HOUSE OF REPRESENTATIVES

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

SENATE

MONDAY, JANUARY 30, 2006

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT F. BENNETT, a Senator from the State of Utah, to perform the duties of the Chair.

TED STEVENS,  
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senate is available for morning business.

The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, last Thursday I submitted a statement expressing my concerns with the nomination of Judge Samuel Alito to the United States Supreme Court.

I am here today to reiterate these concerns as we move toward a final vote on this nomination.

There is no higher legal body in the United States than the Supreme Court. It is the final authority on the meaning of laws and the Constitution.

A Supreme Court Justice could serve for the life of the nominee, so the consequences of confirming a Supreme Court Justice can span decades.

The confirmation of a Supreme Court Justice is one of the most important votes a Senator will take.

With that in mind, after careful consideration, I have concluded I cannot support Judge Alito's nomination to the U.S. Supreme Court.

My first step in evaluating a nominee is to consider whether he or she is appropriately qualified and capable of handling the responsibilities of a Justice.

Looking over Judge Alito's qualifications, it is clear this minimum standard has been met. However, there are additional factors in considering a judicial nominee.

One such factor is the judicial philosophy of the nominee. Many of my colleagues argue this should have no part in the Senate's deliberations.

However, if judicial philosophy helps determine who the President chooses, the Senate should also be allowed to consider this factor when deciding whether to approve or disapprove the nominee.

This information is critical to retain the balance of power that the Framers of our Constitution envisioned.

In addition to the individual's judicial philosophy, we must also consider the cumulative effect that approving a nominee will have on the Supreme Court.

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

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Printed on recycled paper.
In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court.

The Republican stamp on the current Court is undeniable, and clearly the prospects of the Court becoming more moderate in the near future are unlikely.

Upon this backdrop, I have evaluated the decisions and writings of Judge Alito, closely watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination. I have come away from this review with a number of concerns.

First, Judge Alito did not provide complete answers on many important topics the way now Chief Justice Roberts did during his nomination hearing. These included many critical issues such as: Is Roe settled law? What are the limits of the executive branch’s power?

Second, Judge Alito failed to distance himself from the radical views he expressed in his earlier writings on the supremacy of executive power.

Third, Judge Alito’s record includes troubling decisions on vital issues such as search and seizure, reproductive rights, the power of Congress, civil rights, and affirmative action.

Because of these facts, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our country, such as:

Are there limits on the power of the presidency?

Can the Congress regulate the activities of the states?

How expansive is the right to privacy?

What deference should be given to legislative acts of the Congress?

How the Court addresses these questions goes to the heart of what we stand for as a country, which is why this nomination is so important.

While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

I yield the floor.

EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 490, which the clerk will report.

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

The Acting President pro tempore. Under the previous order, the time from 10 to 11 shall be under the control of the Democratic side.

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, today at 4:30, Members of this body will be casting an extremely important vote, the implications of which are going to be felt not only in the next several months but for a great number of years, not only for this generation but for the next generation and the following. It is on a nomination for the Supreme Court of the United States and whether we are going to move ahead and have a final vote tomorrow.

There is nothing more important than the votes we cast on nominations to the Supreme Court, except sending young Americans to war. The implications of this vote are far reaching. As one who has followed the courts of this country as far as we can to a fairer and more just nation, this nomination has enormous consequences and importance. I doubt if we will cast another such vote, unless it would be for a Supreme Court nominee, any time in the near future.

I remember the beginning of the great march towards progress in this Nation made with the Fifth Circuit in the 1950s, the great heroes, Judge Wisdom, Judge Tuttle, Judge Johnson, and many others who awakened the Nation to its responsibility of having America be America by knocking down walls of discrimination and prejudice. Our Founding Fathers didn’t get it right on that as we know. They effectively wrote slavery into the Constitution. We fought a Civil War that didn’t resolve it or solve it. Though, obviously, with President Lincoln and other extraordinary leaders, we began to move the process forward to knock down the walls of discrimination.

It was partly as a result of the extraordinary leadership of Dr. King, his allies and associates in the late 1950s, that America began to think about what this country was all about, recognizing the stains of discrimination. We had the beginning of the movement to knock down the walls of discrimination in the Public Accommodation Act of 1964, the Voting Rights Act of 1965, the Civil Rights Act of 1968, title XIV in 1973. In 1965, we knocked down the walls of discrimination in our immigration laws, the national origin quota system. The Asian-Pacific triangle discriminated against Asians. The national origin quota system discriminated against groups of countries.

We have made enormous progress, not that laws themselves are going to solve these problems. We had laws that were passed, supported by Democrats and Republicans during this time, and we became a fairer and more just nation. Still there are important areas we have to move forward to complete the march. The stains of discrimination are still out there, not nearly as obvious as they were in the earlier part of the last century, but they are still out there. They are evident. All of us at one time or another still see them. It is not limited to a region of the Nation. It exists in my part of the country as well.

The question is, Are we moving forward to knock down the walls of discrimination? That has always been a pretty basic test for me in terms of reaching a judgment on the Supreme Court.

I remember the case of Tennessee v. Lane that was decided not long ago. It involved a woman in a wheelchair, a single mom with two children, trained as a court reporter. The State was Tennessee. About 60 percent of all the courthouses in Tennessee for some reason are on the second floor. The question involved the Americans with Disabilities Act. I welcomed the opportunity to work closely with my colleague from Iowa, Senator HARKIN, on this program. By the time to the floor, we had bipartisan support for that legislation. President Bush 1 indicated it was the piece of legislation of which he was most proud. It wasn’t always easy in terms of dealing with the disability.

I can remember when we had 4 million children who were kept in closets rather than being able to go to school. We had bipartisan support on the IDEA, the Individuals with Disabilities Education Act, and we made enormous progress during that time.

Then we had Tennessee v. Lane. The question was whether that courthouse was going to make reasonable accommodations to let that single mother, who was trained as a court reporter, avoid being carried up a flight of stairs, avoid being carried into the ladies room, avoid other humiliating circumstances because of her disability, was that courthouse going to have to knock down those reasonable accommodations.

Four Justices on the Supreme Court said no, no, we don’t have to make those accommodations. But five said yes. Sandra Day O’Connor said yes on that and they made those accommodations. That mother was able to gain entrance into the courthouse and has had a successful career. She appeared before our committee with tears in her eyes. If that decision had gone 5 to 4, it would have been the same as it had to have passed disability rights acts—not the Americans With Disability Act, but a Massachusetts disabilities act, or Connecticut, or Rhode Island. But we had the Americans With Disabilities Act, so 42 million fellow citizens with physical and mental disabilities are now part of the American family today. Just as we have knocked down the walls of discrimination on race, religion, ethnicity, and gender, we have done so with disability. We have also made significant progress in terms of gay and lesbian issues as well.

We have made this march toward progress. The question is whether we
are going to have a justice who believes in that march of progress, or whether we are going to have somebody who is going to be a roadblock in that march toward progress. I express my opposition to Judge Alito because I think he is the wrong judge at the wrong time on the wrong court. I don’t believe he is going to be part of the whole movement and march toward progress in this country. It is a delicate balance. We have seen at times in American history where legislatures have led the way in making this a fairer country and where Congress has led the way and, certainly, we have seen that with Executive power in terms of the adoption of the Medicare Programs and Medicaid. We had Presidential leadership for a while in the early sixties, and finally we passed those. As a result, we are a fairer country. Ask our elderly people if we didn’t have the Medicare and the Medicaid programs where we would be as a nation.

That is the issue.

I accepted the challenge of Judge Alito, who said, let’s read my cases. I am regretful of the fact that I don’t understand a nominee, one has to read their dissenting opinions. Ruth Bader Ginsburg and Robert Bork agreed 91 percent of the time. Isn’t that extraordinary about two individuals with dramatically different judicial philosophies? They agreed 91 percent of the time. Where you found their differences were in their dissents.

That is where I looked with regard to this nominee. That is why I came to the conclusion that we have two nominees that are not going to be friendly to the average worker, friendly on women’s rights, friendly on the issues of race, friendly on the issues of the environment, and would no doubt be willing to accede to a Republican, to the Executive policy programs where we would be as a nation. That is the issue.

I remember the time when the President announced the nomination of Judge Alito. It was in the early morning. I happened to be in Massachusetts where the announcement was made. I didn’t know Judge Alito. Certainly the representation was that there is a wide open kind of net that has been spread out across the country to try to find the very best in our Nation who would be a good nominee. I have voted for seven Republican nominees for the Supreme Court. We have had a great many of those nominees who were virtually unanimous in their support for Harriet Miers. We saw groups in this country that were prepared to exercise a veto. We have seen groups in or outside Congress that were prepared to exercise a litmus test. We have seen groups that have said absolutely, no, we are not going to have Harriet Miers. These are the same groups that indicated for so long that nominees are entitled to a vote up or down.

We ought to be able to look at a nominee’s judicial philosophy and all the rest. All of those issues went right out the window when Harriet Miers was nominated. The reason was because Harriet Miers didn’t pass a litmus test. Now we have Judge Alito. Before the announcement ended, we see this extraordinary wave of support that has come over in terms of support for this nominee. I wonder how people could be so opposed to Harriet Miers and, as soon as Judge Alito was announced, how they could be so overwhelmingly in favor of him. What did they know? Who knew?

One of the things I think of is what our Founding Fathers wanted. What did the Constitution say on this issue? The Founding Fathers, in debating the Constitution, considered the issue of appointment of judges four different times. On three occasions they gave all the authority to this body here, the Senate, to recommend and appoint. The last important decision at the Constitutional Convention—10 days before the end of the Convention—with the Executive having the power to appoint and the Senate having the power to give advice and consent. You cannot read the debates, which I have read, and not understand that it was a primary matter, a primary idea of the Constitution that the Senate is supposed to be a rubberstamp. I know it suits their interests, but our Founding Fathers wanted the shared responsibility. Remember the checks and balances, the essential aspect of the Constitution of the United States? When they give authority and power in one place, they give authority and power to the other—the Commander in Chief, Executive, making of war; with the Congress, the power of the purse, and the rest of the issues we all are familiar with.

This is a shared responsibility, and we in this Senate have a very important constitutional obligation to review the recommendation. The real question I have is whether we have a nominee is to find out—not for ourselves, but as instruments for the American people—what are the beliefs of this nominee are; what are the real beliefs of the nominee for the Supreme Court of the United States; do we have the assurances that this individual is the best of the best. We have seen that. President Reagan gave us Sandra Day O’Connor, who was the best of the best. The list went on. We have had extraordinary jurists in the past.

We approached this try to find out these things on the Judiciary Committee. We have a pretty good sense that the executive branch knows the philosophy of this nominee. They have made the recommendation and obviously they have inquired of this nominee, so they know where he is.

I was absolutely startled this morning when I picked up the New York Times and saw in Mr. Kirkpatrick’s article that extraordinary wave of support this nominee was selected, who selected him, and what the process was. All during this period of time, that was something those of us on Judiciary Committee had no mind of. Maybe our friends on the other side knew about it. But this is on the front page of the New York Times: Paving the Way for Alito

Began In Reagan Era. I don’t feel it extends, continuing on page A18. I ask unanimous consent that the article be printed in the RECORD.

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

IN ALITO, G.O.P. REAPS HARVEST PLANTED IN

BY DAVID D. KIRKPATRICK

Last February, as rumors swirled about the failing health of Chief Justice William H. Rehnquist, a team of conservative grassroot organizers, political strategists and legal pragmatists and legal strategists met to prepare a battle plan to ensure any vacancies were filled by like-minded jurists.

The team recruited conservative lawyers to study the records of 18 potential nominees including Judges John G. Roberts Jr. and Samuel Alito Jr. The group, which included more than three dozen lawyers across the country to respond to news reports on the president’s eventual pick and briefed them in,” one lawyer present during the strategy meetings said with pride in an interview over the weekend. This lawyer and others present who described the meetings were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

On the eve of what is expected to be the Senate confirmation of Judge Alito to the Supreme Court, coming four months after Chief Justice Roberts was installed, three former state attorneys general—“a watershed for the conservative movement.”

In 1982, the year after Mr. Alito first joined the Reagan administration, that movement was little more than the handful of legal scholars who gathered at Yale for the first meeting of the Federalist Society, a newly formed conservative legal group.

Judge Alito’s ascent to join Chief Justice Roberts on the court “would have been beyond our best expectations,” said Spencer Abraham, one of the group’s founders, a former Secretary of Energy under President Bush and now the chairman of the Committee for Justice, one of many conservative organizations set up to support judicial nominees.

He added, “I don’t think we would have put a lot of money on it in a friendly wager.”

Judge Alito’s confirmation is also the culmination of a disciplined campaign begun by the Reagan administration to seed the lower federal judiciary with like-minded jurists who could reorient the federal courts toward a view of the Constitution much closer to its 18th-century authors’ intent, including a much less expansive view of its application to individual rights and responsibilities. That was a philosophy promulgated by Edwin Meese III, attorney general in the Reagan administration, that became the gospel of the Federalist Society and the nascent conservative legal movement.

Both Mr. Roberts and Mr. Alito were among the cadre of young conservative lawyers attracted to the Reagan administration’s Justice Department. And both advanced to the post of promising young jurist. Then strategists like C. Boyden Gray, White House counsel in the first Bush administration and an adviser to the current White House, sought to place throughout the federal judiciary with like-minded jurists.

