMA), the Senator from California (Mrs. FEINSTEIN) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 2183, a bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program.

S. CON. RES. 69

At the request of Mr. ISAKSON, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of S. Con. Res. 69, a concurrent resolution supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects, and for other purposes.

S. RES. 182

At the request of Mr. COLEMAN, the names of the Senator from Maryland (Mr. SARBANES), the Senator from Delaware (Mr. CARPER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. Res. 182, a resolution supporting efforts to increase childhood cancer awareness, treatment, and research.

S. RES. 236

At the request of Mr. COLEMAN, the names of the Senator from North Carolina (Mr. BURR) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. Res. 236, a resolution recognizing the need to pursue research into the causes, a treatment, and an eventual cure for idiopathic pulmonary fibrosis, supporting the goals and ideals of National Idiopathic Pulmonary Fibrosis Awareness Week, and for other purposes.

S. RES. 320

At the request of Mr. ENSIGN, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID (for himself, Mr. DURBIN, Ms. STABENOW, Mr. SCHUMER, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mrs. CLINTON, Mr. CONRAD, Mr. DAYTON, Mr. DORGAN, Mr. FEINGOLD, Mr. HARKIN, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. OBAMA, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. WYDEN, and Mr. INOUYE):

S. 2180. A bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

• Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.•

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

S. 2180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Honest Leadership and Open Government Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—CLOSING THE REVOLVING DOOR

Sec. 101. Extension of lobbying ban for former Members and employees of Congress and executive branch officials.
Sec. 102. Elimination of floor privileges for former Member lobbyists.
Sec. 103. Disclosure by Members of Congress and senior congressional staff of employment negotiations.
Sec. 104. Ethics review of employment negotiations by executive branch officials.
Sec. 105. Wrongfully influencing a private entity's employment decisions or practices.

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

Sec. 201. Quarterly filing of lobbying disclosure reports.
Sec. 202. Electronic filing of lobbying disclosure reports.
Sec. 203. Additional lobbying disclosure requirements.
Sec. 204. Disclosure of paid efforts to stimulate grassroots lobbying.
Sec. 205. Disclosure of lobbying activities by certain coalitions and associations.
Sec. 206. Disclosure by registered lobbyists of past executive and congressional employment.
Sec. 207. Creation of a comprehensive public database of lobbying disclosure information.
Sec. 208. Conforming amendment.

TITLE III—RESTRICTING CONGRESSIONAL TRAVEL AND GIFTS

Sec. 301. Ban on gifts from lobbyists.
Sec. 302. Prohibition on privately funded travel.
Sec. 303. Prohibiting lobbyist organization and participation in congressional travel.
Sec. 304. Disclosure of noncommercial air travel.
Sec. 305. Per diem expenses for congressional travel.

TITLE IV—ENFORCEMENT OF LOBBYING RESTRICTIONS

Sec. 401. Senate Office of Public Integrity.
Sec. 402. Increased civil and criminal penalties for failure to comply with lobbying disclosure requirements.
Sec. 403. Penalty for false certification in connection with congressional travel.
Sec. 404. Mandatory annual ethics training for congressional employees.

TITLE V—OPEN GOVERNMENT

Sec. 501. Sense of the Senate on conference committee protocols.
Sec. 502. Actual voting required in conference committee meetings.
Sec. 503. Availability of conference reports on the internet.

TITLE I—CLOSING THE REVOLVING DOOR

SEC. 101. EXTENSION OF LOBBYING BAN FOR FORMER MEMBERS AND EMPLOYEES OF CONGRESS AND EXECUTIVE BRANCH OFFICIALS.

Section 207 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) in the subsection heading, by striking ''One-year'' and inserting ''Two-year'';

(B) in paragraph (1), by striking ''1 year'' and inserting ''2 years'' in both places it appears; and

(C) in paragraph (2)(B), by striking ''1-year period'' and inserting ''2-year period;''

(2) in subsection (d)—

(A) in paragraph (1), by striking ''1 year'' and inserting ''2 years''; and

(B) in paragraph (2)(A), by striking ''1 year'' and inserting ''2 years''; and

(3) in subsection (e)—

(A) in paragraph (1)(A), by striking ''1 year'' and inserting ''2 years'';

(B) in paragraph (2)(A), by striking ''1 year'' and inserting ''2 years'';

(C) in paragraph (3), by striking ''1 year'' and inserting ''2 years'';

(D) in paragraph (4), by striking ''1 year'' and inserting ''2 years'';

(E) in paragraph (5)(A), by striking ''1 year'' and inserting ''2 years''; and

(F) in paragraph (6), by striking ''1-year period'' and inserting ''2-year period''.

SEC. 102. ELIMINATION OF FLOOR PRIVILEGES FOR FORMER MEMBER LOBBYISTS.

Rule XXIII of the Standing Rules of the Senate is amended by inserting after ''Ex-Senators and Senators elect'' the following: '', except for any ex-Senator or Senator elect who is a registered lobbyist''.

SEC. 103. DISCLOSURE BY MEMBERS OF CONGRESS AND SENIOR CONGRESSIONAL STAFF OF EMPLOYMENT NEGOTIATIONS.

(a) SENATE.—Rule XXXVII of the Standing Rules of the Senate is amended by adding at the end the following:

''13. (a) A Member of the Senate or an employee of the Senate earning in excess of 75 percent of the salary paid to a Senator shall notify the Committee on Ethics that he or she is negotiating or has any arrangement concerning prospective private employment if a conflict of interest or the appearance of a conflict of interest may exist.

''(b) The disclosure and notification under subparagraph (a) shall be made within 3 business days after the commencement of such negotiation or arrangement.

''(c) A Member or employee to whom this rule applies shall recuse himself or herself from any matter in which there is a conflict of interest for that Member or employee under this rule and notify the Select Committee on Ethics of such recusal.

''(d)(1) The Select Committee on Ethics shall develop guidelines concerning conduct which is covered by this paragraph.

''(2) The Select Committee on Ethics shall maintain a current public record of all notifications received under subparagraph (a) and of all recusals under subparagraph (c).''.

SEC. 104. ETHICS REVIEW OF EMPLOYMENT NEGOTIATIONS BY EXECUTIVE BRANCH OFFICIALS.

Section 208 of title 18, United States Code, is amended—

(1) in subsection (b)(1)—

(A) by inserting after ''the Government official responsible for appointment to his or her position'' the following: ''and the Office of Government Ethics''; and

(B) by striking ''a written determination made by such official'' and inserting ''a written determination made by the Office of Government Ethics, after consultation with such official,''; and

(2) in subsection (b)(3), by striking ''the official responsible for the employee's appointment, after review of'' and inserting ''the Office of Government Ethics, after consultation with the official responsible for the employee's appointment and after review of''; and

(3) in subsection (d)(1)—

(A) by striking ''Upon request'' and all that follows through ''Ethics in Government Act of 1978.'' and inserting ''In each case in which the Office of Government Ethics makes a determination granting an exemption under subsection (b)(1) or (b)(3) to a person, the Office shall, not later than 3 business days after making such determination, make available to the public pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978, and publish in the Federal Register, such determination and the materials submitted by such person in requesting such exemption.''; and

(B) by striking ''the agency may withhold'' and inserting ''the Office of Government Ethics may withhold''.

SEC. 105. WRONGFULLY INFLUENCING A PRIVATE ENTITY'S EMPLOYMENT DECISIONS OR PRACTICES.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

''§ 226. Wrongfully influencing a private entity's employment decisions by a Member of Congress

''Whoever, being a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress or an employee of either House of Congress, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

''(1) takes or withholds, or offers or threatens to take or withhold, an official act; or

''(2) influences, or offers or threatens to influence, the official act of another;

shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.''.

(b) NO INFERENCE.—Nothing in section 226 of title 18, United States Code, as added by this section, shall be construed to create any inference with respect to whether the activity described in section 226 of title 18, United States Code, was already a criminal or civil offense prior to the enactment of this Act, including sections 201(b), 201(c), and 216 of title 18, United States Code.

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

''226. Wrongfully influencing a private entity's employment decisions by a Member of Congress.''.

(d) SENATE RULES.—Rule XLIII of the Standing Rules of the Senate is amended by adding at the end the following:

''6. No Member shall, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

''(1) take or withhold, or offer or threaten to take or withhold, an official act; or

''(2) influence, or offer or threaten to influence, the official act of another.''.

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

SEC. 201. QUARTERLY FILING OF LOBBYING DISCLOSURE REPORTS.

(a) QUARTERLY FILING REQUIRED.—Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended—

(1) in subsection (a)—

(A) by striking ''Semiannual'' and inserting ''Quarterly'';

(B) by striking ''the semiannual period'' and all that follows through ''July of each year'' and insert ''the quarterly period beginning on the first days of January, April, July, and October of each year''; and

(C) by striking ''such semiannual period'' and insert ''such quarterly period''; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''semiannual report'' and inserting ''quarterly report'';

(B) in paragraph (2), by striking ''semiannual filing period'' and inserting ''quarterly period'';

(C) in paragraph (3), by striking ''semiannual period'' and inserting ''quarterly period''; and

(D) in paragraph (4), by striking ''semiannual filing period'' and inserting ''quarterly period''.

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 3(10) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended by striking ''six month period'' and inserting ''three-month period''.

(2) REGISTRATION.—Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is amended—

(A) in subsection (a)(3)(A), by striking ''semiannual period'' and inserting ''quarterly period''; and

(B) in subsection (b)(3)(A), by striking ''semiannual period'' and inserting ''quarterly period''.

(3) ENFORCEMENT.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended in paragraph (6) by striking ''semiannual period'' and inserting ''quarterly period''.

(4) ESTIMATES.—Section 15 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1610) is amended—

(A) in subsection (a)(1), by striking ''semiannual period'' and inserting ''quarterly period''; and

(B) in subsection (b)(1), by striking ''semiannual period'' and inserting ''quarterly period''.

(5) DOLLAR AMOUNTS.—

(A) Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is amended—

(i) in subsection (a)(3)(A)(i), by striking ''$5,000'' and inserting ''$2,500'';

(ii) in subsection (a)(3)(A)(ii), by striking ''$20,000'' and inserting ''$10,000'';

(iii) in subsection (b)(3)(A), by striking ''$10,000'' and inserting ''$5,000''; and

(iv) in subsection (b)(4), by striking ''$10,000'' and inserting ''$5,000''.

(B) Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended—

(i) in subsection (c)(1), by striking ''$10,000'' and ''$20,000'' and inserting ''$5,000'' and ''$10,000'', respectively; and

(ii) in subsection (c)(2), by striking ''$10,000'' both places such term appears and inserting ''$5,000''.

SEC. 202. ELECTRONIC FILING OF LOBBYING DISCLOSURE REPORTS.

Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended by adding at the end the following:

''(d) ELECTRONIC FILING REQUIRED.—A report required to be filed under this section shall be filed in electronic form, in addition to any other form that may be required by the Secretary of the Senate or the Clerk of the House of Representatives. The Secretary of the Senate and the Clerk of the House of Representatives shall provide for public access to such reports on the Internet.''.

SEC. 203. ADDITIONAL LOBBYING DISCLOSURE REQUIREMENTS.

(a) DISCLOSURE OF CONTRIBUTIONS AND PAYMENTS.—Section 5(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(b)) is amended—

(1) in paragraph (5), as added by section 204(c), by striking the period and inserting a semicolon; and

(2) by adding at the end the following:

''(6) for each registrant (and for any political committee, as defined in section 301(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)), affiliated with such registrant) and for each employee listed as a lobbyist by a registrant under paragraph 2(C), the name of each Federal candidate or officeholder,

leadership PAC, or political party committee, to whom a contribution was made, and the amount of such contribution; and

''(7) a certification that the lobbying firm or registrant has not provided, requested, or directed a gift, including travel, to a Member or employee of Congress in violation of rule XXXV of the Standing Rules of the Senate.''.

(b) LEADERSHIP PAC.—Section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended by adding at the end the following:

''(17) LEADERSHIP PAC.—The term 'leadership PAC' means an unauthorized multicandidate political committee that is established, financed, maintained, and controlled by an individual who is a Federal officeholder or a candidate for Federal office.''.

(c) FULL AND DETAILED ACCOUNTING.—Section 5(c)(1) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(c)(1)) is amended by striking ''shall be rounded to the nearest $20,000'' and inserting ''shall be rounded to the nearest $1,000''.

SEC. 204. DISCLOSURE OF PAID EFFORTS TO STIMULATE GRASSROOTS LOBBYING.

(a) DISCLOSURE OF PAID EFFORTS TO STIMULATE GRASSROOTS LOBBYING.—Section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended—

(1) in paragraph (7), by adding at the end the following: ''Lobbying activities include paid efforts to stimulate grassroots lobbying, but do not include grassroots lobbying.''; and

(2) by adding at the end the following:

''(18) GRASSROOTS LOBBYING.—The term 'grassroots lobbying' means the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same.

''(19) PAID EFFORTS TO STIMULATE GRASSROOTS LOBBYING.—The term 'paid efforts to stimulate grassroots lobbying'—

''(A) means any paid attempt to influence the general public, or segments thereof, to engage in grassroots lobbying or lobbying contacts; and

''(B) does not include any attempt described in subparagraph (A) by a person or entity directed to its members, employees, officers or shareholders, unless such attempt is financed with funds directly or indirectly received from or arranged by a lobbyist or other registrant under this Act retained by another person or entity.

''(20) GRASSROOTS LOBBYING FIRM.—The term 'grassroots lobbying firm' means a person or entity that—

''(A) is retained by 1 or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of such clients; and

''(B) receives income of, or spends or agrees to spend, an aggregate of $50,000 or more for such efforts in any quarterly period.''.

(b) REGISTRATION.—Section 4(a) of the Act (2 U.S.C. 1603(a)) is amended—

(1) in paragraph (1), by striking ''45'' and inserting ''20'';

(2) in the flush matter at the end of paragraph (3)(A)—

(A) by striking ''as estimated'' and inserting ''as included''; and

(B) by adding at the end the following: ''For purposes of clauses (i) and (ii) the term 'lobbying activities' shall not include paid efforts to stimulate grassroots lobbying.'';

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following:

''(3) GRASSROOTS LOBBYING FIRMS.—Not later than 20 days after a grassroots lobbying firm first is retained by a client to engage in paid efforts to stimulate grassroots lobbying, such grassroots lobbying firm shall register with the Secretary of the Senate and the Clerk of the House of Representatives.''.