“It is a Reagan personnel officer’s dream come true,” said Douglas W. Kmiec, a law

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professor at Pepperdine University who worked with Mr. Alito and Mr. Roberts in the Reagan administration. “It is a graduation. These individuals have been in study and practice for these roles all their professional lives.”

As each progressed in legal stature, others were laying the infrastructure of the movement. The defeat of the Supreme Court nomination of Judge Robert H. Bork conservatives vowed to build a counterweight to the liberal forces that had mobilized behind them.

With grants from major conservative donors like the John M. Olin Foundation, the Federalist Society functioned as a network of shadow conservative bar association, planting chapters in law schools around the country that served as a pipeline to prestigious judicial clerkships.

During their narrow and politically costly victory in the 1991 confirmation of Justice Clarence Thomas, the Federalist Society lawyers forged new ties with the increasingly sophisticated network of grass-roots conservative Christian groups like Focus on the Family in Colorado Springs and the American Family Association in Tupelo, Mississippi. Many conservative Christian pastors and broadcasters had railed for decades against the growing number of liberal judges.

By 2000, the decades of organizing and battles had fueled a deep demand in the Republican senate on the Judiciary Committee at the White House counsel, as the successor to the conservative Justice Antonin Scalia. In November, some Democrats believed they had an opening in the Alito nomination after the disclosure of a 1985 memorandum Judge Alito wrote in the Reagan administration about his conservative legal views on abortion, affirmative action and other subjects.

“It was a done deal,” one of the Democratic staff members of the Senate Judiciary Committee said on the condition of anonymity because the staff is forbidden to talk publicly about internal meetings. “This was the most evidence we have ever had about a Supreme Court nominee’s true beliefs.”

Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum, which described views that were typical in their circles, people involved in the effort said. But executives at Creative Response Management, the public relations firm, quickly convinced them it was “a big deal” that could become the centerpiece of the Democrats’ attacks, one of the people said.

“The call came in right away,” said Jay Sekulow, chief counsel of the American Center for Law and Justice and another lawyer on the Alito team. Responding to Mr. Alito’s 1985 statement that he disagreed strongly with the abortion-rights precedents, for example, “The answer was no, he was told to work to change it.”

Mr. Sekulow said, “He worked for the Reagan administration, he was a lawyer representing a client, and it may well have reflected his personal beliefs. But look what he has done as judge.”

His supporters deluged news organizations with phone calls, press releases and lawyers to interview, all noting that on the United States Court of Appeals for the Third Circuit, Judge Alito had voted to uphold and to strike down abortion restrictions.

Democrats contended that those arguments were irrelevant because on the lower court Judge Alito was bound by Supreme Court precedent, whereas as a justice he could vote to overturn any precedents with which he disagreed.

By last week it was clear that the judge had enough to win confirmation. And the last gasp of resistance came in a Democratic caucus meeting on Wednesday when Senator Edward M. Kennedy, joined by Senator John Kerry, both of Massachusetts, unsuccessful tried to persuade the party to study the records of 18 potential nominees—including Judges John G. Roberts and Samuel A. Alito—and trained more than three dozen lawyers across the country to respond to news reports on the President’s eventual pick.

So members of the right wing are going to make the pick and we see around the country where dozens of lawyers are going to respond to the news reports. It continues: “We boxed them in.”

Boxed whom in? They boxed in the American people. That is what they are saying proudly—“we boxed them in,” one lawyer present during the strategy meetings said with pride in an interview over the weekend.

Boxed whom in? This is a nomination for the Supreme Court of the United States. This is supposed to represent all of the people, all Americans. No, no, they boxed them in, a lawyer present at the strategy meeting said with pride.

This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast. It is. They exulted. Although I was surprised that—and this would be my 23rd Supreme Court nominee—the nominee was up in the Capitol last week thanking Senators for their support and receiving congratulations prior to the time we even vote on him.

It has been debated for less than a week on the floor of the Senate. Twenty-five Senators from our side have spoken. Only half of our caucus had a chance to speak. They will not speak now if we cut it off. They have not had a chance to talk. Again, the article says: “The team had told its allies not to exult publicly until the confirmation vote was cast.”

Then they will pop the champagne and say we pulled one over on you. And it continues: “They laid out a two-part strategy to roll out behind whoever the President picked, people present said. The plan: first extol the nonpartisan legal credentials of the nominee...”

Mr. KENNEDY, Mr. President, America is listening to the President. He said: We are going to get the very best nominee we possibly can. That is one side of the story. Most of us certainly believed it. Well, this is the story. This may be accurate and it may not be. I think it is very difficult to read this story and not certainly find a very powerful ring of truth in it:

Last February, as rumors swirled about the health of Chief Justice William H. Rehnquist, a team of conservative grassroots organizers, public relations specialists, and legal strategists met to prepare a battle plan to ensure any vacancies were filled by like-minded jurists.

So the right wing had a plan. They knew what the thinking of the nominee was. The article continues: The team recruited conservative lawyers to study the records of 18 potential nominees—including Judges John G. Roberts and Samuel A. Alito—and trained more than three dozen lawyers across the country to respond to news reports on the President’s eventual pick.

So members of the right wing are going to make the pick and we see around the country where dozens of lawyers are going to respond to the news reports. It continues: “We boxed them in.”

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This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

They laid out a two-part strategy to roll out behind whoever the President picked, people present said. The plan: first extol the nonpartisan legal credentials of the nominee...
... steering the debate away from the nominee’s possible influence over hot-button issues. Second, attack the liberal groups they expect to oppose any Bush nominee.

There it is, that is the strategy. It is not that we are going to nominate the best possible nominee and that is what we are going to work with Republicans and Democrats alike to make sure the American people understand how this nominee is going to protect your constitutional rights and liberties. That is what this is. That is what has been done at other times—not every time, but most of the time. That is what the American people expect and what they are entitled to.

But, oh, no, this group is already saying we know how we are going to handle this, whoever it is. We are going to exalt the assets of this nominee. The other thing is we are going to launch our attacks on other people before the nominee is even out there. This is the confirmation process for the Supreme Court of the United States for a nominee who is going to make the decisions on your rights and liberties for the next 30, 40 years? Attack them as soon as the nomination is out there. Exalt the nominee’s professional credentials. We don’t care if it is, but you better get them out there doing it, and we have our network wired around the country to make sure they are going to come out right on it. This for the Supreme Court of the United States? This is how you are finding out.

It continues:

Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum.

This is the 1985 memorandum of Judge Alito that he used in an application for a job with the Justice Department. He was 35 years old. He had argued 15 cases before the Supreme Court. He had a number of statements in there that were provocative. I will come back to that.

This memorandum was provocative because it indicated that he was against a woman’s right to choose, he was against reapportionment, which, of course, has had enormous importance in terms of ensuring people’s right to vote and have that vote counted in a meaningful way. There was some concern whether this was going to have any impact. This was his real, true view about the Constitution. This was a document which showed his real view about it, which would have been helpful to the American people to at least understand what Judge Alito’s views are.

Those lawyers supporting Alito said we will shrug off the memo:

... which described views which were typical in liberal public relations firms, the team’s public relations firm, quickly convinced him it was “a big deal” that could become the centerpiece of the Democrats’ attacks, one of the people said.

Creative Response Concepts. Who is this Creative Response Concepts? The Creative Response Concepts, if you look them up on the Web, right above the Alito confirmation hearings is the Swift Boat Veterans for Truth—Swift Boat Veterans for Truth, the ones who made the distortions and misrepresentations about my colleague and friend, Judge Alito, and his war record. The media, I daresay that is not what the Founding Fathers intended, that is not what they expected, and the American people deserve a great deal better.

I hope people will have the chance to read the whole article. I am not going to go through it now. I have given the press a chance to listen and they are going to have food on the table. Now we are asking them to shift their focus to Judge Alito. Judge Alito—he is not going to affect what my family is faced with? It will affect a great deal your children and your children’s children’s future.

Here are some of the issues Supreme Court decisions affect.

Supreme Court decisions affect the ability of Americans to be safe in their homes from irresponsible search and seizures and other government intrusions. We had those cases come up in the hearings. I will come back and spend some time on them. It is difficult to believe.

Supreme Court decisions affect whether the rights of employees can be
protected in the workplace. If you are a worker, you should be concerned about this nominee. They affect whether families can obtain needed medical care under health insurance policies. Decisions on health care, we understand ERISA, often go to the Supreme Court. Decisions affect whether people will actually receive retirement benefits they were promised. There was $38 billion lost in the last 5 years; 700 retirement programs lost $2 billion, where workers actually paid in. Who is going to protect their rights? Is it going to be the powerful companies, powerful interests, special interests, or are we going to have a judge who is going to be looking out for the worker and the worker’s interest? It is a legitimate issue.

If you care about your health care, if you care about your retirement, if you care about your conditions of employment, this Supreme Court nominee is where you ought to be focused where you ought to give your attention. Supreme Court decisions affect whether people will be free from discrimination, prejudice, and outright bigotry in their daily lives. You are going to have to make sure you are going to be told you are not going to get the job because of the color of your skin or because of your gender. There are cases we went through during the Judiciary Committee about Judge Alito being insensitive in those areas. I will come back to them.

Do you hear me? Discrimination, prejudice, outright bigotry in their daily lives. You are going to have to make sure you are going to have a Supreme Court that is going to be fighting for you.

The decisions affect whether Americans’ most private medical decisions will be a family matter or subject to government interference. Terri Schiavo is a classic example. We have governmental solutions to these issues, or should these matters be left to the Supreme Court that is going to be fighting for you.

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issues and women’s privacy issues, which are so at risk at this particular time with this nominee. All of those issues are out there. All we are saying is, don’t we think we ought to try to get it right? Don’t we think we ought to have the chance to lay this out just a little more?

In every one of those examples I gave, in those nine different titles, there are cases on which Judge Alito has ruled. He has taken a position. In many of the cases he has taken the position in strong opposition to other judges appointed by Republicans. Judge Rendell talked about Gestapo-like tactics that were used when marshals came in on a civil action. There was no crime committed. It was a civil action in order to repossess a farm in bankruptcy to be sold at public auction. People had worked their whole lives for this small farm in Pennsylvania, and the marshals came in, they seized it, and grabbed these individuals who were just performing their own responsibilities. The government. Cass Sunstein said that. Certainly ought to be decided by the jury. I think most of us would agree with that, would we not?

Judge Alito said: No, no, we are not going to let that to the jury. They were just performing their own responsibilities. I am not going to let that go to the jury.

Other judges, on issues about whether there is discrimination in employment—including some Republican judges who sat with Judge Alito and said if we follow Judge Alito’s reasoning and rationale we would effectively—‘eviscerate’ is the word that was used—title VII, title VII being the provisions we passed in the 1964 act to make sure we were not going to discriminate in employment.

The list goes on. It is not just myself or others who have expressed opposition. We have the very distinguished Cass Sunstein of the University of Chicago who has done a review of Judge Alito’s cases and said that 84 percent of the time Judge Alito decided for the powerful or the entrenched interests or the government. Cass Sunstein said that.

Judge Ritter, that is not a Democratic organ. That is not Democrat members of the committee. They have a whole group who analyzed his opinions independently. The Knight Ridder newspaper chain reached the same decision.

The Yale study group—gifted, talented students and professors up there at Yale University—did a study about Judge Alito’s dissents and opinions and came to the same conclusion. If you are looking for someone who is going to protect men and women of color, if you are looking for somebody who is going to protect children, if you are looking for someone who is going to protect the privacy issues of women, this is not your candidate.

Those are the conclusions of a broad range of different groups who have looked at those dissents and opinions. They are not just Democrats, not partisan. Knight Ritter is not partisan. Cass Sunstein is basically in the middle. Some will say this afternoon, oh, well, you can always find a few cases. It is not just a few. These are the overwhelming number of studies. Even the Washington Post study, in terms of the number of victories that people of color had or the workers had over the existing power system, reaches the same conclusion.

It seems to me we ought at least to have the opportunity to make sure the American people understand this. It takes time. It took some time for the American people to understand what was really happening in Iraq. It took some time for the American people to understand the fact that it was a war, but it took time. People are working hard. They are busy with their jobs and their families, and they are trying to do what is right and play by the rules. It takes some time for them to understand the facts in this case to affect their lives and their well-being in the future. But there is nothing more important. There is nothing more important here in the Senate. There is nothing more important in the unfinished business of the Senate.

Just pick up the calendar and look at the unfinished business of the Senate. Nothing comes close to it. If you said right behind this is the Defense appropriations bill, this is going to delay a little bit because we are going to go to confirm or reject. So that is really one of the important issues before us.

I must confess I have been a little surprised at the system we have gone through. It has been strung out for a very long time and seems to me perhaps it has gone on longer than necessary, but nevertheless that is where we are. I was very pleased to learn it is not partisan, not political. I was a little surprised to hear that. But nevertheless I do think it is important.

I have not practiced law, but I certainly understand in our system the Supreme Court is one of the three elements of our Government and is a very important one. And so it is important that we deal with it. I just would like to say that it seems to me, as I have listened and as I have paid as much attention as I could to Judge Alito’s hearings, I am certainly impressed. I have been impressed with his qualifications and his experience. I would think surely one of the most important elements of the question of confirmation is experience, someone who has the qualifications and the experience. Certainly Judge Alito has that—Princeton University, Harvard Law School, Army Reserve, DOJ legal counsel, U.S. attorney, unanimously confirmed in New Jersey, circuit court judge Third Circuit, unanimously confirmed in New Jersey, further before the Supreme Court. Many attorneys, of course, have not had this kind of distinguished opportunity. I would guess

Mr. President, I believe my time is just about up.

The ACTING PRESIDENT pro tempore. The minority has an additional minutes.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, in one reference to Judge Rendell and also Judge Chertoff on the two cases I referenced, it was Judge Rendell who described the tactics of the marshals brandishing shotguns as “Gestapo-like” and Judge Chertoff who criticized Judge Alito’s position that it was a bad case, Doe v. Groody, which involved the strip-search of the 10-year-old girl. I ask the RECORD reflect that change.

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

Under the previous order, the time from 11 to 12 will be under the control of the majority side, and then debate will continue to alternate on an hourly basis until 4 p.m.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I appreciate the opportunity to talk a little bit about the judge’s position before us. I have not done so until now. I have watched this debate with interest because I think it is one of the most important things we do.

The system, of course, is for the President to nominate and for the Senate to confirm or reject. So that is really one of the important issues before us.

I must confess I have been a little surprised at the system we have gone through. It has been strung out for a very long time and seems to me perhaps it has gone on longer than necessary, but nevertheless that is where we are. I was very pleased to learn it is not partisan, not political. I was a little surprised to hear that. But nevertheless I do think it is important.

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for the most part many of the candidates for the Supreme Court have not had that kind of experience. He has had some 15 years with the Third Circuit, some 35,000 votes. So the background is there.

I think one of the things, certainly, that is a part of the confirmation and the confirmation hearing and what we need to understand is the positions that these various candidates take, and I would like to just share a few quotations, responses that the judge gave that were asked.

In terms of believing in the Constitution and that it protects rights for all, under all circumstances, in times of peace or war, the judge said:

"Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances. It is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis, because that's when there's the greatest temptation to depart from them.

It seems to me that is very clear and one that has been talked about a good deal currently.

Another question was: Do you believe anyone, the President, the Congress, the courts, rise above the law? The candidate said:

"No person in this country is above the law. And that includes the Supreme Court. Everyone has to follow the law, and that means the Constitution of the United States and it means the laws that are enacted under the Constitution of the United States."

Again, I think that is a very basic premise. We are all treated equally under the law. "Under the law," that is the key.

1, as we do, go to schools quite often, and having spent some time on the Foreign Relations Committee, I often tell students that one of the significant differences about our country and most of the rest of the world is we have laws under which everyone is treated equally. I think that is one of the keys, and that response, it seems to me, is a great one.

He was asked would he base decisions on the Constitution and the rule of law, not shifting public opinion. He said:

"The Court should make its decisions based on the Constitution and the law. It should not sway in the wind of public opinion at any time.

Certainly, that is a very important element as well. He was asked about his personal views and how that would affect his decisions. He said:

I would approach the question with an open mind, and I would listen to the arguments that were made.

When you become a judge, you really have to put aside the things that you did as a lawyer at prior points in your legal career and think about legal issues the way a judge thinks about legal issues.

When asked about upholding the high standards of integrity and ethics, he said:

I did what I've tried to do throughout my career as a judge, and that is to go beyond the letter of the ethics rules and to avoid any situation where there might be an ethical question raised.

It seems to me those are the kinds of responses that make you feel comfortable with. I am very pleased that apparently we are going toward the end. Certainly, it is time to get down toward the end, there is no reason to continue to drag this out. We know what we need to know, it is there, and it is good.

So I think throughout the process the candidate has answered the questions to the best of his ability. Unfortunately, many of the questioners spent more time giving speeches and circumventing the process than asking relevant questions, but that is part of the process.

I must confess I am getting a little concerned about the Senate confirmation process. We ought to take another look at our role and not deviate from that role for other unrelated reasons. So I hope Members have not taken us down the path of setting a bad precedent, and I am sure that is not the intention. I am looking forward to completing this this afternoon and completing it tomorrow. I think we have before us a great opportunity to confirm one of the most capable persons that we could have on our Supreme Court.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. BENNETT. Mr. President, I was here in the Chamber in the role of Presiding Officer during the presentation of the senior Senator from Massachusetts during the presentation of the senior Senator from Massachusetts during the presentation of the senior Senator from Massachusetts to a story in this morning's New York Times with respect to public relations activity aimed at supporting Judge Alito. He was quite outraged at what he had read in the New York Times and talked about how improper it was for a public relations firm or any group of lawyers to gather together and mount a campaign on behalf of this nominee; that that should be left to the Senate and that there should be no outside interference in this process.

The New York Times had focused on the activities that had been in favor of the nominee, and the Senator from Massachusetts found that objectionable.

As I listened to him, I could not help but think of the actions that went forward in opposition to this nominee by groups of lawyers who gathered together to get their ammunition ready in the public arena, by public relations firms that were hired to oppose the nominee.

I remember the story in the Washington Post when John Roberts was proposed where they described those groups that were opposed to the President gathering with their press releases to attack the nominee, who were forced to strip out the name of the person they thought the nominee would be, and is perhaps embarrassed by the fact that they could issue the press releases as soon as the name was made public. They had prepared their ammunition to attack the President's nominee before they knew who he was, and they were embarrassed by the fact that they had guessed wrong. But they did not change a single word of their attack once they knew that the actual nominee was someone different than they had anticipated.

My only comments to the Senator from Massachusetts would be that if he decries the work that was done in favor of a nominee by outside lawyer groups and public relations firms, he should join with some of the rest of us and say that the same criticism applies to those who were preparing to save the nominee, whomever he might have been.

If the Senator from Massachusetts will have a conversation with Ralph Neas and the People for the American Way and say to them, back off, let the nominee be made known, let his views or her views be made known, have a clear evaluation of where they stand before you start your public relations attack, then I will turn to the groups on the right and say the same thing: You back off. Let the nominee be known. Let the views be examined before you mount your public relations campaign.

But we saw what happened when people in support of a Republican President's nominee back off and allow the field to be dominated by those who are on the attack. Out of that first experience of seeing attack after attack after attack into an empty field, we have created a new word in the English language. It is a verb, to "Bork." The nominee was Robert Bork. I had my problems with Robert Bork. I am not sure how I would have voted, having heard his record. But I do know that the record was distorted and the opportunity to hear his record was changed by virtue of the groups that were all prepared to savage him, to attack his personality, to destroy any careful analysis of his record. He was "Borked." And we hope that other people would be "Borked" by this same savage attack from the left.

So I have sympathy with the Senator from Massachusetts when he complains about the groups on the right that were marshaled in advance of the nomination to defend the nominee. But I say to him they were marshaled to defend the nominee because they saw what happened when such previous activity was not carried forward. With the way in which the Chief Justice, John Roberts' name was marshaled in advance of the nomination to defend the nominee, the public demonstrating a sense of revulsion about this whole "Borking"
process, and now with Judge Alito moving forward in a manner far more dignified than we have seen in the past, I hope “Borking” would become a historic artifact and would disappear and that groups on the far left and the far right—finally realizing that the Senate is no longer dominated by these kinds of tactics—that the ads that are run, television ads attacking the nominee boomerang.

We have seen some of these groups that have attacked Judge Alito have had their ads taken down because they were false, they were attacked by the media generally for the severity and the falsity of their position. “Borking” does not work anymore. And I hope that both sides would recognize that the Senate has demonstrated a level of civility and intelligence in this situation that says we will not be moved by those who raise large sums of money, who run television ads in our home States savaging the nominee, who decide where he will be appointed based upon what they think is wrong with the nominee. We will be focused on the actual record. We will not allow this to turn into an electoral circus.

That was done in the case of Judge Bork, it was done successfully, although it was attempted with Chief Justice Roberts.

It is not working now with Judge Alito. I hope people on both sides will then abandon those tactics, I yield the floor and suggest the absence of a quorum.

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

Mr. GRASSLEY. Mr. President, I assume that the business is to speak on the Alito nomination.

Mr. GRASSLEY. Mr. President, I choose to do that.

I support the nomination of Samuel Alito, Judge Alito, as we heard in our hearings, and so far in most of the debate on the floor, is a person who is a dedicated public servant, who practices what he preaches: integrity, modesty, genuine and a devotion to the law and to the Constitution. He understands a judge should not have a personal agenda or be an activist on the bench but should make decisions as they should be decided—do it in an impartial manner, do it with an open mind, and do it with appropriate restraint and, of course, in accordance with the laws and the Constitution.

Listening to a lot of my colleagues on the committee, and last week, I am extremely disappointed that we are looking now at an attempt by Senators—and they are all on the other side of the aisle—to delay and filibuster this nominee. It is too bad Majority Leader Frist had to take the extreme position of filing cloture on this very important nomination. No Supreme Court nomination has ever been defeated by filibuster if a majority of the Senators stood ready to confirm. The problem there is that we are not in the Senate here because we already know a bipartisan majority of Senators will vote to confirm Judge Alito if we get to that point tomorrow at 11 o’clock. We also now have had plenty of time to think about this nomination. It is unfortunate that certain Senators will vote against this nominee because they think doing so is a good political issue for them. These Senators are applying a very different standard to what has been the history and the tradition in the Senate of considering Supreme Court nominees. The position being taken by these Senators is that Judge Alito ought to somehow share Justice O’Connor’s judicial philosophy in order for him to fill the seat where she has been for the last 25 years.

That sort of thinking is totally at odds with what the Constitution requires, but more importantly than what the Constitution requires, what the Senate’s tradition in the past 225 years, and that is that Judge Alito does not have to be Justice O’Connor’s judicial philosophy soulmate to deserve confirmation by this Senate. Because the Supreme Court does not have seats reserved for one philosophy or another. That kind of reasoning is completely antithetical to the proper role of the judiciary in our system of Government.

My colleagues on the other side, then, have it all wrong. There has never been an issue of ideological balance on the Court. If that were the case, you think President Ford would have nominated Justice Stevens or President Bush I would have nominated Robert Bork. They have turned out to be the most liberal member on the Court appointed by Republicans? Those President did not think in terms of ideological balance.

The Senate’s tradition, then, has not been to confirm individuals to the Supreme Court who promote special interests or represent certain causes. The Senate has never understood its role to maintain any perceived ideological balance on the Court. Under our checks and balances system, we do not want to go down that path. Going down that path will create a standard that will seriously jeopardize the independence of the judiciary and distort our system of Government, a system based upon the judiciary being the arbiter of the war that often—I should say continually goes on between the executive branch of Government and the legislative branch of Government.

Democrats want the Supreme Court to assume an expansive role well beyond what was originally intended by the Constitution and its writers. They want the Court to take on a role that is closer to the role of the legislative branch, which is to make policy and bring about changes in our society.

Now, this has consequences when you go down this road. It has brought about the politicization of the judicial confirmation process that we have seen with the Roberts nomination, and also on the Alito nomination, but also on the Roberts nomination, or go back 3 years previous to the holding up of several circuit court nominees before this body through the threat of filibuster or not just the threat but the use of the filibuster.

Politicizing the judicial confirmation process is wrong. That is because when judges improperly assume the role of deciding essentially political questions rather than legal questions, the judicial confirmation process devolves into one focused less on whether a nominee can impartially and appropriately implement law. Instead, it becomes one
more focused on whether a nominee will implement a desired political outcome, and do it from the bench, regardless of the law and regardless of what the Constitution says.

Americans want what the Constitution truly is. They want judges who will conform to the Constitution whether the nominee has the requisite characteristics. The Constitution says, and it’s a solemn obligation—to the rule of law, and that which means is that in every single case, the judge has to do what the law requires.

Judge Alito also understands that the Constitution provides justice for all, for everybody. He told the committee this:

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 said:

Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.

Judge Alito understands the importance of the proper role of the judiciary in our system of checks and balances. We ought to be careful to make sure that we only approve judges who understand that. His colleagues believe Judge Alito will be an independent judge who will apply the law and the Constitution to every branch of Government and every person because Judge Alito knows that no one, including the President, is above the law.

When I said “his colleagues,” I meant those colleagues who testified before our committee and have worked with him for a long time on that circuit.

One of his colleagues, Judge Aldisert, testified:

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

Former Judge Gibbons, who now represents clients against the Bush administration over its treatment of detainees in Guantanamo, doesn’t believe that Judge Alito will “rubber-stamp” any administration’s policy if it violates the law and Constitution. He said:

I’m confident, however, that as an able legal scholar and a fairminded justice, he will not have any agenda-driven or result-oriented approach.

Justice Aldisert summarized these judges’ testimony best on the day they appeared before the committee when he said:

We who have observed at firsthand his impartiality with respect to all plaintiffs. He said 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 . . . 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.

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We who have observed at firsthand his impartiality with respect to all plaintiffs. We who have observed at firsthand his impartiality with respect to all plaintiffs.
to do what Justices on the Supreme Court ought to do based upon his 15 years on the circuit court, that he is fair and openminded and will approach cases without bias and without a personal agenda?

The standpoint of the Senators who know Judge Alito best believe, without reservation, he is a judge who follows the law and the Constitution without a pretext outcome in mind. They believe he is a man of great integrity, modesty, intellect, and insight. They believe he is a fair and openminded committed to doing what is right rather than committed to implementing a personal agenda.