(c) SEPARATE ITEMIZATION OF PAID EFFORTS TO STIMULATE GRASSROOTS LOBBYING.—Section 5(b) of the Act (2 U.S.C. 1604(b)) is amended—

(1) in paragraph (3), by—

(A) inserting after ''total amount of all income'' the following: ''(including a separate good faith estimate of the total amount relating specifically to paid efforts to stimulate grassroots lobbying and, within that amount, a good faith estimate of the total amount specifically relating to paid advertising)''; and

(B) striking ''and'' after the semicolon;

(2) in paragraph (4), by—

(A) inserting after ''total expenses'' the following: ''(including a good faith estimate of the total amount relating specifically to paid efforts to stimulate grassroots lobbying and, within that total amount, a good faith estimate of the total amount specifically relating to paid advertising)''; and

(B) striking the period and inserting a semicolon;

(3) by adding at the end the following:

''(5) in the case of a grassroots lobbying firm, for each client—

''(A) a good faith estimate of the total disbursements made for grassroots lobbying activities, and a subtotal for disbursements made for grassroots lobbying through paid advertising;

''(B) identification of each person or entity other than an employee who received a disbursement of funds for grassroots lobbying activities of $10,000 or more during the period and the total amount each person or entity received; and

''(C) if such disbursements are made through a person or entity who serves as an intermediary or conduit, identification of each such intermediary or conduit, identification of the person or entity who receives the funds, and the total amount each such person or entity received.''; and

(4) by adding at the end the following:

''Subparagraphs (B) and (C) of paragraph (2) shall not apply with respect to reports relating to paid efforts to stimulate grassroots lobbying activities.''.

(d) LARGE GRASSROOTS EXPENDITURE.—Section 5(a) of the Act (2 U.S.C. 1604(a)) is amended—

(1) by striking ''No later'' and inserting:

''(1) IN GENERAL.—Except as provided in paragraph (2), not later''; and

(2) by adding at the end the following:

''(2) LARGE GRASSROOTS EXPENDITURE.—A registrant that is a grassroots lobbying firm and that receives income of, or spends or agrees to spend, an aggregate amount of $250,000 or more on paid efforts to stimulate grassroots lobbying for a client, or for a group of clients for a joint effort, shall file—

''(A) a report under this section not later than 20 days after receiving, spending, or agreeing to spend that amount; and

''(B) an additional report not later than 20 days after each time such registrant receives income of, or spends or agrees to spend, an aggregate amount of $250,000 or more on paid efforts to stimulate grassroots lobbying for a client, or for a group of clients for a joint effort.''.

SEC. 205. DISCLOSURE OF LOBBYING ACTIVITIES BY CERTAIN COALITIONS AND ASSOCIATIONS.

(a) IN GENERAL.—Section 4(b)(3)(B) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(3)(B)) is amended to read as follows:

''(B) participates in the planning, supervision or control of such lobbying activities;''.

(b) NO DONOR OR MEMBERSHIP LIST DISCLOSURE.—Section 4(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)) is amended by adding at the end the following:

''No disclosure is required under paragraph (3)(B) if it is publicly available knowledge that the organization that would be identified is affiliated with the client or has been publicly disclosed to have provided funding to the client, unless the organization in whole or in major part plans, supervises or controls such lobbying activities. Nothing in paragraph (3)(B) shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by this Act or an organization identified under that paragraph.''.

SEC. 206. DISCLOSURE BY REGISTERED LOBBYISTS OF PAST EXECUTIVE AND CONGRESSIONAL EMPLOYMENT.

Section 4(b)(6) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(6)) is amended by striking ''or a covered legislative branch official'' and all that follows through ''as a lobbyist on behalf of the client,'' and inserting ''or a covered legislative branch official,''.

SEC. 207. CREATION OF A COMPREHENSIVE PUBLIC DATABASE OF LOBBYING DISCLOSURE INFORMATION.

(a) DATABASE REQUIRED.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended—

(1) in paragraph (7), by striking ''and'' at the end;

(2) in paragraph (8), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(9) maintain, and make available to the public over the Internet, without a fee or other access charge, in a searchable and downloadable manner, an electronic database that includes the information contained in registrations and reports filed under this Act.''.

(b) AVAILABILITY OF REPORTS.—Section 6(4) of the Lobbying Disclosure Act of 1995 is amended by inserting before the semicolon at the end the following: ''and, in the case of a report filed in electronic form pursuant to section 5(d), shall make such report available for public inspection over the Internet not more than 48 hours after the report is so filed''.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out section 6(9) of the Lobbying Disclosure Act of 1995, as added by subsection (a).

SEC. 208. CONFORMING AMENDMENT.

The requirements of this Act shall not apply to the activities of any political committee described in section 301(4) of the Federal Election Campaign Act of 1971.

TITLE III—RESTRICTING CONGRESSIONAL TRAVEL AND GIFTS

SEC. 301. BAN ON GIFTS FROM LOBBYISTS.

(a) IN GENERAL.—Paragraph 1(a)(2) of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following: ''This clause shall not apply to a gift from a lobbyist.''.

(b) RULES COMMITTEE REVIEW.—The Committee on Rules and Administration shall review the present exceptions to the Senate gift rule and make recommendations to the Senate not later than 3 months after the date of enactment of this Act on eliminating all but those which are absolutely necessary to effectuate the purpose of the rule.

SEC. 302. PROHIBITION ON PRIVATELY FUNDED TRAVEL.

Paragraph 2(a)(1) of rule XXXV of the Standing Rules of the Senate is amended by striking ''an individual'' and inserting ''an organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 that is not affiliated with any group that lobbies before Congress''.

SEC. 303. PROHIBITING LOBBYIST ORGANIZATION AND PARTICIPATION IN CONGRESSIONAL TRAVEL.

(a) IN GENERAL.—Paragraph 2 of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

''(g) A Member, officer, or employee may not accept transportation or lodging on any trip sponsored by an organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 covered by this paragraph that is planned, organized, requested, arranged, or financed in whole, or in part by a lobbyist or foreign agent, or in which a lobbyist participates.

''(h) Before a Member, officer, or employee may accept transportation or lodging otherwise permissible under this paragraph from any person, such Member, officer, or employee shall obtain a written certification from such person (and provide a copy of such certification to the Select Committee on Ethics) that—

''(1) the trip was not planned, organized, requested, arranged, or financed in whole, or in part by a registered lobbyist or foreign agent and was not organized at the request of a registered lobbyist or foreign agent;

''(2) registered lobbyists will not participate in or attend the trip; and

''(3) the person did not accept, from any source, funds specifically earmarked for the purpose of financing the travel expenses.

The Select Committee on Ethics shall make public information received under this subparagraph as soon as possible after it is received.''.

(b) CONFORMING AMENDMENTS.—Paragraph 2(c) of rule XXXV of the Standing Rules of the Senate is amended—

(1) by striking ''of expenses reimbursed or to be reimbursed'';

(2) in clause (5), by striking ''and'' after the semicolon;

(3) in clause (6), by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(7) a description of meetings and events attended during such travel, except when disclosure of such information is deemed by the Member or supervisor under whose direct supervision the employee works to jeopardize the safety of an individual or otherwise interfere with the official duties of the Member, officer, or employee.''.

(c) PUBLIC AVAILABILITY.—Paragraph 2(e) of rule XXXV is amended to read as follows:

''(e) The Secretary of the Senate shall make available to the public all advance authorizations, certifications, and disclosures filed pursuant to subparagraphs (a) and (h) as soon as possible after they are received.''.

SEC. 304. DISCLOSURE OF NONCOMMERCIAL AIR TRAVEL.

A Member, officer, or employee of the Senate shall—

(1) disclose a flight on an aircraft that is not licensed by the Federal Aviation Administration to operate for compensation or hire, taken in connection with the duties of the Member, officer, or employee as an officeholder or Senate officer or employee; and

(2) with respect to the flight, file a report with the Secretary of the Senate, including the date, destination, and owner or lessee of the aircraft and the purpose of the trip.

SEC. 305. PER DIEM EXPENSES FOR CONGRESSIONAL TRAVEL.

(a) SENATE.—Rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

''7. Not later than 90 days after the date of adoption of this paragraph and at annual intervals thereafter, the Committee on Rules and Administration shall develop and revise, as necessary, guidelines on what constitutes 'reasonable expenses' or 'reasonable expenditures' for purposes of this rule. In developing and revising the guidelines, the committee shall take into account the maximum per diem rates for official Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense.''.

TITLE IV—ENFORCEMENT OF LOBBYING RESTRICTIONS

SEC. 401. SENATE OFFICE OF PUBLIC INTEGRITY.

(a) ESTABLISHMENT.—There is established in the Senate an office to be known as the ''Senate Office of Public Integrity'' (referred to in this section as the ''Office''), which shall be headed by a Senate Director of Public Integrity (hereinafter referred to as the ''Director'').

(b) OFFICE.—The Office shall receive lobbyists' disclosures on behalf of the Senate under the Lobbying Disclosure Act of 1995 and conduct such audits and investigations as are necessary to ensure compliance with the Act.

(c) REFERRAL AUTHORITY.—The Office shall have authority to refer violations of the Lobbying Disclosure Act of 1995 to the Select Committee on Ethics and the Department of Justice for disciplinary action.

(d) DIRECTOR.—

(1) IN GENERAL.—The Director shall be appointed by the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the Senate. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person appointed as Director shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(2) OVERSIGHT.—The Director shall report to a joint leadership group consisting of the President pro tempore, the Majority Leader, and the Minority Leader.

(3) TERMS OF SERVICE.—Any appointment made under paragraph (1) shall become effective upon approval by resolution of the Senate. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed except that the Senate may, by resolution, remove Director prior to the termination of any term of service. The Director may be reappointed at the termination of any term of service.

(4) COMPENSATION.—The Director shall receive compensation at a rate equal to the annual rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code .

(5) STAFF.—The Director shall hire such additional staff as are required to carry out this section, including investigators and accountants.

(e) AUDITS AND INVESTIGATIONS.—

(1) IN GENERAL.—The Office shall audit lobbying registrations and reports filed pursuant to the Lobbying Disclosure Act of 1995 to determine the extent of compliance or noncompliance with the requirements of such Act by lobbyists and their clients.

(2) EVIDENCE OF NON-COMPLIANCE.—If in the course an audit conducted pursuant to the requirements of paragraph (1), the Office obtains information indicating that a person or entity may be in non-compliance with the requirements of the Lobbying Disclosure Act of 1995, the Office shall refer the matter to the Select Committee on Ethics or the United States Attorney for the District of Columbia, as appropriate

(f) TRANSFER OF RECORDS.—On the date that is 90 days after the date of enactment of this Act, the Office of Public Records of the Senate shall transfer all authority and records of that office to the Senate Office of Public Integrity.

(g) CONFORMING AMENDMENTS.—

(1) NEW OFFICE.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended by striking ''Secretary of the Senate'' and inserting ''Senate Office of Public Integrity''.

(2) AUDIT AUTHORITY.—Section 8 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1607) is amended by striking subsection (c).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in a separate account such sums as are necessary to carry out this section.

SEC. 402. INCREASED CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH LOBBYING DISCLOSURE REQUIREMENTS.

Section 7 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1606) is amended—

(1) by inserting '' (a) CIVIL PENALTY.—'' before ''Whoever'';

(2) by striking ''$50,000'' and inserting ''$100,000''; and

(3) by adding at the end the following:

''(b) CRIMINAL PENALTY.—

''(1) IN GENERAL.—Whoever knowingly and wilfully fails to comply with any provision of this section shall be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both.

''(2) CORRUPTLY.—Whoever knowingly, wilfully, and corruptly fails to comply with any provision of this section shall be imprisoned for not more than 10 years, or fined under title 18, United States Code, or both.''.

SEC. 403. PENALTY FOR FALSE CERTIFICATION IN CONNECTION WITH CONGRESSIONAL TRAVEL.

(a) CIVIL FINE.—

(1) IN GENERAL.—Whoever makes a false certification in connection with the travel of a Member, officer, or employee of either House of Congress (within the meaning given those terms in section 207 of title 18, United States Code), under paragraph 2(h) of rule XXXV of the Standing Rules of the Senate, shall, upon proof of such offense by a preponderance of the evidence, be subject to a civil fine depending on the extent and gravity of the violation.

(2) MAXIMUM FINE.—The maximum fine per offense under this section depends on the number of separate trips in connection with which the person committed an offense under this subsection, as follows:

(A) FIRST TRIP.—For each offense committed in connection with the first such trip, the amount of the fine shall be not more than $100,000 per offense.

(B) SECOND TRIP.—For each offense committed in connection with the second such trip, the amount of the fine shall be not more than $300,000 per offense.

(C) ANY OTHER TRIPS.—For each offense committed in connection with any such trip after the second, the amount of the fine shall be not more than $500,000 per offense.

(3) ENFORCEMENT.—The Attorney General may bring an action in United States district court to enforce this subsection.

(b) CRIMINAL PENALTY.—

(1) IN GENERAL.—Whoever knowingly and wilfully fails to comply with any provision of this section shall be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both.

(2) CORRUPTLY.—Whoever knowingly, wilfully, and corruptly fails to comply with any provision of this section shall be imprisoned for not more than 10 years, or fined under title 18, United States Code, or both.

SEC. 404. MANDATORY ANNUAL ETHICS TRAINING FOR CONGRESSIONAL EMPLOYEES.

(a) ETHICS TRAINING.—

(1) IN GENERAL.—The Committee on Ethics shall provide annual ethics training to each employee of the Senate which shall include knowledge of the Official Code of Conduct and related Senate rules.

(2) SECRETARY OF THE SENATE.—The Secretary of the Senate shall assist the Committee on Ethics in providing training required by this subsection.

(3) NEW EMPLOYEES.—A new employee of the Senate shall receive training under this section not later than 60 days after beginning service to the Senate.

(b) CERTIFICATION.—Not later than January 31 of each year, each employee of the Senate shall file a certification with the Committee on Ethics that the employee attended ethics training in the last year as established by this section.

TITLE V—OPEN GOVERNMENT

SEC. 501. SENSE OF THE SENATE ON CONFERENCE COMMITTEE PROTOCOLS.