After hearing all that, some of my colleagues ought to be ashamed of the blue smoke they are making out of this nomination or the ghosts they are putting up to scare us. Judge Alito will carry out the responsibilities that a Justice on the Supreme Court should, and he will do it in a principled, fair, and effective manner. If my colleagues have any doubt where I stand, I will cast my vote in support of Samuel Alito. This highly qualified nominee deserves to be confirmed to the Supreme Court. I hope my colleagues will see that as well and vote accordingly, particularly on a very tough vote because of the extraordinary majority it takes to also vote to end a filibuster, the first filibuster of the 110 nominees to the Supreme Court. Hopefully, we will never see another extraordinary majority that will affect our colleagues on the floor of the Senate with such a filibuster once again. Vote to end the filibuster late this afternoon and then vote to confirm Judge Alito tomorrow.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MS. STARENOW. Mr. President, this is an incredibly important time in our Nation's history. This is the second Supreme Court nominee to come before the Senate in the past 6 months. We are truly at a time where we are making decisions that will affect our children, our grandchildren, and an entire generation of people. Sandra Day O'Connor, the first woman Justice, and she was a judge, an activist judge who has tilted the scales against the little guy. Often, he has been criticized by his colleagues as trying to legitimize from the bench in order to change the direction the Court and, as I indicated, touch people's lives, affect people's lives and opportunities for a generation.

I take this constitutional responsibility very seriously, as I know my colleagues do. I am committed to doing Judge Alito's written opinions, his testimony, as well as the hearing transcript. I commend Senators Specter and Leahy for conducting the hearings in a respectful and bipartisan manner. The Constitution grants all Americans, as we know, the same rights and liberties and freedoms under the law, which is why it is so important that we get the right person. The majority values upon which the United States was founded—not just words, but they are values, they are beliefs, they are the motivation for us as we, together, fight for the things we want for our families and work hard every day as Americans to make the process works for everybody. We count on the Supreme Court to protect these constitutional rights at all times, whether the majority agrees or whether it is popular. Every American has the same rights under our Constitution.

Judge Alito's nomination comes at a time when we face new controversies over governmental intrusion into people's private lives, from secret wiretaps conducted without a warrant or the knowledge of the courts to attempts to subpoena millions of Internet searches from companies such as Google. One of the most important responsibilities of the Supreme Court is to serve as a check on excessive Government intrusion into people's lives.

In light of where we are today and the issues that this Court will face, it is even more important to have a Justice who will stand up for Americans. Unfortunately, Judge Alito's record is clear and deeply troubling. When one looks at his writings, his court opinions from over 15 years on the Third Circuit Court of Appeals, and when one looks at the hearing transcripts, there is a clear and consistent record of siding with the government, siding with other powerful interests at the expense of American citizens.

In case after case, whether it is about job discrimination, pensions, illegal searches at random from companies, he has been an activist judge who has tilted the scales against the little guy. Often, he has been criticized by his colleagues as trying to legitimize from the bench in order to change the result he desires.

His views are way outside the mainstream, especially in his dissent opinions. There are numerous cases where Judge Alito was the only dissenter, which means he felt strongly enough about his personal views that he objected to what the other 10 judges supported and expressed his own separate opinion on an issue. These dissents give insight into what I believe is an extreme ideology on the most basic of American freedoms, liberties, and rights.

Because of his extreme record and after much deliberation, I concluded that Judge Alito is the wrong choice to replace Sandra Day O'Connor on the U.S. Supreme Court. He may well, as we know, be the deciding vote on issues that affect our children and grandchildren and an entire generation.

His record on workers' protections is outside the mainstream. Our manufactur-
Judge Alito has had a clear and consistent record when it comes to siding with corporate interests over working Americans and, in many of these cases, he has sided with the majority of the court. He dissented on a case to pay reporters overtime pay under the Fair Labor Standards Act. He dissented from a majority opinion that found a company in violation of Federal aviation standards on the theory that they were removing materials from a refuse heap and sending them to powerplants to be processed into electricity. These are laws that exist to protect working Americans, to protect their health and their safety. The recent tragedies in West Virginia have reminded us of how important this is, but Judge Alito argued that the safety standards did not apply to this site.

The Sixth Circuit found that a company in violation of Federal aviation standards on the theory that they were removing materials from a refuse heap and sending them to powerplants to be processed into electricity. These laws exist to protect working Americans, to protect their health and their safety. The recent tragedies in West Virginia have reminded us of how important this is, but Judge Alito argued that the safety standards did not apply to this site.

In another dissent, Judge Alito voted with the government in cases involving privacy, security, and the Supreme Court will have to eventually answer. Unfortunately, in cases involving privacy, security, and protection from unjustified search and seizures, Judge Alito has consistently sided with the government interests.

One of the most important issues we face today is personal privacy and freedom. We are having this debate in the Senate right now with the PATRIOT Act reauthorization, and we see it in the news reports with the Justice Department seeking unprecedented amounts of information on what Americans are doing on the Internet. When has the government gone too far? It is a question we face in the Senate, and the Supreme Court will have to eventually answer. Unfortunately, in cases involving privacy, security, and protection from unjustified search and seizures, Judge Alito has consistently sided with the government interests.

As an Assistant Solicitor General in the Reagan administration, Judge Alito argued against the position whether the Justice Department should file a friend-of-the-Court brief in Tennessee v. Garner, a Supreme Court case on the constitutionality of a Tennessee law which allowed police to shoot a fleeing suspect, even when the shooting was intended only to prevent the suspect from escaping and not to protect the officer or the public from harm. In this case, a 15-year-old boy broke into a house and stole $10 worth of money and jewelry. The police arrived while the boy was in the process of running away. They ordered him to stop. He did not stop. And despite the fact they could see he was unarmed, the officer shot him from behind the head and killed him. The officer did not shoot this unarmed 15-year-old because he was a danger to others but to keep him from escaping.

The Sixth Circuit found that this law was unconstitutional, but in his memo, Judge Alito argued that the case was wrongly decided and that this was an issue that should be left to the State legislatures.

The Justice Department did not file a brief in this case, and the Supreme Court ultimately rejected Judge Alito’s position and found the law unconstitutional, writing:

It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that police arrive late or are slower does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.

In Doe v. Groody, Judge Alito dissented from a majority opinion written by now Homeland Security Secretary Michael Chertoff to uphold the strip search of a 10-year-old girl and her mother, even though neither was a criminal suspect, presented any risk or was named in the search warrant.

The search warrant specifically limited the search of persons to the suspect, John Doe, but when police arrived, they only found Jane Doe and her 10-year-old daughter inside the house. They took the mother and the little girl to another room and strip-searched them, having them lift their shirts, drop their pants, and turn around.

Judge Chertoff held that the warrant clearly limited police authority to the search of John Doe and not all occupants in the house. Judge Alito dissented, accusing the majority of a “technical” and “legalistic” reading of the warrant. The warrant was clear, but Judge Alito argued for a broad departure from what was actually written in the warrant in a way that would favor governmental intrusion.

I hear my colleagues from across the aisle saying over and over again that they want judges who will follow the law and not legislate from the bench. Judge Alito ignored the plain language of a search warrant in order to allow the strip search of a 10-year-old girl. How is this not legislating from the bench?

Judge Chertoff certainly thought so. He criticized Judge Alito’s view as threatening to turn the requirement of a search warrant into “little more than the cliche rubberstamp.”
In another case deeply concerning to me, a family of dairy farmers was being forced off their farm by a bankruptcy court. This was in Pennsylvania. It could easily have been in Michigan or anyplace else in the Midwest. When they refused to give up their farm, seven U.S. marshals and a State trooper arrived at their home to evict them by pointing shotguns and semiautomatic rifles at the family. The marshals grabbed a family friend who was also at the house and used him as a human shield for searching a mother and her teenage age son into the house and searched them with guns, handcuffed them, and took him that he wasn’t free to leave.

A fellow judge on the court dissented and called the marshals’ conduct “Ge-stapo-like” since seven marshals had detained and terrorized the family and friends and ransacked a home while carrying out an unresisted civil eviction notice, to point shotguns and semiautomatic rifles at a family sitting in their living room who were not criminals. They were not dangerous. They were dairy farmers who had lost their home and their livelihood because of a bankruptcy.

Judge Alito also argued that putting a gun to the man’s back and using him as a human shield was not an unreasonable search under the fourth amendment because the marshals never told him that he wasn’t free to leave. A fellow judge on the court dissented and called the marshals’ conduct “Ge-stapo-like” since seven marshals had detained and terrorized the family and friends and ransacked a home while carrying out an unresisted civil eviction. But Judge Alito’s decision made sure the family never got a trial.

In another dissent, Judge Alito again would have allowed the invasive search of a mother and her teenage son based on a broad reading of a warrant. Mrs. Baker and her three children arrived at the home of the lastest son for dinner in the middle of a drug raid by police. The warrant was limited to the search of her son’s home, but when Mrs. Baker and her three children started walking up to the house, the police threatened them with guns, handcuffed them, and dumped Mrs. Baker’s purse out onto the ground. They then took her teenage son into the house and searched him. Judge Alito once again dissented to keep a jury from hearing whether the warrant was lawful by handcuffing, holding at gunpoint, and searching a mother and her teenage children who by happenstance walked up to visit the home of a family member.

This disregard for the personal privacy and freedom of Americans extends to the decision on a woman’s right to choose, which affects every woman in this country. In Planned Parenthood v. Casey, Judge Alito voted in dissent to uphold a law requiring a woman to notify her husband before exercising her constitutional right to obtain an abortion. He argued that the spousal notification provision would only restrict a small number of women and didn’t substantially limit access to an abortion, even though the women affected may face physical abuse as a result of this requirement. The Supreme Court, including Judge O’Connor, affirmed that the requirement was unconstitutional, rejecting Alito’s argument, comparing it to antiquated 18th century laws that said that women had no legal existence separate from their husbands.

Justice O’Connor eloquently summarized the problem with Judge Alito’s position, writing, “women do not lose their constitutionally protected liberty when they marry.”

These cases are not isolated instances. They are part of a long and consistent record of siding with powerful interests over Americans—people who have had their rights violated, people who have been injured, people who have been sexually abused, people who have been victimized and are asking the court to make things right, make things whole, women in this country who want to know they are respected in their privacy and their most personal decisions. For 15 years, Judge Alito has said no. A group of schoolchildren, ages 6 to 8, were being sexually abused by their bus driver. Despite the young age of the children and the fact that the driver had total custody of them when they were on the bus, Judge Alito joined an opinion dismissing the case, arguing that the school superintendent didn’t have a duty to make sure the children were protected because riding the bus wasn’t mandatory.

A disabled student had to drop out of medical school because of severe back pain that made it difficult for her to sit in classes for hours at a time. She had requested a special chair during class so she could continue her studies and become a doctor. The school failed to accommodate her request, and the Third Circuit ruled that her case should go forward, she should have her day in court. Judge Alito joined an opinion dissenting, arguing that the case should not go to trial; she should not get her day in court. The majority wrote that “few if any Rehabilitation Act cases would survive” if Judge Alito’s view prevailed.

A college student died at a varsity lacrosse practice. None of the team’s coaches were trained in CPR. The nearest phone was 200 yards away on the other side of a 8-foot fence, and there was no ambulance on the field. The Third Circuit ruled to allow the case to move forward, for the family to have their day in court. But once again, Judge Alito said no. A worker received severe injuries after being thrown through the windshield of a garbage truck after the brakes of the truck failed. He brought a products liability lawsuit, arguing that the damaged hydraulic brake lines were a design defect. The Third Circuit was ruled in favor of the injured worker, but Judge Alito sided with the company.

When we take a step back and look at the entirety of Judge Alito’s record, we see a systematic tilt toward powerful institutions and against the little guy; a long history of writing ideologically driven dissents that are not only out of step with the majority of his peers on the Third Circuit, but are way outside the mainstream of America.

Let me say in conclusion, whether it is a family losing their dairy farm, workers losing their pensions, a mentally disabled young man who was the victim of sexual assault in the workplace, an unarmed 15-year-old boy being shot dead in the back of the head, a strip search of a 10-year-old girl, or the ability of a woman to make her own reproductive health decisions, Judge Alito has consistently said no to the daily concerns of average Americans.

Now we are being asked not just to confirm a nominee who has spent 15 years tipping the scales of justice and whose record is inconsistent with the majority of his peers on the Third Circuit, but to confirm a judge who will replace Sandra Day O’Connor, a woman who was a consensus builder, a uniter on the U.S. Supreme Court.

Based on this record, I cannot in good conscience cast my vote for Samuel Alito to be Associate Justice of the U.S. Supreme Court. The Supreme Court is the ultimate check on Presidential overreaching. And over and over again, we see this judge siding against American women.

We can do better than this nominee at this critical time in American history, and I urge my colleagues to join me in voting no on this nominee.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, on countless nominations Democrats have joined Republicans and Republicans have joined Democrats to send a judicial nomination to the floor with a bipartisan vote. Just a few days ago, Chief Justice Roberts came to the floor 13 to 5. Justice Breyer came to the floor unanimously. Justice Ginsburg came to the floor unanimously. Justice Breyer won on the floor 87 to 9; Justice Ginsburg, 97 to 3; and Chief Justice Roberts, 78 to 22.

But, in this case, Judge Alito comes to the floor in a straight party line, particularly divided vote. In a divided country, at a time of heightened partisan tensions, at a time of ideology often trumping common sense or broad public interest, the President has chosen to send a Supreme Court nominee who comes directly out of a revolt by the ideological wing of his party in order to satisfy their demand for ideological orthodoxy.

Some people obviously delight in that. We have read about that today in the New York Times. And that is their right. But most don’t. Most don’t think that is the way to pick a Supreme Court Justice. It doesn’t mean it is good for the country, it doesn’t mean it fills our current needs, and it doesn’t mean it is even the right thing to do.
As we approach this nominee, we can’t forget that he was not the President’s first choice. His first choice was Harriet Miers, and opposition to her nomination came not from Democrats but from the far right of the Republican Party. They challenged her ideological purity with such confidence that the President capitulated to their demands and gave them Judge Alito instead—a nominee who they received with gleeful excitement.

Jerry Falwell “applauded” his appointee. Edelman called it “a truly outstanding nomination.” Rush Limbaugh called the nomination “fabulous.” Ann Coulter and Pat Buchanan raved about how it would upset liberals. This rightwing reaction can only mean one thing: they know what kinds of opinions Judge Alito will issue—opinions in line with their extreme ideology.

All of this is to be contrasted with the standard set out by Justice Potter Stewart. He said:

“The mark of a good judge is a judge whose opinions you can read and . . . have no idea what kind of opinions they consider unfit for the Supreme Court.”

But one thing Judge Alito do see patterns—patterns which demonstrate a bias towards the powerful, patterns which demonstrate a lack of skepticism towards government overreaching, and patterns which demonstrate a hostility to the disadvantaged. This does not mean that Judge Alito never rules in favor of an individual suing the government for an unlawful search or a minority suing a corporation for unlawful discrimination. But it does mean that in the overwhelming majority of cases he has not. And this raises the question of whether he approaches each case with an open mind or whether he comes with a bias that can only be overcome in the rarest of circumstances.

So why should the debate on Judge Samuel Alito continue now? Well, to begin with, there hasn’t been that much debate on this nomination in the first place—a nomination of extraordinary consequence. It came to the floor of the Senate only weeks after the 25th Amendment closure was filed the very next day on Thursday. To this moment, not more than 25 Democratic Senators have had a chance to speak. At this time, the Senate has spent a total of 25 hours on a nomination that will last a lifetime.

The Supreme Court has granted the executive the right to use torture, or to eavesdrop without warrants. Not after a woman’s right to privacy has been taken away. Is history going to care what we say after the courthouse door is slammed in the faces of women, minorities, and the poor? No. Except to wonder why we didn’t do more when we knew what was coming.

Obviously, I have heard some people try to make Judge Alito’s decisions is “obstructionist.” But did people suggest it was obstructionism when the extreme rightwing of the Republican Party scuttled the nomination of Harriet Miers? How many times have we heard our colleagues come to the floor and demand that judicial nominees get an up-or-down vote? She never got an up or down vote. She never even got a hearing. Yet a minority in the Republican Party was able to stop a nominee that they considered unfit for the Supreme Court.

It is hardly obstructionist to use, as the former chair of the Judiciary Committee Senator HATCH described it, “one of the few tools that the minority has to protect itself and those the majority represents is exactly what we are doing here. That is why we have the Senate and the rules we live by. We are protecting basic rights and freedoms that are important to every American: privacy, equality, and justice.

It is important to remember that the rights we are expressing concern about didn’t come easily. Access to the court house, civil rights, privacy rights, voting rights, antidiscrimination laws—all of these were hard fought for. They came with bloodshed and loss of life. Their achievement required courage and determination. None of these basic rights were written into law without a fight, and still today it requires constant vigilance for them to be enforced and maintained. That commitment for vigilance is one of the characteristics that should leap out in a Supreme Court nominee.

We should remember that even though the 13th, 14th, and 15th amendments outlawed slavery, provided for equal protection under the law, guaranteed citizenship, and protected the right to vote for African American Americans, the fact is the Federal Government had to enforce them until the 1960s. Few politicians were willing to take a stand—to fight for the rights of African Americans. Something besides grassroots pressure was ultimately needed to prompt the Congress into action. That something was the unanimous Supreme Court decision in Brown v. Board of Education.

Imagine if the Court had not enforced the equality guaranteed by the 14th amendment. Imagine if it still had the ideological outlook it had when Plessy was decided. Or when Dredd Scott was decided. Two of the most ideally driven—and regrettable—decisions ever. Segregation would still be a fact of life. African American children would be forced to attend their own schools, would be receiving an inferior and inadequate education. And, there would have been no catalyst to start the civil rights movement.

The Supreme Court nominee is in fact a vote for the rights and freedoms we care about and fight for. That is exactly what this vote is.

There is no question in anyone’s mind, a nomination of extraoridinary merit. There is no question that for a Supreme Court nominee is a vote for a truly outstanding nomination. This rightwing reaction can only mean one thing: they know what kinds of opinions Judge Alito will issue—opinions in line with their extreme ideology.

Let me share with you the story of David D. Chittister. On February 14, 1997, David requested sick leave from the Pennsylvania Department of Community and Economic Development, where he worked. He was granted leave, but approximately ten weeks later, his leave was revoked, and he was fired. David knew the Family Medical Leave Act guaranteed him 12 weeks of sick leave. So he sued the Pennsylvania Department of Community and Economic Development for firing him during that time.

The Department of Justice, in their shoes. Imagine that you become sick. You become so sick that you are hospitalized, completely unable to work. The only reason that you can afford your treatment is because you are still employed. And also that you believe yourself protected by the Family Medical Leave Act.

Now imagine that Judge Alito is on the Supreme Court. He is one of the nine voices that gets to decide whether the Family Medical Leave Act is constitutional. And he votes the way he did on the Third Circuit, invalidating that part of the Family Medical Leave Act which guarantees an individual 12 weeks of sick leave and applies to you. You are out of luck as you face mounting medical bills without any source of income.

This is not hypothetical. That is the decision he made. Health care is a very real problem for many more Americans than ever. Many of us have been pushing for a national approach to health care for years. Our citizens can’t get the sick leave they need to take care of themselves. They cannot get adequate health insurance—coverage isn’t what it should be. The Family Medical Leave Act was a step in the right direction to deal with family values and health needs. It made sure that people could take the time they needed when they became seriously ill without losing their income. It was enacted with overwhelming bipartisan support in a 71 to 27 vote. But if Judge Alito were on the Supreme Court and he follows the vote of his own precedent, it would no longer protect State employees.

So I ask my colleagues who voted for the Family Medical Leave Act: didn’t we do exactly what we meant to do? Didn’t we need to protect all workers? So is it right, now, to put a person on
Where do you come out on this? Which view do you want on our Supreme Court? Let me also share another story this one about Beryl Bray. Beryl was an African American woman who worked her way up from a room attendant to a Housekeeping manager for Marriott Hotels in less than three years. When the position of Director of Services opened up, Beryl applied. A Caucasian woman got the job, and Beryl sued claiming discrimination. 

As Judge Alito was hearing, Beryl probably did not make a lot of money. She probably used a lot of her resources to bring her discrimination claim. She wanted her day in court. If Judge Alito had his way, she wouldn’t have gotten it. Critical facts were in dispute. Facts which, if resolved as Beryl claimed they should be, would establish a clear case of discrimination. As the lawyers here know, the factual disputes should have been resolved by a jury or a bench trial of her peers entitled to her day in court. Judge Alito, however, did not agree. He would have resolved the facts on his own in favor of Marriott Hotels. He would have ended the case then and there.

Or let’s talk about Harold Glass. Mr. Glass worked at Philadelphia Electric Company, of PECO as it is known, for 23 years before he retired. While working full-time, Harold attended school to improve his career opportunities. Over the years, he earned two associate degrees, a bachelor of science degree in industrial and management engineering and a bachelor of science degree in engineering.

In addition to his full-time work and continuing education, Harold was a long-time activist on behalf of PECO employees. In 1968, he helped organize the Black Grievance Committee to respond to problems of racial fairness, including inadequate representation of minorities by an uncertified labor organization. He served as an officer. He represented employees in handling routine individual grievances before management and negotiated with management about employee concerns. In addition, he took the lead in organizing witnesses in three legal actions against PECO concerning racially discriminatory employment practices.

Over the years, Harold applied for promotions to new positions, but each time he was rejected. In addition, he was not able to apply for positions he would have liked to have because they were never posted by the company. This despite the fact that, in 23 years of employment with PECO, Harold received only one performance evaluation, which was less than fully satisfactory—when he was serving as a junior technical assistant. Harold claimed that racial harassment at that time from his coworkers and a hostile work environment had affected his job. But the trial judge did not allow him to demonstrate these facts.

On appeal, a divided three-judge panel reversed the trial judge’s decision. Two of Judge Alito’s colleagues believed that Mr. Glass should have been allowed to present the evidence of racial discrimination to the jury. Judge Alito, however, disagreed. He thought that allowing Mr. Glass to tell the story of the discrimination plaintiff from showing evidence of discrimination? I think most reasonable people would disagree with Judge Alito. I believe that is the problem here: Judge Alito has demonstrated a pattern of looking at discrimination claims with a high degree of skepticism. In the dozens of employment discrimination cases involving race that Judge Alito has participated in, he has ruled in favor of African Americans on the merits in only two instances. He has never authored a majority opinion favoring African Americans in such cases. He has dissented from rulings of the jury or the trial court in favor of African American plaintiffs, and in doing so has required an unrealistic amount of evidence before he is willing to step in on behalf of wronged individuals. He is not willing to give them the benefit of the doubt even to just let a jury decide their case.

This is an unacceptable view of the way our country works. Americans know that what sets us apart from almost any other country is the right of any citizen no matter where they come from, what their lot in life is to have their day in court. That is what makes America special. This little guy can hold the big corporations accountable. Our nation is defined by the great strength of individuals who struggle and protect their rights—particularly the disadvantaged. We have worked hard to ensure that no one is denied their civil rights. Judge Alito’s track record casts serious doubt on his commitment to this struggle. The country must pass protecting individuals against discrimination requires the courts to fully enforce it. And we just don’t keep faith with ourselves if we empower individuals to sue large corporations who act unlawfully and then have those courts refuse to hold them accountable.

Judge Alito’s hostility to civil rights claims is not my observation alone. It is an observation shared by many people who have reviewed his record. Let’s not forget that after reviewing more than 400 of Judge Alito’s opinions, law professors at Yale Law School—Judge Alito’s alma matter—concluded that:

In the area of civil rights law, Judge Alito consistently has used procedural and evidentiary standards to penalize female, minority, age and disability claimants. . . Judge Alito seems relatively willing to defer to the claims of employers and the government over those advancing civil rights claims.

That is the opinion of those who have studied his record. Similarly, Knight-
Ridder 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-sides with . . . an employee alleging discrimination or summarily dismisses his case.”

Judge Alito may believe that it is his duty to keep these types of cases away from the jury. He may, and in fact probably does, believe that he is doing the right thing. That is his right. But, it is my right to judge the facts of these cases. It is my right to say that the record of his reaction to the same facts should not be elevated to the Supreme Court.

A fair amount has been said about Judge Alito’s endorsement of the unitary executive theory. This is a complicated and somewhat abstract theory of constitutional interpretation, but if it is ever endorsed by a majority of the Court, it will have a significant practical impact on our everyday lives.

What we want to know is whether the President alone is responsible for enforcing the laws. At its most simplistic, it seems somewhat reasonable: Congress makes the laws, the President enforces the laws, and the judiciary interprets the laws. But, in fact, dates back to the administration of Franklin Roosevelt, and it has been championed by liberal and conservative scholars and administrations as a way of asserting the President’s ability to retain control of independent agencies. Use of the theory in recent times has been changing.

During Judge Alito’s tenure, the Reagan administration developed new uses for the theory. It was used to support claims of limitless presidential power in the area of foreign affairs—including the actions that became the Iran-contra affair. And, this view of Presidential power has expanded to the Bush administration, claiming in Presidential significance statements, that the President can ignore antitorture legislation overwhelmingly passed here in Congress. Not only is the substance of that message incredible, but the idea that the President could somehow alter congressional intent—the meaning of legislation agreed upon by 100 Senators—with a single flick of a pen is absolutely ludicrous. It turns the meaning of legislative intent on its head.

In all hearings, Judge Alito attempted to downplay the significance of this theory by saying it did not 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 by that explanation. 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 consequence of this theory is dramatic.” It is just common sense that if the unitary executive theory means that the President can ignore laws that Congress passes, it necessarily expands the scope of Presidential power—and reduces the scope of Congress.

Judge Alito had numerous opportunities in the hearings to define the limits of the unitary executive, but he refused to answer serious questions. He didn’t answer when Senator LEAHY asked him whether it would be constitutional for the Congress to prohibit Americans from using torture. He didn’t answer when Senator DURBIN asked whether he shared Justice Thomas’s view that a wartime President has inherent powers—and beyond those explicitly given to Congress. He didn’t answer when Senator FEINGOLD asked what, if anything, there are on the President’s power.

We all understand that under article II, the President has primary responsibility for the conduct of foreign affairs. But, the idea that the President can either reserve an existing law or redefine statutory limits at will in the areas of foreign affairs, national security, and war is a startling one. And it is one that I cannot accept.

We need to know what limits Judge Alito would place on the executive branch. We needed him to go beyond simple recitations of Supreme Court case law. We needed to know what he actually thought.