It is the sense of Senate that—

(1) conference committees should hold regular, formal meetings of all conferees that are open to the public;

(2) all conferees should be given adequate notice of the time and place of all such meetings;

(3) all conferees should be afforded an opportunity to participate in full and complete debates of the matters that such conference committees may recommend to their respective Houses;

(4) all matters before a conference committee should be resolved in conference by votes on the public record; and

(5) existing rules should be enforced and new rules adopted in the Senate to shine the light on special interest legislation that is enacted in the dead of night.

SEC. 502. ACTUAL VOTING REQUIRED IN CONFERENCE COMMITTEE MEETINGS.

Rule XXVIII of the Standing Rules of the Senate is amended by adding at the end the following:

''8. Each Senate member of a conference committee shall be afforded an opportunity at an open meeting of the conference to vote on the full text of the proposed report of the conference.''.

SEC. 503. AVAILABILITY OF CONFERENCE REPORTS ON THE INTERNET.

Rule XXVIII of all the Standing Rules of the Senate is amended by adding at the end the following:

''9. It shall not be in order in the Senate to consider a conference report unless such report is available to all Members and made available to the general public by means of the Internet for at least 24 hours before its consideration.''.

By Mr. LAUTENBERG (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. COLEMAN, Mrs. FEINSTEIN, Mr. PRYOR, Mr. DEWINE, Mrs. BOXER, Mr. MENENDEZ, Ms. COLLINS, Mr. DAYTON, Mr. REED, Mr. JEFFORDS, Mrs. LINCOLN, Mr. LEAHY, Mr. WYDEN, Ms. STABENOW, Mr. JOHNSON, Mr. KENNEDY, Mr. DORGAN, Mr. LIEBERMAN, Mrs. CLINTON, Mr. CHAFEE, and Mr. DODD):

S. 2181. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State prescription drug expenditures for covered part D drugs for Medicare beneficiaries; to the Committee on Finance.

● Mr. LAUTENBERG. Mr. President, I rise to introduce the Medicare State Reimbursement Act along with my colleagues, Senators SNOWE, SCHUMER, COLEMAN, FEINSTEIN, PRYOR, DEWINE, BOXER, MENENDEZ, COLLINS, DAYTON, REED, JEFFORDS, LINCOLN, LEAHY, WYDEN, STABENOW, JOHNSON, KENNEDY, DORGAN, LIEBERMAN, CLINTON, CHAFEE and DODD.

There have been many difficulties surrounding implementation of the Medicare prescription drug benefit, however, few have experienced the severity of the problems that those who are dually eligible for both Medicare and Medicaid have faced.

''Dual Eligibles'' are the Nation's poorest seniors and the disabled. Many suffer from multiple, chronic, debilitating conditions and on average take between five and ten medications per day. Missing even one dose of medication could result in a life threatening situation.

Across America, countless beneficiaries who tried to have their prescriptions filled for the first time under the new system were told that their enrollment could not be verified, their drugs were not covered, or they would be charged larger co-payments or deductibles than they could afford. As a result, many were at risk of not receiving lifesaving prescription drugs.

Regardless of how Senators voted on the Medicare Drug bill, I think all Senators can agree on one thing: the flaws in the startup of this program are unacceptable.

Fortunately, a number of States including New Jersey have taken actions to help those who have experienced problems with access to medications under the new prescription drug benefit. As of Wednesday this week, New Jersey had already spent $16.6 million dollars.

Congress has been asking the Centers for Medicare and Medicaid Services whether New Jersey and other States will be paid back for its expenditures. The answers we have gotten so far are not satisfactory.

That is why we need to legislate on this issue. It must be crystal clear to the Federal Government that it needs to repay these States that are bailing them out.

Accordingly, I am introducing emergency legislation today that will reimburse States for the cost they have incurred for filling this unanticipated gap in coverage.

Specifically, this legislation would: require the Federal Government to reimburse the states for the cost of prescriptions for low income seniors and people with disabilities (''dual eligibles'') who were eligible for coverage under Medicare Part D, but were improperly denied Federal coverage.

Reimburse states through an equivalent reduction in funds owed by each state under the ''claw back'' provision of the new Medicare law.

Reimbursement will be at a rate equal to 100 percent of all State costs plus an interest rate equal to the market rate on 3-month Treasury Securities plus 0.1 percent.

Directs the Secretary of HHS to recover overpayments by states to private prescription drug plans and return that money to the Medicare Trust Fund.

This is not just about access to the Federal entitlement program—it's about life and death.

I urge my colleagues on both sides of the aisle to support this legislation and move for its immediate passage.

I ask unanimous consent that the text of the bill be printed in the RECORD.●

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

S. 2181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare State Reimbursement Act of 2006''.

SEC. 2. FEDERAL RESPONSIBILITY FOR STATE PRESCRIPTION DRUG EXPENDITURES FOR COVERED PART D DRUGS FOR MEDICARE BENEFICIARIES.

Section 1935(c) of the Social Security Act (42 U.S.C. 1396v(c)) is amended—

(1) in paragraph (1)(A), by striking ''Each of the 50 States'' and inserting ''Subject to paragraph (7), each of the 50 States''; and

(2) by adding at the end the following new paragraph:

''(7) OFFSET FOR STATE PRESCRIPTION DRUG EXPENDITURES FOR COVERED PART D DRUGS FOR MEDICARE BENEFICIARIES.—

''(A) IN GENERAL.—The amount of payment for a month (beginning with January 2006) under paragraph (1) shall be reduced by an amount equal to the sum of—

''(i) the amount (as documented by the State) that the State expended during the month for payment for covered part D drugs for part D eligible individuals who are enrolled in a prescription drug plan under part D of title XVIII but were unable to access on a timely basis prescription drug benefits to which they were entitled under such plan; and

''(ii) interest on such amount (for the period beginning on the day after the date on which an expenditure described in subparagraph (A) is made and ending on the date on which payment is made under paragraph (1)) at a rate equal to the weighted average of interest on 3-month marketable Treasury securities determined for such period, increased by 0.1 percentage point.

''(B) RECOVERY OF REDUCED PAYMENT FROM PRESCRIPTION DRUG PLANS.—The Secretary shall provide for recovery of payment reductions made under subparagraph (A) from those prescription drug plans under part D of title XVIII or MA–PD plans under part C of such title that would otherwise be responsible for the expenditures described in subparagraph (A)(i). Any such amounts recovered shall be deposited into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.''.

● Ms. SNOWE. Mr. President, I am pleased to join with Senator LAUTENBERG today to introduce urgent legislation to assist the many States which have stepped forward to provide an essential safety net to our Medicare Part D beneficiaries. Our States have acted as ''payers of last resort''—as beneficiaries faced unaffordable costs when errors in implementing their coverage

denied them access to vital medications. The Medicare State Reimbursement Act will reimburse our States for their costs in assuring that millions receive their medications. So many of our colleagues have recognized the crisis which was averted—Senators COLEMAN, SCHUMER, DEWINE, FEINSTEIN, COLLINS, JEFFORDS and many more have joined us in this bipartisan effort to support the States in the vital role they have played in countering a deficit of action by the Federal bureaucracy.

The introduction of the prescription drug benefit is a landmark step in the progress of Medicare. This benefit will save the average senior about $1,000 per year. This is the relief that millions have needed for so long. It must eliminate the terrible choices so many have had to make between vital medications and the other essentials of life—not create new dilemmas.

As we worked to ensure a prescription drug benefit, many of us worked hard to assure special help to those with the most limited resources. We enacted a benefit which provided additional help for those on limited incomes, including millions who rely on both Medicare and Medicaid—our ''dual eligibles''. It was essential that these individuals would see uninterrupted coverage of their essential medications. So we needed to ensure each would be enrolled in a drug plan. To do this, the Centers for Medicare and Medicaid Services, CMS, randomly assigned each of them to a plan. In a program based on competition—based on choices—plans are going to differ. To find the best plan, one must make an educated choice, not a random assignment.

So the result of random assignment was predictable. Many beneficiaries wound up in plans which did not cover their drugs. My State of Maine immediately stepped forward to work to assure that every beneficiary was matched with the plan which best met their needs. As plans were reviewed, my State found a third of those reviewed—15,000 beneficiaries—were not enrolled in the most appropriate drug plan. Getting each into the plan that met their medication requirements was essential to meeting their needs.

Despite these best efforts to improve the situation, some beneficiaries were not in a plan at all, while others were in plans which seemed not to understand that every beneficiary was to be allowed a refill of their existing medications. So as beneficiaries came to their local pharmacies to get prescription refills, many faced great obstacles in getting the drugs they needed. We had heard of some problems in validating enrollment eligibility, but at year end, these just became worse, and we found beneficiaries were not properly enrolled, plans were not giving the proper transition refills, and co-payments charged were often excessive. As individual faced co-payments of $100 or more—instead of the $5 or less they should have been charged—many simply couldn't afford their medications. Thankfully, our States have stepped in to make sure low income seniors received their medications. In Maine alone, approximately $5 million in assistance has been given to ensure medications are dispensed.

This drug benefit must increase access, not make it more difficult. I am appalled, that with all the technology we have, so many have faced such difficulties in the implementation of this benefit. I salute the forbearance of our pharmacies, as they strived to meet essential needs, and the efforts of my State and others which have assured that these most vulnerable Americans not suffer from the failures of either the Federal bureaucracy or the plan administrators.

So what this legislation does is simple. It authorizes CMS to reimburse the States their costs which they paid for providing medications to those who did not receive the benefits to which they were entitled. It does this by a simple mechanism: an adjustment in the ''claw back'' payments which States make as their contribution for their dual eligibles. Accordingly, CMS is authorized to collect those funds from those who were obligated to serve our beneficiaries—the drug plans and managed care plans which deliver the drug benefit.

It has been confirmed that CMS does not presently have this authority, and it simply is not acceptable to propose that CMS will simply help the States collect from the plans. It was CMS which approved the plans, and it is CMS which administers Part D. They are in the best position to assure plan compliance.

I look forward to prompt consideration of this legislation, and look forward to continuing work with my colleagues to assure that the Medicare drug benefit meets the needs of all our beneficiaries, and that none of our most vulnerable citizens should suffer from such administrative failures as we have seen here.

I call on my colleagues to join us in assuring our States are justly compensated.●

● Mrs. FEINSTEIN. Mr. President, I am pleased to join with Senators LAUTENBERG, SNOWE, SCHUMER, COLEMAN and many others to introduce legislation to reimburse States for prescription drug expenses they have incurred for their residents who are dually eligible for Medicare and Medicaid. States have had no other option but to step in and ensure seniors can still get their drugs because the implementation of the new Medicare drug benefit has been so poorly handled by the Bush administration.

The faulty implementation of the new drug benefit has caused a major health emergency in California and States across the country, particularly for seniors with chronic and debilitating diseases who rely on multiple medications every day to keep them alive.

It is incomprehensible to me that with all the money and time given to the Centers for Medicare and Medicaid Services, CMS, to implement this new drug benefit, stories emerge every day of seniors and disabled individuals being hospitalized because they are being told they have to pay hundreds of dollars for their medications which they cannot afford and thus don't take.

Because of severe glitches in the database run by CMS, these individuals are leaving pharmacies without their medications or are making undue sacrifices to pay for costs they should not have incurred in the first place.

So far, more than 24 States and the District of Columbia have stepped in to say they will cover the cost of prescription drugs for their residents who are dually eligible for Medicare and Medicaid and who cannot access lifesaving and life sustaining drugs as a result of Federal incompetence.

Earlier this week, the Governor of California and California's State legislative leaders announced a plan to make $150 million available for 30 days to cover drug costs for dual eligible individuals who have fallen through the system. In California, these individuals account for more than 1 million of the State's 4 million total Medicare recipients.

Problems with the Bush administration's implementation of the drug benefit have cost California $5.5 million to fill 63,000 prescriptions, as of January 18. I have no doubt these costs are just the beginning.

Unless these significant implementation errors are fixed immediately, the new drug benefit amounts to a massive unfunded mandate. The Bush administration must reimburse States, in full, for the drug costs they have absorbed as a result of major implementation errors that occurred on their watch.

The legislation I am introducing today with Senators LAUTENBERG, SNOWE, SCHUMER and COLEMAN will ensure that States are repaid in full by the Federal Government for all costs associated with prescription drugs for dual eligible individuals. The States did not create the crisis felt by our Nation's poorest and most vulnerable seniors and disabled and the States should not be responsible for costs associated with a Federal program that was intended to provide these individuals with comprehensive prescription drug coverage at little or no cost.

It is simply unacceptable for the Bush administration to tell States and the Congress not to worry because the private health insurance plans will reimburse States for the costs they've incurred. States should not be made to wait to be reimbursed because of implementation foul-ups caused by CMS.

I urge my colleagues to support this legislation.●

By Mr. ROCKEFELLER (for himself, Mr. REID, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON,

Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER):

S. 2183. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Finance.

• Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.•

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

S. 2183

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Requiring Emergency Pharmaceutical Access for Individual Relief (REPAIR) Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Transition requirements.
Sec. 3. Federal fallback for full-benefit dual eligible individuals for 2006.
Sec. 4. Identifying full-benefit dual eligible individuals in data records.
Sec. 5. Prohibition on conditioning Medicaid eligibility for individuals enrolled in certain creditable prescription drug coverage on enrollment in the Medicare part D drug program.
Sec. 6. Ensuring that full-benefit dual eligible individuals are not overcharged.
Sec. 7. Reimbursement of States for 2006 transition costs.
Sec. 8. Facilitation of identification and enrollment through pharmacies of full-benefit dual eligible individuals in the Medicare part D drug program.
Sec. 9. State health insurance program assistance regarding the new Medicare prescription drug benefit.
Sec. 10. Additional Medicare part D informational resources.
Sec. 11. GAO study and report on the imposition of co-payments under part D for full-benefit dual eligible individuals residing in a long-term care facility.
Sec. 12. State coverage of non-formulary prescription drugs for full-benefit dual eligible individuals during 2006.
Sec. 13. Protection for full-benefit dual eligible individuals from plan termination prior to receiving functioning access in a new part D plan.

SEC. 2. TRANSITION REQUIREMENTS.

(a) REQUIREMENT.—

(1) IN GENERAL.—Section 1860D–4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)) is amended by adding at the end the following new paragraph:

''(4) FORMULARY TRANSITION.—The sponsor of a prescription drug plan is required to provide at least a 30-day supply of any drug that a new enrollee in the plan was taking prior to enrolling in such plan. For individuals residing in a long-term care setting, the sponsor of a prescription drug plan is required to provide at least a 90-day supply of any drug such individual was taking prior to enrolling in such plan. A formulary transition supply provided under this section shall be made by the sponsor of a prescription drug plan without imposing any prior authorization requirements or other access restrictions for individuals stabilized on a course of treatment and at the dosage previously prescribed by a physician or recommended by a physician going forward.

''(5) CUSTOMER SERVICE.—The sponsor of a prescription drug plan is required to provide—

''(A) accessible and trained customer service representatives available for full business hours from coast to coast to provide knowledgeable assistance to individuals seeking help with Medicare Part D including, but not limited to, beneficiaries, caseworkers, SHIP counselors, pharmacists, doctors, and caregivers;

''(B) at least one dedicated phone line for pharmacists with sufficient staff to reduce wait times for pharmacists seeking Medicare Part D assistance to no more than 20 minutes; and

''(C) sufficient staff to reduce wait times for all Medicare Part D-related calls to plan phone lines to no more than 20 minutes.''.

(2) APPLICATION.—The requirements under paragraphs (4) and (5) of section 1860D–4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)), as added by subsection (a), shall apply to the plan serving as the national point of sale contractor under part D of title XVIII of such Act.

(b) EFFECTIVE DATE AND ENFORCEMENT.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) ENFORCEMENT.—The Secretary may impose a civil monetary penalty in an amount not to exceed $15,000 for conduct that a sponsor of a prescription drug plan or an organization offering an MA–PD plan knows or should know is a violation of the provisions of paragraph (4) or (5) of section 1860D–4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)), as added by subsection (a). The provisions of section 1128A of the Social Security Act (42 U.S.C. a–7a), other than subsections (a) and (b) and the second sentence of subsection (f), shall apply to a civil monetary penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under subsection (a) of such section 1128A(a).

SEC. 3. FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FOR 2006.

(a) IN GENERAL.—

(1) IN GENERAL.—If a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))), or an individual who is presumed to be such an individual pursuant to subsection (b), presents a prescription for a covered part D drug (as defined in section 1860D–2(e) of such Act (42 U.S.C. 1395w–102(e))) at a pharmacy in 2006 and the pharmacy is unable to locate or verify the individual's enrollment through a reasonable effort, including the use of the pharmacy billing system or by calling an official Medicare hotline, or to bill for the prescription through the plan serving as the national point of sale contractor, the pharmacy may provide a 30-day supply of the drug to the individual.

(2) REFILL.—The pharmacy may provide an additional 30-day supply of a drug if the pharmacy continues to be unable to locate the individual's enrollment through such reasonable efforts or to bill for the prescription through the plan serving as the national point of sale contractor when a prescription is presented on or after the date that a prescription refill is appropriate, but in no case after December 31, 2006.

(3) COST-SHARING.—The cost-sharing for a prescription filled pursuant to this subsection shall be cost-sharing provided for under section 1860D–14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)).

(b) PRESUMPTIVE ELIGIBILITY.—An individual shall be presumed to be a full-benefit dual eligible individual (as so defined) if the individual presents at the pharmacy with—

(1) a government issued picture identification card;

(2) reliable evidence of Medicaid enrollment, such as a Medicaid card, recent history of Medicaid billing in the pharmacy patient profile, or a copy of a current Medicaid award letter; and

(3) reliable evidence of Medicare enrollment, such as a Medicare identification card, a Medicare enrollment approval letter, a Medicare Summary Notice, or confirmation from an official Medicare hotline.

(c) PAYMENTS TO PHARMACISTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall reimburse pharmacists, to the extent that such pharmacists are not otherwise reimbursed by States or plans, for the costs incurred in complying with the requirements under subsection (a), including acquisition costs, dispensing costs, and other overhead costs. Such payments shall be made in a timely manner from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) RETROACTIVE APPLICATION TO BEGINNING OF 2006.—The costs incurred by a pharmacy which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(d) RECOVERY OF COSTS FROM PLANS BY SECRETARY NOT PHARMACIES.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (c)(1) from prescription drug plans (as defined in section 1860D–1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (c)(1).

SEC. 4. IDENTIFYING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN DATA RECORDS.

(a) IN GENERAL.—The Secretary of Health and Human Services and a prescription drug plan or an MA–PD plan shall clearly identify all full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))) and reflect the low-income subsidy status of such individual for each calender year (beginning with 2006) in every data record file used to enroll or adjudicate claims for such individuals.

(b) ENROLLMENT.—For each calendar year (beginning with 2006) and for each Medicaid beneficiary who is a full-benefit dual eligible individual (as so defined), the Secretary of Health and Human Services shall—

(1) identify in the Medicare enrollment database that such individual has dual eligible status that has been verified with a State or the District of Columbia; and

(2) ensure that such dual eligible status is reflected in each data file necessary to ensure that such status is transmitted to a prescription drug plan or an MA–PD plan when

the Secretary certifies the enrollment of such an individual in a plan.

(c) DEFINITION OF MA–PD PLAN AND PRESCRIPTION DRUG PLAN.—For purposes of this section, the terms ''MA–PD plan'' and ''prescription drug plan'' have the meaning given such terms in sections 1860D–1(a)(3)(C) and 1860D–41(a)(14) of the Social Security Act (42 U.S.C. 1395w–101(a)(3)(C); 1395w–151(a)(14)), respectively.

SEC. 5. PROHIBITION ON CONDITIONING MEDICAID ELIGIBILITY FOR INDIVIDUALS ENROLLED IN CERTAIN CREDITABLE PRESCRIPTION DRUG COVERAGE ON ENROLLMENT IN THE MEDICARE PART D DRUG PROGRAM.

(a) IN GENERAL.—Section 1935 of the Social Security Act (42 U.S.C. 1396v) is amended by adding at the end the following:

''(f) PROHIBITION ON CONDITIONING ELIGIBILITY FOR MEDICAL ASSISTANCE FOR INDIVIDUALS ENROLLED IN CERTAIN CREDITABLE PRESCRIPTION DRUG COVERAGE ON ENROLLMENT IN MEDICARE PRESCRIPTION DRUG BENEFIT.—

''(1) IN GENERAL.—A State shall not condition eligibility for medical assistance under the State plan for a part D eligible individual (as defined in section 1860D–1(a)(3)(A)) who is enrolled in creditable prescription drug coverage described in any of subparagraphs (C) through (H) of section 1860D–13(b)(4) on the individual's enrollment in a prescription drug plan under part D of title XVIII or an MA–PD plan under part C of such title.

''(2) COORDINATION OF BENEFITS WITH PART D FOR OTHER INDIVIDUALS.—Nothing in this subsection shall be construed as prohibiting a State from coordinating medical assistance under the State plan with benefits under part D of title XVIII for individuals not described in paragraph (1).''.

(b) NULLIFICATION OF STATE PLAN AMENDMENTS, REDETERMINATION OF ELIGIBILITY.—In the case of a State that, as of the date of enactment of this Act, has an approved amendment to its State plan under title XIX of the Social Security Act with a provision that conflicts with section 1935(f) of such Act (as added by subsection (a)), such provision is, as of such date of enactment, null and void. The State shall redetermine any applications for medical assistance that have been denied solely on the basis of the application of such a State plan amendment not later than 90 days after the date of enactment of this Act.

SEC. 6. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.

(a) IN GENERAL.—Section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

''(d) ENSURING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.—

''(1) IN GENERAL.—The Secretary shall, as soon a possible after the date of enactment of this subsection, establish processes for the following:

''(A) TRACKING INAPPROPRIATE PAYMENTS.—The Secretary shall track full-benefit dual eligible individuals enrolled in a prescription drug plan or an MA–PD plan to determine whether such individuals were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D–14.

''(B) REDUCTION IN PAYMENTS TO PLANS AND REFUNDS TO INDIVIDUALS.—If the Secretary determines under subparagraph (A) that an individual was overcharged, the Secretary shall—

''(i) reduce payments to the sponsor of the prescription drug plan under section 1860D–15 or to the organization offering the MA–PD plan under section 1853 that inappropriately charged the individual by an amount equal to the inappropriate charges; and

''(ii) refund such amount to the individual within 60 days of the determination that the individual was inappropriately charged.

If the Secretary does not provide for the refund under clause (i) within the 60 days provided for under such clause, interest at the rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 shall be payable from the end of such 60-day period until the date of the refund.

''(2) REQUIREMENT.—The processes established under paragraph (1) shall provide for the ability of an individual to notify the Secretary if the individual believes that they were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D–14.''.

(b) REPORT TO CONGRESS.—Not later than January 1, 2007, the Secretary of Health and Human Services shall submit a report to Congress on the implementation of the processes established under subsection (d) of section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114), as added by subsection (a).

SEC. 7. REIMBURSEMENT OF STATES FOR 2006 TRANSITION COSTS.

(a) REIMBURSEMENT.—

(1) IN GENERAL.—Notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396u–5(d) or any other provision of law, the Secretary of Health and Human Services shall reimburse States for 100 percent of the costs incurred by the State during 2006 for covered part D drugs (as defined in section 1860D–2(e) of such Act (42 U.S.C. 1395w–102(e))) for part D eligible individuals (as defined in section 1860D–1(a)(3)(A) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(A))) which the State reasonably expected would have been covered under such part but were not because the individual was unable to access on a timely basis prescription drug benefits to which they were entitled under such part. Such payments shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) RETROACTIVE APPLICATION TO BEGINNING OF 2006.—The costs incurred by a State which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(b) RECOVERY OF COSTS FROM PLANS BY SECRETARY NOT STATES.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (a)(1) from prescription drug plans (as defined in section 1860D–1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (a)(1).

(c) STATE.—For purposes of this section, the term ''State'' includes the District of Columbia.

SEC. 8. FACILITATION OF IDENTIFICATION AND ENROLLMENT THROUGH PHARMACIES OF FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN THE MEDICARE PART D DRUG PROGRAM.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide for outreach and education to every pharmacy that has participated in the Medicaid program under title XIV of the Social Security Act, particularly independent pharmacies, on the following:

(1) The needs of full-benefit dual eligible individuals and the challenges of meeting those needs.

(2) The processes for the transition from Medicaid prescription drug coverage to coverage under such part D for such individuals.

(3) The processes established by the Secretary to facilitate, at point of sale, identification of drug plan assignment of such population or enrollment of previously unidentified or new full-benefit dual eligible individuals into Medicare part D prescription drug coverage, including how pharmacies can use such processes to help ensure that such population makes a successful transition to Medicare part D without a lapse in prescription drug coverage.

(b) HOLDING PHARMACIES HARMLESS FOR CERTAIN COSTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for such payments to pharmacies as may be necessary to reimburse pharmacies fully for—

(A) transaction fees associated with the point-of-sale facilitated identification and enrollment processes referred to in subsection (a)(3); and

(B) costs associated with technology or software upgrades necessary to make any identification and enrollment inquiries as part of the processes under subsection (a)(3).

(2) TIME.—Payments under paragraph (1) shall be made with respect to fees and costs incurred during the period beginning on December 1, 2005, and ending on June 1, 2006.

(3) PAYMENTS FROM ACCOUNT.—Payments under paragraph (1) shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

SEC. 9. STATE HEALTH INSURANCE PROGRAM ASSISTANCE REGARDING THE NEW MEDICARE PRESCRIPTION DRUG BENEFIT.

During the period beginning on the date that is 7 days after the date of enactment of this Act and ending on May 15, 2006 (or a later date if determined appropriate by the Secretary of Health and Human Services), the Secretary shall ensure that an employee of the Centers for Medicare & Medicaid Services is stationed at each State health insurance counseling program (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990) in order to—

(1) assist Medicare beneficiaries and counselors under such program in better understanding the Medicare prescription drug benefit under part D of title XVIII of the Social Security Act; and

(2) act as a liaison to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services regarding issues related to oversight and enforcement of provisions under the Medicare prescription drug benefit.

SEC. 10. ADDITIONAL MEDICARE PART D INFORMATIONAL RESOURCES.

(a) 1–800–MEDICARE.—The Secretary of Health and Human Services shall increase the number of trained employees staffing the toll-free telephone number 1–800–MEDICARE in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(b) PHARMACY HOTLINE.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to pharmacists; and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(c) STATE HEALTH INSURANCE PROGRAM HOTLINE.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to counselors working in State health insurance counseling programs (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990); and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

SEC. 11. GAO STUDY AND REPORT ON THE IMPOSITION OF CO-PAYMENTS UNDER PART D FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS RESIDING IN A LONG-TERM CARE FACILITY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on how mental health patients who are full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))) and who reside in long-term care facilities, including licensed assisted living facilities, will be affected by the imposition of co-payments for covered part D drugs under part D of title XVIII of such Act. Such study shall include a review of issues that relate to the potential harm of displacement due to an inability to access needed medications because of such co-payments.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the study conducted under subsection (a) together with recommendations for such legislation as the Comptroller General determines is appropriate.

SEC. 12. STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.

(a) STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.—For prescriptions filled during 2006, notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396v(d)), a State (as defined for purposes of title XIX of such Act) may provide (and receive Federal financial participation for) medical assistance under such title with respect to prescription drugs provided to a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) that are not on the formulary of the prescription drug plan under part D or the MA–PD plan under part C of title XVIII of such Act in which such individual is enrolled.

(b) APPLICATION.—

(1) MEDICARE AS PRIMARY PAYER.—Nothing in subsection (a) shall be construed as changing or affecting the primary payer status of a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of the Social Security Act with respect to prescription drugs furnished to any full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) during 2006.

(2) THIRD PARTY LIABILITY.—Nothing in subsection (a) shall be construed as limiting the authority or responsibility of a State under section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) to seek reimbursement from a prescription drug plan, an MA–PD plan, or any other third party, of the costs incurred by the State in providing prescription drug coverage during 2006.

SEC. 13. PROTECTION FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FROM PLAN TERMINATION PRIOR TO RECEIVING FUNCTIONING ACCESS IN A NEW PART D PLAN.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not terminate coverage of a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396v(c)(6)) unless such individual has functioning access to a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of such Act. Such access shall include entry of the individual into the computer system of such plan and an acknowledgment by the plan that the individual is eligible for a full premium subsidy under section 1860D–14 of such Act (42 U.S.C. 1395w–114).

(b) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COLEMAN (for himself, Mr. NELSON of Nebraska, Mr. ALLARD, Mr. ENZI, Mr. BURNS, Mr. COBURN, and Mr. THOMAS):

S. 2186. A bill to establish a commission to strengthen confidence in Congress; to the Committee on Rules and Administration.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the text of the bill to establish a commission to strengthen confidence in Congress be printed in the RECORD.