Sadly, however, Judge Alito did not give us those answers. In fact, he failed to give us answers on many questions of critical importance. He refused to answer questions from Senator LEAHY, Senator KENNEDY, Senator FEINGOLD, and Senator BIDEN on the question of the power of the presidency. He refused to answer questions from Senator SCHUMER, Senator DURBIN, and Senator FEINSTEIN on whether Roe v. Wade was settled law—an answer that even Chief Justice Rehnquist was willing to give. He refused to answer Senator LEAHY’s questions on court stripping; Senator LEAHY’s and Senator FEINSTEIN’s questions on congressional power and the commerce clause; Senator FEINGOLD’s questions on executive action and criminal law; Senator SCHUMER’s questions on immigration.

These are all questions about issues that routinely come before the Court. Judge Alito had an obligation to answer them. He had an obligation to explain and clarify the positions he took in his speeches, judicial opinions, and Justice Department memoranda. But he did not.

Why are we supposed to think that is OK? Since when is it acceptable to secure a lifetime appointment to the Supreme Court by hiding behind a smoke-screen of nonanswers?

I understand that, for many, voting for cloture on the Alito nomination is a very difficult decision, particularly on this Supreme Court nominee. I also understand that, for some of you, a nomination must be an “extraordinary circumstance” in order to justify the vote. This vote is an extraordinary circumstance. What could possibly be more important than this?

This is a lifetime appointment to a Court where nine individuals determine what our Constitution protects and what our laws mean. Once Judge Alito is confirmed, we can never take back this vote. Not after he prevents many Americans from having their discrimination cases heard. Not after he allows more government intrusions into our private lives. Not after he grants the President the power to ignore Federal law under the guise of protecting our national security. Not after he shifts the normal balance of the Court far to the right.

As I have said before, Judge Alito’s nomination was a direct result of the rightwing’s vehement attacks on Harriet Miers, an accomplished lawyer whose only failing was the absence of an ideologically bent record. The rightwing didn’t wait for the next nominee. The rightwing didn’t leave any of the tools in their arsenal unused. The rightwing attacked with every option available to them. Harriet Miers’s confirmation, secure in their conviction that it was the right thing for them to do.

We believe no less. And we should do no less. We did allow the confirmation of the nominee to the appellate court nominees. There was no talk of prolonged debate on Chief Justice Roberts. Now we are presented with a nominee whose record raises serious doubt about serious questions that will have a profound impact on everyday lives of Americans. What on Earth are we waiting for?

Many on my side oppose this nomination. They say they understand the threat he poses, but they argue that cloture is different. I don’t believe it is. It is the only way that those of us in the minority have a voice in this debate. It is the only way we can fully complete our constitutional duty of advice and consent. It is the only way we can stop a confirmation that we feel certain will cause irreversible damage to our country.

I will oppose cloture on the nomination of Judge Alito. And, I sincerely hope my colleagues will join me.

Mr. MCCONNELL. Mr. President, I rise today in support of the nomination of Samuel A. Alito, Jr., to be an Associate Justice of the Supreme Court. We are familiar with Judge Alito’s academic and professional qualifications. He graduated from Princeton and Yale Law School, where he served as editor of its prestigious Law Journal. He spent his life serving his country as a captain in the Army Reserve, as an assistant, and then as U.S. attorney in New Jersey, and for the past 15 years as a distinguished judge on the Third Circuit Court of Appeals, to name a few of his qualifications with which we are all quite familiar at this point in the proceedings.

Equally important is his deserved reputation for fairness and for integrity and his measured approach to the
law. The American Bar Association, hardly a bastion of conservatism, found this out during its exhaustive review of its record. The ABA solicited the views of 2,000 people, including 130 Federal judges and every Supreme Court Justice. The ABA awarded Judge Alito its highest rating, unanimously well qualified. What that means is that every member of the committee of the ABA gave Judge Alito the highest possible mark. It is like receiving straight A+'s on your report card.

Let me repeat that since some who are watching and listening have undoubtedly heard the attacks by Judge Alito’s most vociferous opponents: The ABA, the largest professional association of lawyers in the country, found Judge Alito to be unanimously well qualified for the Supreme Court. In the past, this rating was referred to by our friends on the other side of the aisle as the gold standard.

More insightful than the ABA’s rating is the testimonials of those who know Judge Alito best, his colleagues and his coworkers. Although they possess effective, intellectual philosophies, Judge Alito’s colleagues enthusiastically praise him as “thoughtful, intelligent, and fair” and a judge who “has a great respect for precedent-setting decisions.” To most people, that sounds like the kind of Justice we would want on the Supreme Court.

Judge Timothy Lewis served with Judge Alito for 7 years during which Judge Lewis typically voted with the court’s liberal members. He recounted how he and the late Judge Higginbotham in 1992 consulted his mentor, the late Judge A. Leon Higginbotham, Jr., who was a Carter appointee, a former chief judge of the court and a scholar of U.S. racial history. According to Judge Lewis, Judge Higginbotham said:

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

That is the late Judge Leon Higginbotham. Judge Lewis added his own experience borne out Judge Higginbotham’s evaluation. Judge Lewis said Sam Alito “does not have an agenda” and “is not result-oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference.” He “faithfully showed a deference and deep respect for precedent.”

That is liberal Judge Lewis of the Third Circuit.

Another former chief judge of the Third Circuit, Edward Becker, similarly praised Judge Alito. Here is what he had to say:

I found him to be a guy who approached every case with an open mind. I never found him to have an agenda. I suppose the best example of this is in the area of criminal procedure. He was a former U.S. attorney, but he never came to a case with a bias in favor of the prosecution. If there was an error in the trial, or a flawed search, he would vote to reverse.

Judge Becker noted that Judge Alito is “very principled, very analytical, never decides more than he has to in a case. He does believe in judicial restraint in the way he writes opinions, with no ideological overtones.” The Third Circuit’s current chief judge, Anthony Scirica, succinctly said:

... whatever quality you think a judge ought to have, whether it’s scholarship or an ability to deliberate, or fairness or tempers, Sam has each one of those to the highest degree.

That is the current chief judge of the Third Circuit.

These reflections, which include three former or current chief judges of the Third Circuit, are echoed by Judge Alito’s former law clerks, many of whom are self-described committed Democrats. Jeff Wasserstein clerked for Judge Alito in 1998. Here is what he had to say:

I am a Democrat who always votes Democratic, except when I vote for a green candidate—but Judge Alito was not interested in the ideology of his clerks. He didn’t decide cases based on ideology.

Mr. Wasserstein recounts how in one criminal case the defense attorney had submitted a sloppy brief while the prosecutor had submitted a neat, presentable brief. Mr. Wasserstein says that in his youth and naivete he suggested to Judge Alito it would be easy to decide the case for the Government. But Judge Alito stopped him “cold by saying that was an unfair attitude to have before I had even read the briefs carefully and conducted the necessary additional research needed to ensure that the defendant had received a fair hearing.”

Mr. Wasserstein’s simple anecdote illustrates how Judge Alito approaches each case fairly and with an open mind. He observes that Judge Alito has a “restrained approach to the law.”

Another former law clerk, Kate Pringle, who worked for Senator Kerry, whom we heard speak a few moments ago, for his Presidential campaign, describes herself as a left-leaning Democrat and a big fan of Judge Alito’s. She rejects the notion that Judge Alito is an ideologue, stating he “pays attention to the facts of the cases and applies the law in a careful way. He is a conservative in that sense. His opinions don’t demonstrate an ideological slant.”

That is Kate Pringle, law clerk of Judge Alito and Kerry supporter for President in 2004.

In light of the accolades from those who know him best, in light of his brilliant intellectual and professional achievement, in light of receiving the highest possible rating by America’s largest association of his peers, the ABA, I was hopeful the Senate would provide Judge Alito with a fair and dignified process. Sadly, this has not been the case.

In the Senate we have known for over 200 years, a judicial nominee with Judge Alito’s character, ability, and achievement would command a large bipartisan majority of support. Now it appears Judge Alito will not get that tomorrow. Why is that? It is because there has been a change in the standards by which the Senate considers qualified judicial nominees. In my view, it has not been a change for the better.

According to the New York Times, in early 2001, some of our Democratic colleagues attended a retreat where law professors such as Larry Tribe and Cass Sunstein implored them to “change the ground rules” with respect to how the Senate considered judicial nominees by injecting a political ideology test into the confirmation process. Soon after that meeting, some of our friends initiated a premeditated and sustained effort of serial filibusters of circuit court nominees. We saw a lot them. Those most passionate for this tactic thereby wrote a new and sad chapter into the pages of Senate history.

In the eyes of many Republicans and Democrats, I had hoped this sad chapter of trying to deny judicial nominees a simple up-or-down vote would re-emerge in memory as a mere footnote in a long and proud history of the Senate. Unfortunately, today we stand ready to revive it with the Alito nomination.

We stand today on the brink of a new and reckless effort by a few to deny the rights of many to exercise our constitutional duty to advise and consent, to give this man the simple up-or-down vote he deserves. The Senate should repudiate this tactic, and it will have an opportunity to do that at 4:30 this afternoon.

There is a role for the filibuster for legislative matters. Although I may disagree with its application in a particular legislative case, I neither deny the tactic nor begrudge it when a colleague employs that tactic when there is good reason to do so. I have done so on many occasions and have seen a good reason for employing it in the context of judicial nominations. Nor did any Senate prior to the last Congress find that tactic should be employed for judicial nominations.

It certainly is not warranted in the case of Judge Alito. He is clearly qualified. His friends, his peers, and, indeed, his entire life story tell us so.

During his hearings and despite the best efforts of those opposed to his nomination, he acquired an admirably. Over 18 hours of testimony he was asked 677 questions and was able to answer 659 of them—truly an impressive feat. In doing so, Judge Alito demonstrated an impressive command of the law and a model judicial temperament.

Now, while Judge Alito conducted himself with grace and dignity, unfortunately, some Senators did not. In fact, those who listened most attentively to the outside pressure groups, such as one whose top lobbyist declared “you name it, we’ll do it to defeat Judge Alito,” could have learned a thing or two about grace and dignity.
by watching Judge Alito perform in the face of the most absurd and baseless charges.

Despite the repeated efforts to caricature Judge Alito, the public’s support for him only increased. After the hearings, the only thing the American public was confused about was respect to Judge Alito was the sometimes shabby treatment he received.

With Stephen Breyer and Ruth Bader Ginsburg, Republicans resisted playing base politics and instead measured those two nominees by the traditional confirmation standard of integrity and legal excellence and not a political ideology standard. We did not grandstand on the colorful—to put it delicately—statements Justice Ginsburg had made decades before her nomination such as possibly abolishing Mother’s Day and Father’s Day and statements about purported constitutional rights to prostitution and polygamy, to name a few. Nor did Republicans seek to disqualify Justice Ginsburg from further judicial service because of her long-standing leadership of the ACLU and the controversial positions it often takes.

And Republicans did not succumb to the idea of a reckless filibuster to gain the approbation of a newspaper or an interest group.

If Republicans had wanted to demagogue and defeat the Ginsburg nomination, we could have done the things to Justice Ginsburg that have been done to Judge Alito. In fact, with her highly legal excellence and not a political ideology standard, we could have done the things to Judge Alito that would have been a lot easier to do so, but we exercised self-restraint and self-discipline for the good of the country.

In conclusion, I implore my Democratic friends to consider that in engage in these tactics is neither fair nor right. If this hyperpoliticization of the judicial confirmation process continues, I fear in this moment we will have institutionalized this behavior, and some day we will be hard pressed not to employ political tests and tactics against a Supreme Court nominee of a Democratic President. In that case, no one—Republican or Democrat—will have won.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CHAMBLISS. Mr. President, the Committee on the Judiciary has recommended that we consent to the President’s nomination of Samuel A. Alito, Jr. as Associate Justice of the Supreme Court of the United States. I concur in that recommendation. I am convinced that Judge Alito will make an outstanding addition to the Supreme Court and will be faithful to his judicial oath in neutrally applying the law without imposing his personal, political or ideological views to circumvent the law or the Constitution.

First, I wish to commend Chairman Specter and my former colleagues on the Judiciary Committee—including the Presiding Officer—for conducting nomination hearings which established clearly Judge Alito’s fitness to serve on the Nation’s highest Court. I followed closely Judge Alito’s responses to questions during the hearings. I was impressed by his profound patience, sincerity, and dedication to the ethical restraints which compel all nominees to refrain from prejudicing any matter which may come before the court. Many of my colleagues have complained that Judge Alito “did not answer some questions.” Their real complaint rather, is that they simply didn’t like his answers. Judge Alito quite properly declined to have all prior nominees to the Court, to address in advance specific matters which may come before them. As Judge Alito stated:

If a judge or a judicial nominee announced before the Senate, the briefs or hearing the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would not respect the judicial system, and with justification, because that’s not the way in which members of the judiciary are supposed to go about the work of deciding cases.

That statement, and the time-honored concept which it embodies, is profoundly important. Surely, those of my colleagues who have criticized Judge Alito in this regard know better. Surely, they do not want Justice Roberts at a time when too many within the legal, media and political elites have sought to recast the role of the judiciary into a superlegislature, apparel of, and engines to supplant their views for those of the elected representatives of the American people—should be reminded that such actions and such views on the part of some are anticonstitutional and contrary to the rule of law itself.

Describing his own fidelity to the Constitution and to the rule of law, Judge Alito told the Committee on the Judiciary:

A judge can’t have an agenda. A judge can’t have a preferred outcome in any particular case. And a judge certainly doesn’t have a client. A 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.