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

S. 2186

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Commission to Strengthen Confidence in Congress Act of 2006''.

SEC. 2. ESTABLISHMENT OF COMMISSION.

There is established in the legislative branch a commission to be known as the ''Commission to Strengthen Confidence in Congress'' (in this Act referred to as the ''Commission'').

SEC. 3. PURPOSES.

The purposes of the Commission are to—

(1) evaluate and report the effectiveness of current congressional ethics requirements, if penalties are enforced and sufficient, and make recommendations for new penalties;

(2) weigh the need for improved ethical conduct with the need for lawmakers to have access to expertise on public policy issues;

(3) determine and report minimum standards relating to official travel for Members of Congress and staff;

(4) evaluate the range of gifts given to Members of Congress and staff, determine and report the effects on public policy, and make recommendations for limits on gifts;

(5) evaluate and report the effectiveness and transparency of congressional disclosure laws and recommendations for improvements;

(6) assess and report the effectiveness of the ban on Member of Congress and staff from lobbying their former office for 1 year and make recommendations for altering the time frame;

(7) make recommendations to improve the process whereby Members of Congress can earmark priorities in appropriations Acts, while still preserving congressional power of the purse;

(8) evaluate the use of public and privately funded travel by Members of Congress and staff, violations of Congressional rules governing travel, and make recommendations on limiting travel; and

(9) investigate and report to Congress on its findings, conclusions, and recommendations for reform.

SEC. 4. COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) the chair and vice chair shall be selected by agreement of the majority leader and minority leader of the House of Representatives and the majority leader and minority leader of the Senate;

(2) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party, 1 of which is a former member of the Senate;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party, 1 of which is a former member of the Senate;

(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party, 1 of which is a former member of the House of Representatives; and

(5) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party, 1 of which is a former member of the House of Representatives.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Five members of the Commission shall be Democrats and 5 Republicans.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in professions such as governmental service, government consulting, government contracting, the law, higher education, historian, business, public relations, and fundraising.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed on a date 3 months after the date of enactment of this Act.

(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 5. FUNCTIONS OF COMMISSION.

The functions of the Commission are to submit to Congress a report required by this Act containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules and regulations—

(1) related to section 3; or

(2) related to any other areas the commission unanimously votes to be relevant to its mandate to recommend reforms to strengthen ethical safeguards in Congress.

SEC. 6. POWERS OF COMMISSION.

(a) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this Act—

(1) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(2) subject to subsection (b), require, by subpoena or otherwise, the attendance and

testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(b) SUBPOENAS.—

(1) IN GENERAL.—A subpoena may be issued under this subsection only—

(A) by the agreement of the chair and the vice chair; or

(B) by the affirmative vote of 6 members of the Commission.

(2) SIGNATURE.—Subject to paragraph (1), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

(c) OBTAINING INFORMATION.—Upon request of the Commission, the head of any agency or instrumentality of the Federal Government shall furnish information deemed necessary by the panel to enable it to carry out its duties.

SEC. 7. ADMINISTRATION.

(a) COMPENSATION.—Except as provided in subsection (b), members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(b) TRAVEL EXPENSES AND PER DIEM.—Each member of the Commission shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) STAFF AND SUPPORT SERVICES.—

(1) STAFF DIRECTOR.—

(A) APPOINTMENT.—The Chair (or Co-Chairs) in accordance with the rules agreed upon by the Commission shall appoint a staff director for the Commission.

(B) COMPENSATION.—The staff director shall be paid at a rate not to exceed the rate established for level V of the Executive Schedule under section 5315 of title 5, United States Code.

(2) STAFF.—The Chair (or Co-Chairs) in accordance with the rules agreed upon by the Commission shall appoint such additional personnel as the Commission determines to be necessary.

(3) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff director and other members of the staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(4) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the staff director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(d) PHYSICAL FACILITIES.—The Architect of the Capitol, in consultation with the appropriate entities in the legislative branch, shall locate and provide suitable office space for the operation of the Commission on a nonreimbursable basis. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

(e) ADMINISTRATIVE SUPPORT SERVICES AND OTHER ASSISTANCE.—

(1) IN GENERAL.—Upon the request of the Commission, the Architect of the Capitol and the Administrator of General Services shall provide to the Commission on a nonreimbursable basis such administrative support services as the Commission may request.

(2) ADDITIONAL SUPPORT.—In addition to the assistance set forth in paragraph (1), departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support services as the Commission may deem advisable and as may be authorized by law.

(f) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

(g) PRINTING.—For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

SEC. 8. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this Act without the appropriate security clearances.

SEC. 9. COMMISSION REPORTS; TERMINATION.

(a) ANNUAL REPORTS.—The Commission shall submit—

(1) an initial report to Congress not later than July 1, 2006; and

(2) annual reports to Congress after the report required by paragraph (1);

containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADMINISTRATIVE ACTIVITIES.—During the 60-day period beginning on the date of submission of each annual report and the final report under this section, the Commission shall—

(1) be available to provide testimony to committees of Congress concerning such reports; and

(2) take action to appropriately disseminate such reports.

(c) TERMINATION OF COMMISSION.—

(1) FINAL REPORT.—At such time as a majority of the members of the Commission determines that the reasons for the establishment of the Commission no longer exist, the Commission shall submit to Congress a final report containing information described in subsection (a).

(2) TERMINATION.—The Commission, and all the authorities of this Act, shall terminate 60 days after the date on which the final report is submitted under paragraph (1), and the Commission may use such 60-day period for the purpose of concluding its activities.

SEC. 10. FUNDING.

There are authorized such sums as necessary to carry out this Act.

By Mrs. HUTCHISON:

S. 2193. A bill to amend the Internal Revenue Code of 1986 to establish fairness in the treatment of certain pension plans maintained by churches, and for other purposes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I rise today to introduce a bill to fix an unfortunate application of our current pension rules on church pension beneficiaries.

Church pensions are critically important compensation plans that help support over a million clergy members across the country in their retirement, particularly those who dedicated their careers to serving in economically disadvantaged congregations.

Some of these plans date back to the 18th Century, and they are designed to ensure that our pastors and lay staff who are often paid lower salaries have adequate resources during their retirement years.

Unfortunately, the Internal Revenue Code impedes the ability of church pensions to recognize these valuable contributions to society with provisions that negatively impact church plans while exempting other equally important plans.

For example, Section 415(b)(1)(B) of the Code limits benefits for a retired church employee to 100 percent of the participant's average compensation for his or her highest three years.

This limitation penalizes church employees because some church plans allow lower-paid employees to accrue benefits based on median salaries rather than their own, individual, lower compensation.

While the Code allows exceptions to this general limitation for governmental and multiemployer plans, it does not allow one for church plans.

The rationale for allowing an exception for governmental plans but not church plans cannot be reconciled when one acknowledges the situation in which most ministers find themselves when they retire.

For example, ministers often live in parsonages throughout their careers; and they are faced with acquiring housing for the first time when they retire.

Not having a significant asset in retirement, such as a house—an asset which could be used as collateral and security in time of need, leaves ministers vulnerable in their retirement years and justifies the need for including church pension beneficiaries in an exception to the general limitation.

The Code further punishes church pensions by requiring church plans to pay unrelated business income taxes on investments in leveraged real estate, while exempting the vast majority of retirement plans from this very same tax.

This unequal treatment is simply unfair, and it is time we correct it.

The legislation I am introducing today would rectify this unequal treatment by exempting church plans from the 415(b)(1)(B) limit and the unrelated business income tax.

I ask my colleagues to join me today in establishing parity for the beneficiaries of church pensions by supporting this necessary, long over-due fix to the Internal Revenue Code.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2193

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENDING WAIVER OF DEFINED BENEFIT COMPENSATION LIMIT TO PARTICIPANTS IN CHURCH PLANS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (11) of section 415(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following: ''Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3) except with respect to highly compensated benefits. For purposes of this paragraph, the term 'highly compensated benefits' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 2. EQUALIZING TREATMENT OF RETIREMENT INCOME ACCOUNTS PROVIDED BY CHURCHES WITH RESPECT TO ACQUISITION INDEBTEDNESS.

(a) IN GENERAL.—Section 514(c)(9)(C) of the Internal Revenue Code of 1986 (defining qualified organization) is amended by striking ''or'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ''; or'' , and by adding at the end the following:

''(iv) a retirement income account (as defined in section 403(b)(9)(B)).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

By Mr. STEVENS:

S. 2194. A bill for the relief of Nadezda Shestakova; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 2195. A bill for the relief of Ilya Shestakov; to the Committee on the Judiciary.

Mr. STEVENS. Mr. President, I offer today two private relief bills to provide lawful permanent resident status to Nadezda Shestakova and her son, Ilya Shestakov.

The Shestakov family has lived and worked in Anchorage, Alaska for more than ten years. Nadezda has now returned to Russia, and Ilya is attending high school in Canada, in order to avoid further immigration problems, and to demonstrate that they intend to be good citizens who live within the letter of the law.

Nadezda's husband, Michail, is a legal immigrant working for Aleut Enterprise Corporation (AEC), an Alaska native corporation, and their youngest son is a United States citizen. Both remain in Anchorage awaiting the reunion of their family.

During their time in Alaska, Michail has been an exemplary employee of the Aleut Corporation. As a matter of fact, it was the Aleut Corporation who first brought this issue to my attention, as they wish to support the Shestakov family in any way possible.

The children have excelled in school, and Nadezda has remained an at-home mother, pursuant to the terms of her original visa.

The Shestakov family's problems began when they overstayed their visa due to an error by their attorney, who did not file the extension paperwork on their behalf, as requested.

These are upstanding members of the Alaska community, and they should not be punished due to an error by their former attorney. I would like to see this family reunited in Alaska, so that they can continue to contribute positively to our community.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 349—CONDEMNING THE GOVERNMENT OF IRAN FOR VIOLATING THE TERMS OF THE 2004 PARIS AGREEMENT, AND EXPRESSING SUPPORT FOR EFFORTS TO REFER IRAN TO THE UNITED NATIONS SECURITY COUNCIL FOR ITS NONCOMPLIANCE WITH INTERNATIONAL ATOMIC ENERGY AGENCY OBLIGATIONS

Mr. SANTORUM (for himself and Mr. KYL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 349

Whereas the International Atomic Energy Agency (IAEA) reported in November 2003 that Iran had been developing an undeclared nuclear enrichment program for 18 years and had covertly imported nuclear material and equipment, carried out over 110 unreported experiments to produce uranium metal, separated plutonium, and concealed many other aspects of its nuclear facilities;

Whereas, in November 2004, the Governments of the United Kingdom, France, and Germany entered into an agreement with Iran on Iran's nuclear program (commonly known as the ''Paris Agreement''), successfully securing a commitment from the Government of Iran to voluntarily suspend uranium enrichment operations in exchange for discussions on economic, technological, political, and security issues;

Whereas Article XII.C of the Statute of the IAEA requires the IAEA Board of Governors to report the noncompliance of any member of the IAEA with its IAEA obligations to all members and to the Security Council and General Assembly of the United Nations;

Whereas Article III.B–4 of the Statute of the IAEA specifies that ''if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security'';

Whereas, in September 2005, the IAEA Board of Governors adopted a resolution declaring that Iran's many failures and breaches constitute noncompliance in the context of Article XII.C of the Statute of the IAEA;

Whereas, on January 3, 2006, the Government of Iran announced that it planned to restart its nuclear research efforts in direct violation of the Paris Agreement;

Whereas, in January 2006, Iranian officials, in the presence of IAEA inspectors, began to remove United Nations seals from the enrichment facility in Natanz, Iran;

Whereas Foreign Secretary of the United Kingdom Jack Straw warned Iranian officials that they were ''pushing their luck'' by removing the United Nations seals that were placed on the Natanz facility by the IAEA 2 years earlier;

Whereas President of France Jacques Chirac said that the Governments of Iran and North Korea risk making a ''serious error'' by pursuing nuclear activities in defiance of international agreements;

Whereas Foreign Minister of Germany Frank-Walter Steinmeier said that the Government of Iran had ''crossed lines which it knew would not remain without consequences'';

Whereas Secretary of State Condoleezza Rice stated, ''It is obvious that if Iran cannot be brought to live up to its international obligations, in fact, the IAEA Statute would indicate that Iran would have to be referred to the U.N. Security Council.'';

Whereas President of Iran Mahmoud Ahmadinejad stated, ''The Iranian government and nation has no fear of the Western ballyhoo and will continue its nuclear programs with decisiveness and wisdom.'';

Whereas the United States has joined with the Governments of Britain, France, and Germany in calling for a meeting of the IAEA to discuss Iran's non-compliance with its IAEA obligations;

Whereas President Ahmadinejad has stated that Israel should be ''wiped off the map''; and

Whereas the international community is in agreement that the Government of Iran should not seek the development of nuclear weapons:

Now, therefore, be it

Resolved, That the Senate—

(1) condemns the decisions of the Government of Iran to remove United Nations seals from its uranium enrichment facilities and to resume nuclear research efforts;

(2) commends the Governments of Britain, France, and Germany for their efforts to secure the 2004 Paris Agreement, which resulted in the brief suspension in Iran of nuclear enrichment activities;

(3) supports the referral of Iran to the United Nations Security Council under Article XII.C and Article III.B–4 of the Statute of the IAEA for violating the Paris Agreement; and

(4) condemns actions by the Government of Iran to develop, produce, or acquire nuclear weapons.

SENATE RESOLUTION 350—EXPRESSING THE SENSE OF THE SENATE THAT SENATE JOINT RESOLUTION 23 (107TH CONGRESS), AS ADOPTED BY THE SENATE ON SEPTEMBER 14, 2001, AND SUBSEQUENTLY ENACTED AS THE AUTHORIZATION FOR USE OF MILITARY FORCE DOES NOT AUTHORIZE WARRANTLESS DOMESTIC SURVEILLANCE OF UNITED STATES CITIZENS

Mr. LEAHY (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 350

Whereas the Bill of Rights to the United States Constitution was ratified 214 years ago;

Whereas the Fourth Amendment to the United States Constitution guarantees to the American people the right ''to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures'';

Whereas the Fourth Amendment provides that courts shall issue ''warrants'' to authorize searches and seizures, based upon probable cause;

Whereas the United States Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a ''search and seizure'' within the meaning of the Fourth Amendment;

Whereas Congress was concerned about the United States Government unconstitutionally spying on Americans in the 1960s and 1970s;

Whereas Congress enacted the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), commonly referred to as ''FISA'', to provide a legal mechanism for the United States Government to engage in searches of Americans in connection with intelligence gathering and counterintelligence;

Whereas Congress expressly enacted the Foreign Intelligence Surveillance Act of 1978, and specified provisions of the Federal criminal code (including those governing wiretaps for criminal investigations), as the ''exclusive means by which domestic electronic surveillance . . . may be conducted'' pursuant to law (18 U.S.C. 2511(2)(f));

Whereas the Foreign Intelligence Surveillance Act of 1978 establishes the Foreign Intelligence Surveillance Court (commonly referred to as the ''FISA court''), and the procedures by which the United States Government may obtain a court order authorizing electronic surveillance (commonly referred to as a ''FISA warrant'') for foreign intelligence collection in the United States;

Whereas Congress created the FISA court to review wiretapping applications for domestic electronic surveillance to be conducted by any Federal agency;

Whereas the Foreign Intelligence Surveillance Act of 1978 provides specific exceptions that allow the President to authorize warrantless electronic surveillance for foreign intelligence purposes (1) in emergency situations, provided an application for judicial approval from a FISA court is made within 72 hours; and (2) within 15 calendar days following a declaration of war by Congress;

Whereas the Foreign Intelligence Surveillance Act of 1978 makes criminal any electronic surveillance not authorized by statute;

Whereas the Foreign Intelligence Surveillance Act of 1978 has been amended over time by Congress since the September 11, 2001, attacks on the United States;

Whereas President George W. Bush has confirmed that his administration engages in warrantless electronic surveillance of Americans inside the United States and that he has authorized such warrantless surveillance more than 30 times since September 11, 2001; and

Whereas Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and House Joint Resolution 64 (107th Congress), as adopted by the House of Representatives on September 14, 2001, together enacted as the Authorization for Use of Military Force (Public Law 107–40), to authorize military action against those responsible for the attacks on September 11, 2001, do not contain legal authorization nor approve of domestic electronic surveillance, including domestic electronic surveillance of United States citizens, without a judicially approved warrant: Now, therefore, be it

Resolved, That Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force (Public Law 107–40) does not authorize warrantless domestic surveillance of United States citizens.

• Mr. LEAHY. Mr. President, today I am submitting this resolution expressing the sense of the Senate that the Authorization for Use of Military Force, which Congress passed to authorize military action against those responsible for the attacks on September 11, 2001, did not authorize warrantless eavesdropping on American citizens.

As Justice O'Connor underscored recently, even war ''is not a blank check for the President when it comes to the rights of the Nation's citizens.''

Now that the illegal spying of Americans has become public and the President has acknowledged the 4-year-old program, the Bush administration's lawyers are contending that Congress authorized it. The September 2001 Authorization to Use Military Force did no such thing. Republican Senators also know it and a few have said so publicly. We all know it. The liberties and rights that define us as Americans and the system of checks and balances that serve to preserve them should not be sacrificed to threats of terrorism or to the expanding power of the government. In the days immediately following those attacks, I said, and I continue to believe, that the terrorists win if they frighten us into sacrificing our freedoms and what defines us as Americans.

I well remember the days immediately after the 9/11 attacks. I helped open the Senate to business the next day. I said then, on September 12, 2001:

''If we abandon our democracy to battle them, they win. . . . We will maintain our democracy, and with justice, we will use our strength. We will not lose our commitment to the rule of law, no matter how much the provocation, because that rule of law has protected us throughout the centuries. It has created our democracy. It has made us what we are in history. We are a just and good Nation.''

I joined with others, Republican and Democrats, and we engaged in round-the-clock efforts over the next months in connection with what came to be the USA PATRIOT Act. During those days the Bush administration never asked us for this surveillance authority or to amend the Foreign Intelligence Surveillance Act to accommodate such a program.

Just as we cannot allow ourselves to be lulled into a sense of false comfort when it comes to our national security, we cannot allow ourselves to be lulled into a blind trust regarding our freedoms and rights. The Framers built checks and balances into our system specifically to counter such abuses and undue assertions of power. We must remain vigilant on all fronts or we stand to lose these rights forever. Once lost or eroded, liberty is difficult if not impossible to restore. The Bush administration's after-the-fact claims about the breadth of the Authorization to Use Military Force—as recently as this week, in a document prepared at the White House's behest by the Department of Justice—are the latest in a long line of manipulations of the law. We have also seen this type of overreaching in that same Justice Department office's twisted interpretation of the torture statute, an analysis that had to be withdrawn; with the detention of suspects without charges and denial of access to counsel; and with the misapplication of the material witness statute as a sort of general preventive detention law. Such abuses serve to harm our national security as well as our civil liberties.

In addition, the press reports that the Pentagon maintains secret databases containing information on a wide cross-section of ordinary Americans, and that the FBI is monitoring law-abiding citizens in the exercise of their First Amendment freedoms. When I worked with Senator WYDEN and others in 2003 to stop Admiral Poindexter's Total Information Awareness program, an effort designed to datamine information on Americans—and we meant it. And when I added a reporting requirement on Carnivore, the FBI's e-mail monitoring program, to the Department of Justice Authorizations law in 2002, we meant it. We demanded that Congress be kept informed and that any such program not proceed without congressional authorization.

The New York Times reported that after September 11, 2001, when former Attorney General John Ashcroft loosened restrictions on the FBI to permit it to monitor Web sites, mosques, and other public entities, ''the FBI has used that authority to investigate not only groups with suspected ties to foreign terrorists, but also protest groups suspected of having links to violent or disruptive activities.'' When I learned of such efforts and that they reportedly included monitoring Quakers in Florida and possibly Vermont, I wrote to the Secretary of Defense demanding an answer. That was a month ago. So far he has refused to provide that answer.

Now we have learned that President Bush has, for more than four years, secretly allowed the warrantless wiretapping of Americans inside the United States. And we read in the press that sources at the FBI say that much of what was forwarded to them to investigate was worthless and led to dead ends. That is a dangerous diversion of our investigative resources away from those who pose real threats, while precious time and effort is devoted to looking into the lives of law-abiding Americans.

The United States Supreme Court has consistently held for nearly 40 years, since its landmark decision in Katz v. United States, that the monitoring and recording of private conversations constitutes a ''search and seizure'' within the meaning of the Fourth Amendment. Congress enacted the Foreign Intelligence Surveillance Act of 1978, FISA, to provide a legal mechanism for the government to engage in electronic surveillance of Americans in connection with intelligence gathering. The Foreign Intelligence Surveillance Act, along with

the criminal wiretap authority in title 18 of the United States Code, together provide the exclusive means by which the Government may intercept domestic electronic communications pursuant to the rule of law.

The Foreign Intelligence Surveillance Act has been amended over time, and it has been adjusted several times since the 9/11 attacks. Indeed, much of the PATRIOT Act was devoted to modifying FISA to make it easier to obtain FISA warrants. But the PATRIOT Act did not amend FISA to give the Government the authority to conduct warrantless surveillance of American citizens.

If the Bush administration believed that the law was inadequate to deal with the threat of terrorism within our boundaries, it should have come to Congress and sought to change the law. It did not. Indeed, Attorney General Gonzales admitted at a press conference on December 19, 2005, that the Administration did not seek to amend FISA to authorize the NSA spying program because it was advised that ''it was not something we could likely get.''

I chaired the Senate Judiciary Committee in 2001 and 2002, when the President's secret eavesdropping program apparently began. I was not informed of the program. I learned about it for the first time in the press last month. I thank heaven and the Constitution that we still have a free press.

The Bush administration is now arguing that when Congress authorized the use of force in September 2001 to attack al Qaeda in Afghanistan, it authorized warrantless searches and eavesdropping on American citizens. I voted for that authorization, and I know that Congress did not sign a blank check. The notion that Congress authorized warrantless surveillance in the AUMF is utterly inconsistent with the Attorney General's admission that Congress was not asked for such authorization because it was assumed that Congress would say no.

Former Senate Majority Leader Tom Daschle, who helped negotiate the use of force resolution with the White House, has confirmed that the subject of warrantless wiretaps of American citizens never came up, that he did not and never would have supported giving authority to the President for such wiretaps, and that he is ''confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance.''

Senator Daschle also noted that the Bush administration sought to add language to the resolution that would have explicitly authorized the use of force ''in the United States,'' but Congress refused to grant the President such sweeping power. Maybe that was this Administration's covert way to seek the authority to spy on Americans, but Congress did not grant any such authority.

Spying on Americans without first obtaining the requisite warrants is illegal, unnecessary and wrong. No President can simply declare when he wishes to follow the law and when he chooses not to, especially when it comes to the hard-won rights of the American people.

The resolution I submit today is intended to help set the record straight. It is an important first step toward restoring checks and balances between the co-equal branches of government. I urge all Senators to support it.

Mr. KENNEDY. Mr. President, what is past is prologue. Today, we see history repeating itself. In 1978, President Carter signed into law the ''Foreign Intelligence Surveillance Act,'' successfully concluding years of debate on the power of the President to conduct national security wiretapping.

As a result of lengthy hearings and consultation, Congress enacted that law with broad bipartisan support. Its purpose was clear—to put a check on the power of the President to use wiretaps in the name of national security. One of the clear purposes of that law was to require the government to obtain a judicial warrant for all electronic surveillance in the United States in which communications of U.S. citizens might be intercepted. The Act established a secret court, the Foreign Intelligence Surveillance Court, to review wiretapping applications and guarantee that any such electronic surveillance followed the rule of law. Since 1979, the special court has approved nearly 19,000 applications and denied only 4. Last year, the Administration reached an all-time-high with the number of applications granted.

In the Foreign Intelligence Surveillance Act, Congress established the exclusive means by which electronic surveillance could be conducted in the United States for national security purposes. One of the principal goals of the legislation was to ensure that information obtained from illegal wiretaps could not be used to obtain a warrant from the Foreign Intelligence Surveillance Court. We even made sure that there would be criminal penalties for anyone who failed to comply with these rules.

The PATRIOT Act did not give the President the authority to spy on anyone without impartial judicial review—and neither did the Joint Resolution, enacted in 2001, authorizing the use of force against those responsible for the attacks of September 11th.

The President seemed to agree. In 2004, in Buffalo he stated categorically that ''any time that you hear the United States talking about a wiretap, it requires a court order.'' He said that ''Nothing had changed—when we're talking about chasing down terrorists, we're talking about getting a court order before we do so.''

Now, however, the President and the administration claim they do not have to comply with the law. Just yesterday, the administration again asserted its constitutional authority to eavesdrop on any person within the United States—without judicial or legislative oversight and it claims that the Congress implicitly granted such power in the Joint Resolution of 2001.

But that Joint Resolution says nothing about domestic electronic surveillance. As Justice O'Connor has said, ''A state of war is not a blank check for the president when it comes to the rights of the nation's citizens.''

The bipartisan 9/11 Commission made clear that the Executive Branch has the burden of proof to justify why a particular governmental power should be retained—and Congress has the responsibility to see that adequate guidelines and oversight are made available.

The Executive Branch has failed to meet the 9/11 Commissioners' burden of proof. The American people are not convinced that these surveillance methods achieve the right balance between our national security and protection of our civil liberties.

These issues go to the heart of what it means to have a free society. If President Bush can make his own rules for domestic surveillance, Big Brother has run amok. If the President believes that winning the war on terror requires new surveillance capabilities, he has a responsibility to work with Congress to make appropriate changes in existing law. He is not above the law.

Congress and the American people deserve full and honest answers about the Administration's domestic electronic surveillance activities. On December 22, 2005, I asked the President to provide us with answers before the Senate Judiciary Committee began hearings on Judge Alito's nomination to the Supreme Court. We got no response. The Senate Judiciary Committee is scheduled to begin separate hearings on February 6 on the President's actions. Instead of providing us with the documents the Administration relied upon, the Justice Department continues to circulate summaries and ''white papers'' on the legal authorities it purports to have to ignore the law. It now appears that the President did so on at least thirty occasions after September 11. There is no legitimate purpose in denying access by Members of Congress to all of the legal thought and analysis that the President relied upon when he authorized these activities.

Every 45 days, the President ordered these activities to be reviewed by the Attorney General, the White House Counsel and the Inspector General of the National Security Agency. That's not good enough. These are all executive branch appointees who report directly to the President.

Congress spent seven years considering and enacting the Foreign Intelligence Surveillance Act. It was not a hastily conceived idea. We had broad agreement that both Congressional oversight and judicial oversight were fundamental—even during emergencies

or times of war, which is why we established a secret court to expedite the review of sensitive applications from the government.