The standard for rendering advice and consent, which I outlined in my statement concerning Chief Justice Roberts, is the standard I will apply to Judge Alito as well. That standard—demonstrated commitment to the rule of law and fidelity to the Constitution—is amply met by Samuel A. Alito, Jr. I am pleased to support his nomination and will certainly vote to confirm him as Associate Justice of the Supreme Court. I urge my colleagues to do likewise.

Make no mistake about it. The American people do not want to see an obstructionist attitude in their legislative body. The American people are not benefited by an obstructionist attitude. An obstructionist attitude towards Judge Alito means not moving forward with an up-or-down vote and then confirming Alito to be Associate Justice of the Supreme Court. The American people are best served by a bipartisan attitude in this body. I hope when the cloture vote is made at 4:30 we will see instead the 60 votes needed to not allow a filibuster but that we will see a strong bipartisan vote in support of moving ahead with giving Judge Alito an up-or-down vote on the floor of the
If you want good manufacturing jobs, one thing you could do is educate more engineers. We had more sports exercise majors graduate than electrical engineering majors last year.

Based on that statistic, he added: If you want to be the massage capital of the world, you are well on your way.

That is very interesting. With that, out of my time, I yield to the Senator from Tennessee 3 or 4 minutes to speak to this bill, which is called the PACE legislation.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I thank the Senator from New Mexico. First, there is nothing more important, along with the war on terror, than finding a way to keep our jobs from going to China, India, and other countries around the world. They have figured out how to increase their standard of living, and it has to do with brainpower.

What I want to say today is, first, I congratulate Senator DOMENICI, without whose leadership this would not have gotten to first base. He encouraged Senator BINGAMAN and I to go to work with him going with the President. It was he who presided over our homework sessions with the administration. It is he who has taken the leadership with Senator BINGAMAN on this bill to have 55 cosponsors prior to the President’s speech tomorrow night. So I thank him first.

Second, I reiterate where this idea came from. It came not from Senators, not from lobbyists, nor from this or that clique. Senator BINGAMAN and I asked the people who should know—the experts at the National Academies—the question to this answer: exactly what do we need to do to keep our advantage in science and technology over the next 10 years so we can keep our jobs? They answered that question with 28 recommendations involving kindergarten through the 12th grade education, higher education, basic research, maintaining an entrepreneurial environment. These are ideas that many Senators on both sides of the aisle have advocated for several years, but the fact that the National Academy of Sciences, the Institute of Medicine, and the National Academy of Engineering joined together to say “here is the blueprint” is the reason this idea is gone so far. What it does is help keep our edge in science and technology.

I am looking forward to the President’s remarks tomorrow night. It is my hope that he makes the Augustine report and the whole idea of keeping America on top and keeping our edge in science and technology a focus of his speech and of his next 3 years.

So it is my privilege today to ask unanimous consent on behalf of Senators DOMENICI, BINGAMAN, and myself, to adjourn to the following: Senators Lautenberg, Johnson, McConnell, Snowe, and now Senator Specter of Pennsylvania, who have asked to be added to S. 2197, S. 2198, and S. 2199 as cosponsors, as well as Senator Reed of Rhode Island who has asked to be added as a cosponsor of S. 2197, so that we now have 54 cosponsors of these important pieces of legislation.

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

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a letter from Senator BINGAMAN and myself, encouraged by Senator DOMENICI, to the National Academy of Sciences on May 27, 2005, and a two-page summary of the Domenici-Bingaman-Alexander-Mikulski legislation, which has 54 cosponsors, be printed in the RECORD.

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


Dr. Bruce Alberts, President, National Academy of Sciences, Washington, DC.

Dear Dr. Alberts: The Energy Subcommittee of the Senate Energy and Natural Resources Committee has been given the latitude by Chairman Pete Domenici to hold a series of hearings to identify specific steps our government should take now and in the future to ensure America’s leadership in science and technology. Specifically, we would appreciate a report from the National Academies by September 2005 that addresses the following:

Is it essential for the United States to be at the forefront of research in broad areas of science and engineering? How does this leadership translate into concrete benefits as evidenced by the competitiveness of American businesses and an ability to meet key goals such as strengthening national security and homeland security, improving health, protecting the environment, and reducing dependence on foreign oil?

What specific steps are needed to ensure that the United States maintains its leadership in science and engineering to enable us to successfully compete and be secure in the global community of the 21st century? How can we determine whether total federal research investment is adequate, whether it is properly balanced among research disciplines (considering both traditional research areas and new multidisciplinary fields such as nanotechnology), and between basic and applied research?

How do we ensure that the United States remains at the epicenter of the ongoing revolution in research and innovation that is driving the 21st century economy? Can we assure investors that America is the preferred site for investments in new or expanded businesses that create the best jobs and provide the best services?

How can we ensure that critical discoveries across all the scientific disciplines are preserved and exploited first by American and expanded internationally? Can we ensure that competitive public research investments best supplement these private sector investments?

What specific steps are needed to develop a well-educated workforce and successfully embrace the rapid pace of technological change?

I yield the floor.
Doubling the Research & Development Tax Credit to Encourage Innovation: Doubles the current R&D tax credit and makes it permanent—so companies conduct ground-breaking, job-producing research here, rather than building new facilities overseas.

Creating a Tax Credit to Encourage Employees’ Education: Establishes a new tax credit to cover costs from providing continuing education to employees—so employees can learn cutting-edge skills.

Development of Science Parks: Supports the development of science parks through infrastructure planning grants and loan guarantees so that U.S. science parks are competitive with those throughout Asia.

Mr. DOMENICI. Mr. President, let me say what a privilege it is today to speak once again to the nomination of Judge Alito to the Supreme Court of the United States. In my time here, I have voted to confirm them all. I based my vote, first, on the fact that the President of the United States recommended them and second, on whether they were qualified. I determined whether they were qualified based upon outside evaluations and personal observations of those who knew, trained and taught that particular nominee. For example, I found Justices Ginsburg and Breyer, who were confirmed 96-to-3 and 87-to-9, to be qualified. In my opinion, neither of those judges, based upon the way the Senate is doing things these days, would have come close to getting those kinds of votes. As a matter of fact, for those who threaten filibuster, I believe there is a serious question. Those filibusters would have been the rule of the day, at least one of those nominees might very well have been filibustered, and the filibuster might have been successful. But that wasn’t the way things worked.

Qualification was the question upon which we based our decisions; that has changed. Rancor has taken the place of reason. Partisanship has taken the place of responsibility and fairness. At every step of the process with this nominee, the American people have seen what a confirmation process can turn into if it is not vested and fair, but is instead full of what can be considered as almost hatred, almost fire and brimstone. Our colleagues have focused on the negatives of everything, however small or irrelevant. Currently, the trend is not to do what we have done, which has resulted in some great judges, but rather to be fed by the flames of partisan special interests that want assurances—they want guarantees.

I personally believe this is a dangerous course, and I hope and pray that this will be the last time we follow such procedure. But I doubt that it will ever be. Such actions are wrong. Rejecting the judicial philosophy tests being urged by some is absolutely imperative.

When we apply the appropriate test of qualification, there is no doubt that Judge Alito is qualified. He is qualified to be a Supreme Court Justice. The American public realizes this and that is why they overwhelmingly indicate that we should get on with this and vote. It is clear that there has been no vote on Judge Alito—and the chair has seen many—that has spread before the eyes of the Congress and the public more about themselves, their record, their philosophy, their vote,
their rationale, and their ethics than this man.

The President, indeed, took a big chance with this nomination because to have that much of a record and have a vote and all that goes with it here was, indeed, a giant risk. But it paid off because Judge Alito is what he purported to be—a scholarly, terrific judge, who is without any question, distinguished.

My second point concerns “guarantees.” I believe some members of the Judiciary Committee questioned this judge in an effort to get some guarantees about how he would vote. It is amazing to consider some of the Supreme Court Justices who have been approved by the Senate based on their testimony and their record, which were presumed to be commitments or guarantees as to how they would vote. We can look back to Justice Warren from New Mexico about the process here, but in response to the Senator from New Mexico about the process here, the President was exemplary in how Justice Breyer and Justice Ginsburg were chosen to be members of the Supreme Court. There have been books written about it and chapters of books written about it.

The President, as chairman of the Judiciary Committee, in communication with President Clinton, said: I don’t like this person, this person, this person. And so there was a process set up, nonpublic in nature, where the chairman of the Judiciary Committee conferred with the President and his people and waded through lots of names that, in the judgment of the distinguished Senator from Utah, were not appropriate. Now we have two Members on the Supreme Court whom I think have distinguished themselves. I wish we could have a procedure like that in the future. I think, I repeat, it is unbelievable that one person’s philosophy, their votes, and everything else has been different on the Court than what they told the Senate with guarantees during the confirmation process.

There are no guarantees. Those who are making this a partisan fight won’t say: We don’t have any guarantees, on Roe v. Wade and many other issues, that Judge Alito will vote the way we expect. We are asking him to vote with us, but in response to the Senator from New Mexico about the process here, the President was exemplary in how Justice Breyer and Justice Ginsburg were chosen to be members of the Supreme Court. There have been books written about it and chapters of books written about it.

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this Republican corruption in Washington has taken its toll on our country. We can see it in the state of our Union.

What is the state of our Union? The state of our Union is that we are less safe than we were 4 years ago because the White House has decided protecting its political power is more important than protecting the American people.

We are the wealthiest Nation in the history of the world. Shouldn't we be the healthiest? Frankly, we are not because this administration decided to take care of the big pharmaceutical companies, the drug companies, the HMOs, managed care, instead of 46 million uninsured.

We have a national debt climbing past $8 trillion. I have a letter I received a short time ago from the Secretary of the Treasury saying the debt is at $8.2 trillion and we need to raise it more. Over $9 trillion is what they are talking about because the President squandered the strongest economy in the history of this country with reckless spending and irresponsible tax breaks for special interests and multi-millionaires.

We have an addiction to foreign oil that has climbed steadily over the last 4 years and doubled the price of heat for our homes and gas for our cars because the Vice President let big oil companies write our energy policy. According to the Pentagon, 40% of the middle-class families living literally on the financial cliff. All statistics show the rich are getting richer, the poor are getting poorer, and the middle class is squeezing smaller and smaller all the time.

The economic policies of this administration over 5 years has placed the needs of the wealthy and well-connected ahead of working Americans.

If President Bush is committed to making America stronger, he will acknowledge Tuesday night he will admit the steep price America paid for the war in Iraq, Iran, and North Korea. The President's poor planning and refusal to change course in Iraq has made our military, among other things. Our forces are stretched entirely too thin. The Pentagon's independent studies, the Pentagon is stretched—stretched in a manner, as indicated by, having mass advancements in rank, which they have never done before, because they are trying to keep people in the military, among other things. Our forces are stretched entirely too thin.

The President's poor planning and refusal to change course in Iraq has made progress in 2006 harder to achieve. The President has made it more difficult to spread democracy around the world because he has been undermining it right here at home.

As Katrina made clear, he failed in the 4 years after 9/11 to prepare America for the threats we face. New Orleans could have been anyplace in America. The difference with Katrina is we have weathered it. But other threats, that won't be the case. America can do better. Tomorrow night, the President needs to provide a new way forward. Partisan attacks will only divide us. What we need is for the President to rally the country around our most important goal: protecting our people and our way of life.

Democrats have always been willing to work with President Bush to make America more secure. We know our nation was safer before 9/11, after 9/11, before the war in Iraq. But other threats, that won't be the case.

We do not need the President to offer more of the same on health care. We saw with the President's Medicare prescription drug plan that his policies put special interests ahead of the American people. Ask any senior citizen today about the Medicare plan has helped them. Even if they could work a crossword puzzle out of the New York Times on Sunday, which yesterday, day they still couldn't solve the Medicare Program of President Bush. It is impossible.

We need is a new direction, one that puts families first. Democrats believe the health care crisis is not just a moral imperative, but it is also vital to our economic security and leadership in the world.

As a result, he is gone. We don't know where he is, and he continues to threaten us today in his taunting, vicious, evil manner. Then there is the President's “axis of evil.” Four years ago, the President declared that Iraq and North Korea were the “axis of evil” whose nuclear threats posed risk to the American people, and he was right. Well, mostly right. Instead of pursuing the correct policy to make it safer, he invaded Iraq. Now two members of the “axis of evil”—North Korea and Iran—are more dangerous, and after spending billions of dollars and losing 2,300 American lives, we found out that the third, Iraq, didn't pose a nuclear threat at all.

Then there is what this President has done to our military. Not only has he failed to properly equip our troops for battle—we know the stories are all over the country about 80 percent of our people who have been injured—those 18,000 and 2,300 dead—90 percent of them would have been hurt less, many lives would have been saved had they had the body armor that was available. According to the Pentagon's independent studies, the Pentagon is stretched—stretched in a manner, as evidenced by, having mass advancements in rank, which they have never done before, because they are trying to keep people in the military, among other things. Our forces are stretched entirely too thin.

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What we need is a new direction, one that puts families first. Democrats believe the health care crisis is not just a moral imperative, but it is also vital to our economic security and leadership in the world.
Every day we go without reform is another day America takes another step backward from a position as global leader.