Now, the administration has made a unilateral decision that Congressional and judicial oversight can be discarded, in spite of what the law obviously requires. We need a thorough investigation of these activities. Congress and the American people deserve answers, and they deserve answers now.●

SENATE RESOLUTION 351—RESPONDING TO THE THREAT POSED BY IRAN'S NUCLEAR PROGRAM

Mr. BAYH submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 351

Whereas Iran is precipitating a grave nuclear crisis with the international community that directly impacts the national security of the United States and the efficacy of the International Atomic Energy Agency (IAEA) and the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the ''Nuclear Non-Proliferation Treaty'');

Whereas the United States welcomes a diplomatic solution to the nuclear crisis, but the Government of Iran continues to reject a peaceful resolution to the matter;

Whereas, although the Government of Iran agreed to suspend uranium enrichment activities and to sign and ratify the IAEA's Additional Protocol on expansive, intrusive nonotice inspections in 2003, it has repeatedly failed to live up to its obligations under this agreement;

Whereas the Government of Iran broke IAEA seals on some centrifuges in September 2004, converted uranium to a gas needed for enrichment in May 2005, limited IAEA inspectors to a few sites, and said it would restart uranium conversion activities;

Whereas the Board of Governors of the IAEA declared in September 2005 that Iran was in non-compliance of its Nuclear Non-Proliferation Treaty obligations;

Whereas Iran announced on January 3, 2006, that it would resume uranium ''research'' activities at Natanz and invited IAEA to witness the breaking of IAEA seals at the facility;

Whereas the Government of Iran has acknowledged deceiving the IAEA for the past 18 years for not disclosing an uranium enrichment facility in Natanz and a heavy water production plant in Arak;

Whereas the Government of Iran's human rights practices and strict limits on democracy have been consistently criticized by United Nations reports;

Whereas the Department of State stated in its most recent Country Reports on Human Rights Practices that Iran's already poor human rights record ''worsened'' during the previous year and deemed Iran a country ''of particular concern'' in its most recent International Religious Freedom Report;

Whereas the Government of Iran funds terror and rejectionist groups in Gaza and the West Bank, Lebanon, Iraq, and Afghanistan and is providing material support to groups directly involved in the killing of United States citizens;

Whereas Iran has been designated by the United States as a state sponsor of terrorism since 1984, and the Department of State said in its most recent Country Reports on Terrorism that Iran ''remained the most active state sponsor of terrorism in 2004'';

Whereas President of Iran Mahmoud Ahmadinejad has made repeated anti-American and anti-semitic statements, including denying the occurrence of the Holocaust and Israel's right to exist, and called on people to imagine a world without the United States;

Whereas Iran's recent acquisition of new anti-ship capabilities to block the Strait of Hormuz at the entrance to the Persian Gulf and the decision by the Government of Russia to sell the Government of Iran $1,000,000,000 in weapons, mostly for 29 anti-aircraft missile systems, is most regrettable and should dampen United States-Russian relations;

Whereas the behavior of the Government of Iran does not reflect that country's rich history and the democratic aspirations of most people in Iran;

Whereas the people of the United States stand with the people of Iran in support of democracy, the rule of law, religious freedom, and regional and global stability;

Whereas, although Iran is subject to a range of unilateral sanctions and some third country and foreign entities sanctions, these sanctions have not been fully implemented;

Whereas Iran remains vulnerable to international sanctions, especially with respect to financial services and foreign investment in its petroleum sector and oil sales, few foreign nations have joined the United States in attempting to isolate the regime in Iran and compel compliance with Iran's international obligations;

Whereas, although Iran may be one of the world's largest exporters of oil, it does not have the refining capacity to make the gasoline necessary to make its economy run and currently imports 40 percent of its refined gasoline from abroad;

Whereas more complete implementation of United States sanctions laws and the adoption of additional statutes would improve the chances of a diplomatic solution to the nuclear crisis with Iran;

Whereas President George W. Bush has for 4 years given too little attention to the growing nuclear problem in Iran beyond rhetorical sound bites and has carried out an Iran policy consisting of loud denunciations followed by minimal action and ultimate deference of managing the crisis to Europe, a policy that has been riddled with contradiction and inconsistency and damaging to United States national security;

Whereas, had President Bush effectively marshaled world opinion in 2002 and not wasted valuable time, diverted resources, and ignored the problem in Iran, the United States would not be faced with the full extent of the current nuclear crisis in Iran;

Whereas action now is imperative and time is of the essence; and

Whereas the opportunity the United States has to avoid the choice between military action and a nuclear Iran may be measured only in months: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should cut assistance to countries whose companies are investing in Iran's energy sector, including pipelines to export Iranian crude;

(2) supplies of refined gasoline to Iran should be cut off;

(3) there should be a worldwide, comprehensive ban on sales of weapons to Iran, including from Russia and China;

(4) the United Nations Security Council should impose an intrusive IAEA-led weapons of mass destruction inspection regime on Iran similar to that imposed on Iraq after the 1991 Persian Gulf war;

(5) the United Nations Security Council should adopt reductions in diplomatic exchanges with Iran, limit travel by some Iranian officials, and limit or ban sports or cultural exchanges with Iran;

(6) the President should more faithfully implement the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note) (commonly known as ''ILSA''), and Congress should—

(A) increase the requirements on the President to justify waiving ILSA-related sanctions;

(B) repeal the sunset provision of ILSA;

(C) set a 90-day time limit for the President to determine whether an investment constitutes a violation of ILSA; and

(D) make exports to Iran of technology related to weapons of mass destruction sanctionable under ILSA;

(7) the United States should withdraw its support for Iran's accession to the WTO until Iran meets weapons of mass destruction, human rights, terrorism, and regional stability standards; and

(8) the United States must make the Government of Iran understand that if its nuclear activity continues it will be treated as a pariah state.

SENATE CONCURRENT RESOLUTION 76—CONDEMNING THE GOVERNMENT OF IRAN FOR ITS FLAGRANT VIOLATIONS OF ITS OBLIGATIONS UNDER THE NUCLEAR NON-PROLIFERATION TREATY, AND CALLING FOR CERTAIN ACTIONS IN RESPONSE TO SUCH VIOLATIONS

Mr. COLEMAN (for himself, Mr. SCHUMER, Mr. LAUTENBERG, Mr. ALLEN, Mr. DEWINE, Mr. BROWNBACK, Mr. NELSON of Nebraska, Mr. NELSON of Florida, and Mrs. FEINSTEIN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 76

Whereas the Government of Iran concealed a nuclear program from the International Atomic Energy Agency (IAEA) and the international community for nearly two decades until it was revealed in 2002;

Whereas the Government of Iran has repeatedly deceived the IAEA about a variety of nuclear-related activities, including uranium enrichment and laboratory-scale separation of plutonium;

Whereas the Government of Iran recently removed IAEA seals from a uranium enrichment facility at Natanz and announced the resumption of ''research'' on nuclear fuel in a brazen affront to the international community;

Whereas members of the international community have agreed that the pursuit of uranium enrichment capabilities comprises a ''red line'' for United Nations Security Council referral that has now been unequivocally crossed by Iran;

Whereas this provocation represents only the latest action by the Government of Iran in a long pattern of intransigence relating to its nuclear program, including its violation of an October 2003 agreement with the United Kingdom, Germany, and France (the ''EU-3'') only months after the agreement was signed, its unilateral violation of the 2004 agreement with the EU-3 to suspend its enrichment program (commonly known as the ''Paris Agreement''), its failure to provide IAEA inspectors access to various nuclear sites, and its refusal to answer outstanding questions related to its nuclear program;

Whereas the regime in Iran has made clear the nefarious intentions behind its nuclear program in a series of inflammatory and reprehensible statements, including calling for Israel to be ''wiped off the map'' at a conference titled ''A World without Zionism'' and asserting that the Holocaust was a ''myth'' and that Israel should be transferred to Europe;

Whereas previous activities of the regime, including the sponsorship of terrorist groups such as Hezbollah, Hamas, and Islamic Jihad through the provision of funding, training, weapons, and safe haven and the destabilization of neighboring countries such as Iraq, Israel, and Lebanon, indicate that a nuclear-armed Iran would pose an unprecedented threat to the national security of the United States;

Whereas the Director General of the IAEA, Mohamed El Baradei, has publicly stated that once the Government of Iran perfects its capability to produce nuclear material and completes a parallel weaponization program, it would be only months away from building a nuclear bomb;

Whereas the Institute for Science and International Security, a Washington, D.C., nonproliferation advocacy group, released a January 2, 2006, satellite photograph showing extensive new construction at the Natanz facility;

Whereas the IAEA Board of Governors passed a resolution on September 24, 2005, indicating that Iran's noncompliance with its IAEA obligations would result in the referral of Iran to the United Nations Security Council under Article XII.C of the Statute of the IAEA;

Whereas each member of the EU-3, the leading partner of the United States in diplomatic efforts regarding Iran's nuclear program, has publicly stated its intention to refer Iran to the United Nations Security Council and called for an ''extraordinary meeting'' of the IAEA Board of Governors on February 2, 2006;

Whereas the Governments of China and Russia have expressed agreement with the United States and the EU-3 that the Government of Iran has violated its commitments to the IAEA;

Whereas China and Russia sit on the United Nations Security Council, and their cooperation would be required to enact any substantive Security Council measures against the Government of Iran; and

Whereas the Government of Iran has demonstrated no interest in Russia's offer to enrich Iran's uranium feedstock into power plant fuel on Russian territory, further demonstrating its aversion to compromise:

Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) categorically condemns the Government of Iran for its flagrant violations of its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the ''Nuclear Non-Proliferation Treaty'');

(2) calls for the immediate suspension of all uranium enrichment activities of the Government of Iran;

(3) supports calls for an emergency meeting of the Board of Governors of the IAEA for the purpose of immediately referring Iran to the United Nations Security Council;

(4) calls on all nuclear suppliers to cease immediately cooperation with Iran on nuclear materials, equipment, and technology; and

(5) calls on the Governments of Russia and China to demonstrate that they are responsible stakeholders in the international community by supporting efforts to refer Iran to the United Nations Security Council and by taking appropriate measures in response to Iran's violations of its commitments under the Nuclear Non-Proliferation Treaty.

SENATE RESOLUTION 352—COMMENDING THE UNIVERSITY OF TEXAS AT AUSTIN LONGHORNS FOOTBALL TEAM FOR WINNING THE 2005 BOWL CHAMPIONSHIP SERIES NATIONAL CHAMPIONSHIP

Mrs. HUTCHISON (for herself and Mr. CORNYN) submitted the following resolution; which was considered and agreed to:

S. RES. 352

Whereas the Longhorns won the BCS national championship game, defeating the University of Southern California by a score of 41–38 at the Rose Bowl in Pasadena, California on January 4, 2006;

Whereas the Longhorns have now won four football national titles;

Whereas this historic victory—the 800th win in school history—marks the culmination of an undefeated, 13–0 season;

Whereas, by scoring 652 points during their undefeated season, the Longhorns set an NCAA record for points scored in a single season;

Whereas the University of Texas now owns the longest-active winning streak in the Nation at 20 games;

Whereas, under the leadership of Coach Mack Brown, the Longhorns claimed the Big 12 Conference South Division title, won the Big 12 Conference championship, and earned their eighth consecutive bowl game berth;

Whereas the Longhorns boast seven All-Americans, including Will Allen, Justin Blalock, Aaron Harris, Michael Huff, Jonathan Scott, Rodrigue Wright, and Vince Young;

Whereas quarterback Vince Young—a Heisman Trophy finalist, recipient of the Davey O'Brien National Quarterback Award, and the Maxwell Award winner—was named the Most Valuable Player of the Rose Bowl;

Whereas, Vince Young scored three touchdowns and gained 467 total yards in the championship game, and he became the first player in NCAA history to rush for more than 1,000 yards and pass for more than 3,000 in the same season;

Whereas the Longhorns were captained by Ahmard Hall, David Thomas, Rodrique Wright, and Vince Young at the Rose Bowl;

Whereas Ahmard Hall, the male 2005 Big 12 Sportsperson of the Year, served his country as a Sergeant in the United States Marine Corps for four years—serving tours in Kosovo and Operation Enduring Freedom in Afghanistan—prior to joining the team as a walk-on in 2003 and ultimately rising to the position of starting fullback and team captain;

Whereas the entire Longhorns team should be commended for its inspirational work, determination, and success;

Whereas the University of Texas at Austin has a long tradition of athletic and academic excellence; and

Whereas the Longhorns have brought great honor to themselves, their university, and the great State of Texas: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship;

(2) congratulates the team for completing an undefeated, 13–0 season; and

(3) directs the Secretary of the Senate to make available to the University of Texas at Austin an enrolled copy of this resolution for appropriate display.

SENATE RESOLUTION 353—EXPRESSING CONCERN WITH THE DELIBERATE UNDERMINING OF DEMOCRATIC FREEDOMS AND JUSTICE IN CAMBODIA BY PRIME MINISTER HUN SEN AND THE GOVERNMENT OF CAMBODIA

Mr. FRIST (for himself, Mr. REID, Mr. MCCONNELL, Mr. MCCAIN, Mr. COLEMAN, and Mr. LUGAR) submitted the following resolution; which was considered and agreed to:

S. RES. 353

Whereas the United States affirms its support and respect for the welfare, human rights and dignity of the people of Cambodia;

Whereas, under the leadership of Prime Minister Hun Sen, the Government of Cambodia has engaged in a systematic campaign to undermine the democratic opposition, stifle critics of the Government, and silence and intimidate civil society in Cambodia;

Whereas, despite constitutional guarantees of freedom of expression and association in Cambodia, Prime Minister Hun Sen and the Government of Cambodia have consistently and blatantly violated basic democratic principles, the rule of law, and human rights in Cambodia;

Whereas the United States, the United Nations, and other international donors have publicly expressed concern with Prime Minister Hun Sen's authoritarian conduct (including inappropriate influence and control over the judiciary) and the official corruption and climate of impunity that exist in Cambodia today;

Whereas evidence of the campaign to undermine the democratic opposition in Cambodia is found in the revocation of parliamentary immunity of opposition leaders Sam Rainsy, Chea Poch, and Cheam Channy, and the 7-year prison sentence of Cheam Channy for allegedly forming ''a secret army to overthrow the government'' and 18-month sentence in absentia of Sam Rainsy on charges of allegedly defaming Prime Minister Hun Sen;

Whereas evidence of the campaign to stifle critics of the Government of Cambodia is found in the detention and charges of criminal defamation of radio journalist Mom Sonando and Rong Chhum, president of the Cambodian Independent Teachers Association;

Whereas the decision by Prime Minister Hun Sen and the Government of Cambodia on January 25, 2006, to drop all charges against Mom Sonando, Rong Chhum, Kem Sokha, and Pa Nguon is a welcome step, but does little to alleviate the underlying climate of intimidation in Cambodia;

Whereas evidence of the campaign to silence and intimidate civil society is found in the arrest and detention of human rights activist Kem Sokha, Yeng Virak, and Pa Nguon on charges of criminal defamation;

Whereas other champions of democracy in Cambodia, including former parliamentarian Om Radsady and labor leader Chea Vichea, were brutally murdered in Cambodia, and no one has been brought to justice for committing these heinous crimes;

Whereas Cambodia is a donor dependant country, and more than $2,000,000,000 has been invested by donors in the democratic development of that country; and

Whereas the current atmosphere of intimidation and fear calls into question the viability of the Khmer Rouge Tribunal: Now, therefore, be it

Resolved, That the Senate—

(1) affirms the support and respect of the United States for the welfare, human rights, and dignity of the people of Cambodia;

(2) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately cease and desist from its systematic campaign to undermine democracy, the rule of law, and human rights in Cambodia;

(3) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately release all political prisoners and drop all politically motivated charges against opponents of the government;

(4) calls on Prime Minister Hun Sen and the Government of Cambodia to demonstrate through words and deed the government's commitment to democracy, the rule of law, and human rights in Cambodia;

(5) calls upon the King of Cambodia to play a more active and constructive role in protecting the constitutional rights of all Cambodian citizens; and

(6) urges international donors and multilateral organizations, including the World Bank, the Asian Development Bank, and the United Nations, to hold Prime Minister Hun Sen and the Government of Cambodia fully accountable for actions that undermine the investment of international donors in the democratic and economic development of Cambodia.

SENATE CONCURRENT RESOLUTION 77—TO PROVIDE FOR A JOINT SESSION OF CONGRESS TO RECEIVE A MESSAGE FROM THE PRESIDENT ON THE STATE OF THE UNION

Mr. FRIST (for himself and Mr. REID) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Tuesday, January 31, 2006, at 9 p.m., for the purpose of receiving such communication as the President of the United States shall be pleased to make to them.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 3:30 P.m., in closed session, to receive an operations and intelligence briefing on Iraq.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on January 25, 2006, at 10 a.m., to conduct a hearing on ''Proposals To Reform the National Flood Insurance Program.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 9:30 a.m., to hold a hearing on nominations.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 2:30 p.m., to hold a hearing on nominations.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 4:30 p.m., to hold a hearing on nominations.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, January 25, 2006, at 9:30 a.m., for a hearing titled, ''Lobbying Reform: Proposals and Issues.''

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

PRIVILEGES OF THE FLOOR

Mr. CORNYN. Madam President, I ask unanimous consent that the privilege of the floor be granted for the remainder of the 109th Congress to Reed O'Connor, a detailee from the Department of Justice who works on my Subcommittee on Immigration, Border Security, and Citizenship.

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

JOINT SESSION OF THE TWO HOUSES TO RECEIVE A MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

Mr. THUNE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Con. Res. 77 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 77) to provide for a joint session of Congress to receive a message from the President on the State of the Union.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. THUNE. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (S. Con. Res. 77) was agreed to, as follows:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Tuesday, January 31, 2006, at 9 p.m., for the purpose of receiving such communication as the President of the United States shall be pleased to make to them.

APPOINTMENT OF COMMITTEE TO ESCORT THE PRESIDENT OF THE UNITED STATES

Mr. THUNE. Mr. President, I ask unanimous consent the Presiding Officer of the Senate be authorized to appoint a committee on the part of the Senate to join with the like committee on the part of the House of Representatives to escort the President of the United States into the House Chamber for the joint session to be held at 9 p.m. on Tuesday, January 31, 2006.

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

CONGRATULATING UNIVERSITY OF TEXAS LONGHORNS

Mr. THUNE. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of S. Res. 352 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 352) commending the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship.

There being no objection, the Senate proceeded to consider the resolution.

Mr. THUNE. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 352) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 352

Whereas the Longhorns won the BCS national championship game, defeating the University of Southern California by a score of 41–38 at the Rose Bowl in Pasadena, California on January 4, 2006;

Whereas the Longhorns have now won four football national titles;

Whereas this historic victory—the 800th win in school history—marks the culmination of an undefeated, 13–0 season;

Whereas, by scoring 652 points during their undefeated season, the Longhorns set an NCAA record for points scored in a single season;

Whereas the University of Texas now owns the longest-active winning streak in the Nation at 20 games;

Whereas, under the leadership of Coach Mack Brown, the Longhorns claimed the Big 12 Conference South Division title, won the Big 12 Conference championship, and earned their eighth consecutive bowl game berth;

Whereas the Longhorns boast seven All-Americans, including Will Allen, Justin Blalock, Aaron Harris, Michael Huff, Jonathan Scott, Rodrigue Wright, and Vince Young;

Whereas quarterback Vince Young—a Heisman Trophy finalist, recipient of the Davey O'Brien National Quarterback Award, and the Maxwell Award winner—was named the Most Valuable Player of the Rose Bowl;

Whereas, Vince Young scored three touchdowns and gained 467 total yards in the championship game, and he became the first player in NCAA history to rush for more than 1,000 yards and pass for more than 3,000 in the same season;

Whereas the Longhorns were captained by Ahmard Hall, David Thomas, Rodrique Wright, and Vince Young at the Rose Bowl;

Whereas Ahmard Hall, the male 2005 Big 12 Sportsperson of the Year, served his country as a Sergeant in the United States Marine Corps for four years—serving tours in Kosovo and Operation Enduring Freedom in Afghanistan—prior to joining the team as a walk-on in 2003 and ultimately rising to the position of starting fullback and team captain;

Whereas the entire Longhorns team should be commended for its inspirational work, determination, and success;

Whereas the University of Texas at Austin has a long tradition of athletic and academic excellence; and

Whereas the Longhorns have brought great honor to themselves, their university, and the great State of Texas: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship;

(2) congratulates the team for completing an undefeated, 13–0 season; and

(3) directs the Secretary of the Senate to make available to the University of Texas at Austin an enrolled copy of this resolution for appropriate display.

CONCERN FOR JUSTICE IN CAMBODIA

Mr. THUNE. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Senate Resolution 353, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

The resolution (S. Res. 353) expressing concern with the deliberate undermining of democratic freedoms and justice in Cambodia by Prime Minister Hun Sen and the Government of Cambodia.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Today, the Prime Minister of Cambodia dropped the criminal defamation lawsuits against five government critics and human rights advocates.

Along with the administration, I welcome the Prime Minister's decision and applaud his efforts to recognize the right of free political exchange. I am hopeful that today's action represents progress and a greater commitment to human rights and civil society on the part of the ruling authority.

In recent months, we have had cause for alarm that the Government of Cambodia is engaged in a campaign of political persecution and intimidation. Prime Minister Hun Sen and his apparatus have consistently and blatantly violated basic democratic principles, the rule of law, and human rights as enshrined in the Cambodian Constitution.

Tonight, the Senate stands unified in calling upon Prime Minister Sen and the government of Cambodia: To immediately cease and desist from its systematic campaign to undermine democracy, the rule of law, and human rights; to immediately release all political prisoners and drop all politically motivated charges against opponents of the government; and to demonstrate through word and deed the government's commitment to democracy, the rule of law, and human rights;

We also call upon the King of Cambodia to play a more active and constructive role in protecting the constitutional rights of Cambodian citizens. And we urge international donors and multilateral organizations, including the World Bank, the Asian Development Bank, and the United Nations, to hold the Prime Minister and his government fully accountable for actions that undermine the investment of international donors in the democratic and economic development of Cambodia.

I would like to thank Senator MCCONNELL and Senator MCCAIN for their leadership and commitment to the people of Cambodia. They deserve special recognition for their unflagging support.

Let me close with a report today in the International Herald Tribune. At a recent gathering of 800 impoverished farmers and townspeople in a village south of the capitol of Phnom Penh, an elderly Cambodian woman asked:

I have a question for government. You talk about democracy, but how much right do the people of Cambodia have to speak out? If we speak out, will we be arrested like Kem Sokha?

I put that question to Prime Minister Hun Sen. Will the people be allowed to speak out as free citizens in an open and just democracy? The people of Cambodia want to know. And on their behalf, the U.S. Senate demands an answer.

Mr. THUNE. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 353) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 353

Whereas the United States affirms its support and respect for the welfare, human rights and dignity of the people of Cambodia;

Whereas, under the leadership of Prime Minister Hun Sen, the Government of Cambodia has engaged in a systematic campaign to undermine the democratic opposition, stifle critics of the Government, and silence and intimidate civil society in Cambodia;

Whereas, despite constitutional guarantees of freedom of expression and association in Cambodia, Prime Minister Hun Sen and the Government of Cambodia have consistently and blatantly violated basic democratic principles, the rule of law, and human rights in Cambodia;

Whereas the United States, the United Nations, and other international donors have publicly expressed concern with Prime Minister Hun Sen's authoritarian conduct (including inappropriate influence and control over the judiciary) and the official corruption and climate of impunity that exist in Cambodia today;

Whereas evidence of the campaign to undermine the democratic opposition in Cambodia is found in the revocation of parliamentary immunity of opposition leaders Sam Rainsy, Chea Poch, and Cheam Channy, and the 7-year prison sentence of Cheam Channy for allegedly forming ''a secret army to overthrow the government'' and 18-month sentence in absentia of Sam Rainsy on charges of allegedly defaming Prime Minister Hun Sen;

Whereas evidence of the campaign to stifle critics of the Government of Cambodia is found in the detention and charges of criminal defamation of radio journalist Mom Sonando and Rong Chhum, president of the Cambodian Independent Teachers Association;

Whereas the decision by Prime Minister Hun Sen and the Government of Cambodia on January 25, 2006, to drop all charges against Mom Sonando, Rong Chhum, Kem Sokha, and Pa Nguon is a welcome step, but does little to alleviate the underlying climate of intimidation in Cambodia;

Whereas evidence of the campaign to silence and intimidate civil society is found in the arrest and detention of human rights activist Kem Sokha, Yeng Virak, and Pa Nguon on charges of criminal defamation;

Whereas other champions of democracy in Cambodia, including former parliamentarian Om Radsady and labor leader Chea Vichea, were brutally murdered in Cambodia, and no one has been brought to justice for committing these heinous crimes;

Whereas Cambodia is a donor dependant country, and more than $2,000,000,000 has been invested by donors in the democratic development of that country; and

Whereas the current atmosphere of intimidation and fear calls into question the viability of the Khmer Rouge Tribunal: Now, therefore, be it

Resolved, That the Senate—

(1) affirms the support and respect of the United States for the welfare, human rights, and dignity of the people of Cambodia;

(2) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately cease and desist from its systematic campaign to undermine democracy, the rule of law, and human rights in Cambodia;

(3) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately release all political prisoners and drop all politically motivated charges against opponents of the government;

(4) calls on Prime Minister Hun Sen and the Government of Cambodia to demonstrate through words and deed the government's commitment to democracy, the rule of law, and human rights in Cambodia;

(5) calls upon the King of Cambodia to play a more active and constructive role in protecting the constitutional rights of all Cambodian citizens; and

(6) urges international donors and multilateral organizations, including the World Bank, the Asian Development Bank, and the United Nations, to hold Prime Minister Hun Sen and the Government of Cambodia fully accountable for actions that undermine the investment of international donors in the democratic and economic development of Cambodia.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 4355(a)(1) and 4355(a)(2), appoints the following Senators to the Board of Visitors of the U.S. Military Academy: the Senator from Maine, Ms COLLINS, designated by the Chairman of the Committee on Armed Services; the Senator from Texas, Mrs. HUTCHISON, from the Committee on Appropriations; the Senator from Rhode Island, Mr. REED, At Large; and the Senator from Louisiana, Ms. LANDRIEU, from the Committee on Appropriations.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 6968(a)(1) and 6968(a)(2), appoints the following Senators to the Board of Visitors of the U.S. Naval Academy: The Senator from Arizona, Mr. MCCAIN, designated by the Chairman of the Committee on Armed Services; the Senator from Mississippi, Mr. COCHRAN, from the Committee on Appropriations; the Senator from Maryland, Mr. SARBANES, At Large; and the Senator from Maryland, Ms. MIKULSKI, from the Committee on Appropriations.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 9355(a)(1) and 9355(a)(2), appoints the following Senators to the Board of Visitors of the U.S. Air Force Academy: the Senator from Colorado, Mr. ALLARD, designated by the Chairman of the Committee on Armed Services; the Senator from Idaho, Mr. CRAIG, from the Committee on Appropriations; the Senator from Arkansas, Mr. PRYOR, At Large; and the Senator from South Dakota, Mr. JOHNSON, from the Committee on Appropriations.

ORDERS FOR THURSDAY, JANUARY 26, 2006

Mr. THUNE. Mr. President, I ask unanimous consent when the Senate completes its business today, it stand in adjournment until 9:45 p.m. on Thursday, January 26; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to executive session and resume consideration of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States as under the previous order.

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

PROGRAM

Mr. THUNE. Mr. President, today we have had a full day of debate on the nomination of Judge Alito for the Supreme Court. This all-important debate will continue tomorrow and the balance of the week. Tomorrow, we will again be alternating hour time blocks for Members to speak, with the Democratic side speaking from 10 until 11 and the majority from 11 to 12 and alternating back and forth throughout the day. Members are encouraged to use this time to make their statements. As the majority leader announced earlier today, we are hoping we can work toward a time certain for a vote on the Alito nomination and will notify Members so they can plan their schedules accordingly.

ADJOURNMENT UNTIL 9:45 TOMORROW

Mr. THUNE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:06 p.m., adjourned until Thursday, January 26, 2006, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate January 25, 2006:

DEPARTMENT OF TRANSPORTATION

THOMAS J. BARRETT, OF ALASKA, TO BE ADMINISTRATOR OF THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. (NEW POSITION)

THE JUDICIARY

BRETT M. KAVANAUGH, OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, VICE LAURENCE H. SILBERMAN, RETIRED.

MICHAEL A. CHAGARES, OF NEW JERSEY, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT, VICE MICHAEL CHERTOFF, RESIGNED.

VANESSA LYNNE BRYANT, OF CONNECTICUT, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, VICE DOMINIC J. SQUARTRITO, RETIRED.

RENEE MARIE BUMB, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE WILLIAM H. WALLS, RETIRED.

BRIAN M. COGAN, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, VICE FREDERIC BLOCK, RETIRED.

THOMAS M. GOLDEN, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, VICE FRANKLIN VAN ANTWERPEN, ELEVATED.

ANDREW J. GUILFORD, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, VICE DICKRAN M. TEVRIZIAN, JR., RETIRED.

NOEL LAWRENCE HILLMAN, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE WILLIAM G. BASSLER, RETIRED.

GRAY HAMPTON MILLER, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, VICE EWING WERLEIN, JR., RETIRED.

SUSAN DAVIS WIGENTON, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE JOHN W. BISSELL, RETIRED.

S. PAMELA GRAY, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE SUSAN REBECCA HOLMES, RETIRED.

DEPARTMENT OF JUSTICE

STEVEN G. BRADBURY, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE JACK LANDMAN GOLDSMITH III, RESIGNED.

DEPARTMENT OF STATE

RAJKUMAR CHELLARAJ, OF TEXAS, TO BE AN ASSISTANT SECRETARY OF STATE (ADMINISTRATION), VICE WILLIAM A. EATON, RESIGNED.

RICHARD T. MILLER, OF TEXAS, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS, WITH THE RANK OF AMBASSADOR.

RICHARD T. MILLER, OF TEXAS, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SESSIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS DURING HIS TENURE OF SERVICE AS REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT AS COMMANDANT OF THE UNITED STATES COAST GUARD AND TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 44:

To be admiral

VICE ADM. THAD W. ALLEN, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE RANK INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. THOMAS F. METZ, 0000