For our families, we must make health care affordable and accessible. For our businesses, we must remove the burden of skyrocketing costs that is holding our businesses, our economy, and our workers back in the global marketplace.

Our fourth clue that the President knows America’s needs will come in his remarks about the economy. After all we have seen in the past 5 years, it will not be credible for the President to claim our economy is growing, that his plan to reduce his deficits—and I say his deficits—is working, and that Congress is to blame for spending and bad decisions. The truth is, the fiscal nightmare we see today belongs to President Bush and President Bush alone.

I love to watch golf on TV. I know I am not like a lot of people, I should be watching football or basketball or something. I love to watch golf on TV. It is a game of chess. Yesterday, Tiger Woods—this guy is fantastic. He is seven strokes behind after the first day. 24 holes yesterday and wins the tournament. He has a bad day and wins the tournament.

I mentioned records—he holds all kinds of records. That was the 47th tournament he won—quicker than anyone else in the history of golf. 50 years old. He won the Buick Open four times. That is what he won yesterday. He holds record after record. I mention these records because President Bush holds all the records. The highest deficit, he holds them all. There is not a close second. He has them all.

It is not a record the American people envy, such as that of Tiger Woods. His financial record has bankrupted this country. We are going to be asked in a couple of days to increase the deficit ceiling—over $8.2 trillion.

Here is another doublespeak Orwell would be proud of: we are likely to hear tomorrow night. I am sure we are going to talk about the Bush competitive agenda. The President can talk all he wants about making America competitive, but for 5 years he has done nothing to keep America in the game. From what we have read in the press, this plan sounds like more empty rhetoric from someone who has spent 5 years slashing the funding we need to stay on the cutting edge. He shut the doors to thousands of college students by supporting cuts in student aid. He has allowed our country to fall further behind our trading partners. It is no accident that is happening in South America. President Reagan, President Clinton, and the first President Bush worked hard to democratize Central and South America. These countries are losing their democracy edge because we have so neglected the hemisphere.

He has lavished billions on big oil instead of investing in American technology and know-how to make us more energy independent. We need to hear new economic ideas tomorrow night. The President needs to tell us how he is going to begin paying down the debt, his deficit, so our children and our grandchildren do not pay the price for his reckless fiscal record.

It is so strange to me that Republicans—when I started my political career, they were the ones concerned about deficits. They have created them. They don’t complain about spending. They just want to be seen cutting it. The President has not vetoed a single spending bill. Of course, he hasn’t vetoed anything, but why should he? We don’t have separate branches of Government while he is here; the Republican Congress does whatever he wants. Maybe beginning the sixth year that will not be the case.

We need the President to speak honestly about tax relief, about middle-class families and how they deal with these energy prices. The truth about the Bush millionaires stand, with his newest proposal, to get over $100,000 while the average working family will receive pennies on that. The President’s priorities are upside down. It is time for him to join us and bring fairness to our Tax Code.

Democrats are ready to work with President Bush, but he needs to commit to policies that put the needs of hard-working Americans first. One final signal that President Bush is committed to America stronger will come on the issue of reform. Because of connections to the culture of corruption and stonewalling about Jack Abramoff, it is not credible for President Bush to claim the moral high ground on values as an honest government. President Bush needs to set an example, if he is going to lead our country forward tomorrow night. He needs to come clean about his connections to corruption, with Abramoff—as Republicans, they can do. HAGUE THUNE—Republican Senators have called for this. Too many Republicans have shown in recent days that we are going to obscure the facts and move on.

There is legislation pending. We do not need a task force. We need Senators LIEBERMAN and COLLINS to go ahead with the hearings and decide what needs to be done. Our legislation may not be perfect, but it is legislation we need to start with.

It is up to those who control the White House where men are willing to break the law and ignore America’s best interests so they can protect their political power. Safavian, Libby, Rove—it is Republicans who control the Congress which sold its soul to special interests and a Republican right-wing base, a base that has its sights set on stacking our courts with extremist judges. They have acknowledged that. It has been K Street, the so-called K Street Project, that has conspired with corrupted lawmakers. In the first, going so far as having them not hire Democrats to work as representa- 

We have a plan to reform Washington. We need to bring it to the Senate floor. We need to do that. President Bush has to join with us. Anything less, we will know the President has no interest in changing his ways and making America stronger.

The President faces a tremendous test tomorrow night. It is up to him to prove to the American people he intends to denounce the culture of corruption that has come to Washington since he arrived and change direction in 2006. Democrats are ready to work with President Bush in order to move our country forward because we believe that together, America can do better. So tomorrow night I hope President Bush will join us in putting progress ahead of politics so we can have a State of the Union that is as honest and strong as the American people.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise today to discuss the President’s nomination of Samuel A. Alito, Jr., to the Supreme Court of the United States. I am pleased to have an opportunity to discuss this and to present reasons why my conclusion is going to be as it is.

It is no secret that Judge Alito is from my home State and I was honored to introduce him to the Judiciary Committee. I talked with him privately in my office. He is an accomplished jurist from a distinguished family in New Jersey, and at that hearing our colleagues from Pennsylvania, Mr. SPECTER, asked me if I was endorsing Judge Alito for this position and I told him I was just presenting evidence to the committee and I will let the record speak for itself. I was not going to make any prejudgments. I wanted to hear from Judge Alito. I wanted to listen to his answers to my colleagues’ questions.

This nomination, as all are when it comes to the Supreme Court, is an incredibly important moment for our Nation—particularly because Judge Alito has been nominated to replace Justice Sandra Day O’Connor. Justice O’Connor, over the past 25 years, has proven she is not an ideologically conservative Justice or a liberal Justice. She has not brought an agenda to the Court. That is why Justice O’Connor has been such an important swing vote—because she always studied the facts and the law and tried to apply them fairly.

I did not always agree with her. But, like many Americans, I knew she came at these legal questions fairly and with an open mind. She showed respect for precedent. She put the law above her beliefs. For her, it was critical that we replace Justice O’Connor with someone who shares her open-minded approach of looking at the law and the facts with no political agenda. Even the mere threat of legal activism on this Supreme Court threatens the future of this country and the rights of our children, our grandchildren, and other generations.
Many legal experts—judges, lawyers, professors—have contacted me regarding this nomination. Some supported him, some opposed him. Many of these experts tried to convince me one way or the other. But when I listened to Judge Alito at his hearing in the Judiciary Committee, I listened with the faces of my grandchildren in my mind; with the thoughts of ordinary people who depend on the fairness of our society. I was applying Judge Alito’s philosophy to the real problems of everyday people—in New Jersey and across the Nation.

I often hear many concerns from my constituents about how powerless they feel in the face of insurance companies that are often indifferent to their plight, or as an employee unfairly treated in the workplace. What rights do everyday Americans have in the face of giant corporations or unchecked Government power? All the hearings I’ve had thus far indicate to me that Judge Alito almost always lined up against the little guy and with the big corporations and Government. That is the side he came out on. In fact, the Knight-Ridder study of 1999 shows how workers who defend their jobs are “seldom sided with . . . an employee alleging discrimination or consumers suing big business.”

The Washington Post analysis of all divided opinions on the Third Circuit involving Judge Alito found that he “has sided against three of every four people who claim to have been victims of discrimination” and “routinely . . . defers to government officials and others in a position of government authority.”

I don’t think that is what our Founders wanted when they designed the Constitution.

I want to give two examples. In Bray v. Alabama, an African American motel worker in Park Ridge, NJ, alleged discrimination against her employer. The Third Circuit ruled that she deserved her day in court because there was enough evidence of discrimination. Judge Alito dissented, citing concerns about the cost of trials to employers. Listen to that—citing concerns about the cost of trials to employers. I wonder if the Constitution makes any reference to that or does it say everybody should have equal rights when it comes to hearing their case in the courtroom?

The other judges in that case criticized Judge Alito’s dissent, saying that if it were law, then the employment discrimination laws would have no real effect.

In another case, Sheridan v. Dupont, Judge Alito was the only judge of 11 judges who heard the case to find against the claim of gender discrimination. Judge Alito stated that the alleged victim should not even get a trial. That is absolutely contrary to what our country is about. This is a nation of laws. The other judges were so distressed by Judge Alito’s decision that they said “the judicial system has little to gain by Judge Alito’s approach.”

So if he is confirmed to the Supreme Court we ask ourselves the question: Will Judge Alito make it more difficult for the everyday people to protect themselves and their families against the power of big business and unchecked Government power? Whatever else he may need the help? Is that what we are talking about when we enact laws here? I hope not. Unfortunately, it appears almost certain.

Regarding individual rights, there was a very disturbing exchange in the hearing involving the Constitutional right to reproductive choice. Senator DURBIN asked Judge Alito if he would agree with Chief Justice Roberts’ statement that “the right to choose is settled law.” It seems to me that it was a “no-brainer”—of course it is settled law. It has been on the books for 33 years and upheld 38 times.

You don’t have to go to law school to figure that one out.

But Judge Alito refused to say it was “settled law.” To me it was a telling moment in the hearings.

“I am not a lawyer, but I understand this: The right to choose is settled law. That means that is the law it is seen by Judge Roberts, Chief Justice. Judge Alito’s refusal to acknowledge that the right to choose is settled law indicates to me that, even before he sits on the Supreme Court, he intends to overturn Roe v. Wade.

That is the interpretation I make from that.

For everyday New Jerseyans, especially our State’s women, that would be the beginning of a nightmare. We do not want to turn back the clock on women’s rights. Even if abortions become illegal, they will still happen—but largely in unsafe conditions. It’s a nightmare that I do not want to risk happening.

Then there is the issue of abuse of power and the power of the Presidency. Growing up in New Jersey, it is clear that our state is proud of our role in the American Revolution. More battles of the Revolutionary War were fought in New Jersey than in any other state. The most famous image of that war is George Washington crossing the Delaware River at Trenton.

New Jersey is a state of immigrants. Many New Jerseyans came to America to escape kings, despots and dictators. So we understand why we fought the War of Independence to get rid of King George.

America doesn’t want a king or an “imperial President.” Neither does New Jersey. That’s why we have three co-equal branches of government.

So when Judge Alito talked about his theory of a “unitary executive”—a President above the other two branches of government—I found that very troubling.

The Father of our Nation, George Washington, warned the American people about allowing a leader to claim too much power. In his farewell address to the nation, Washington indicated his concern about the Presidency becoming too powerful.

He said we should avoid allowing: the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism.

Those are Washington’s words. But they have a real resonance today. The current administration claims a power beyond the laws that Congress has set. It is an administration that begins to look like it can spy on us without a warrant, despite specific laws to the contrary. These are the kinds of abuses that caused the citizens of New Jersey and the other American colonies to rise up against King George III.

We don’t want a King. And we don’t want to create a Supreme Court that will crown this President—or any future President—Republican or Democratic.

The question before us is not a generic question of whether Judge Alito is qualified for the Supreme Court. The real question is whether Judge Alito is the right person for this seat on the Supreme Court. The seat at issue is vacated by Justice Day O’Connor’s seat. It is a seat held by a middle of the road, balanced justice.

As I noted during my testimony introducing Judge Alito to the Judiciary Committee, he is a young man. If the Senate confirms him for a lifetime appointment to the Supreme Court, he might serve for three decades—or even longer. His decisions would affect not only our rights, but also the rights of our children, our grandchildren and other future generations.

That’s why, after careful consideration and deliberation, I have decided to vote no on the confirmation of Judge Alito. He is a good, decent man—an ethical man. I do not think he subscribes to any bigoted views. But I believe there is a grave risk that he carries a legal agenda with him, one that he will bring to the Supreme Court.

I think the issue is not black and white. I think it is a gray issue. If there is a gray issue, if there is doubt about where we are going to come out, I want to decide on protecting women’s rights and protecting ordinary people in fairness before a court of law.

While there will be law professors and others who will disagree with my analysis, as I said before, I am more concerned about the effect of this nomination on everyday people in New Jersey and across the country.

I am proud that there is a Federal courthouse in Newark that carries my name. It was while I was absent from the Senate a while that that was done. But I fought hard to get an inscription put on the wall of that courthouse. I wrote it. It reads:

The true measure of a democracy is its dispensation of justice.

This Nation of laws has to continue to be just that, and people have to know that they are treated fairly and that their personal rights are protected and that they can bring courses of action if their rights are damaged.
I believe in that quote. It guides me today.

For the parents fighting an insurance company for access to health care for their child, for the blue-collar worker facing harassment in the workplace, for women who want government’s hands off their bodies, for foreigners trying to come here. When some on the court sought to inject an activist political philosophy into judicial decision-making and to turn back the clock on the liberties afforded the American people under the Constitution and confine American citizens as enemy combatants, but to also conduct warrantless wiretapping of American citizens as enemy combatants, but to also conduct warrantless wiretapping of American citizens, a justice who would allow this administration to continue to stretch and potentially violate its legal and constitutional authority. Especially now as our Nation faces today and will face tomorrow, America cannot afford that kind of justice.

We live in extraordinary times today. President Bush has sought the accumulation of unprecedented powers. He has asserted the authority to not only torture detainees and indefinitely detain American citizens as enemy combatants, but to also conduct warrantless wiretapping of American citizens.

Judge Alito has found against Congress’s power, he only strengthened my concern that this President cannot ignore the Constitution and confine American citizens indefinitely without the ability to challenge their detentions. Decisions such as this, which recognize that our national security is enhanced rather than undermined by respect of the rule of law, are what has always made the United States the envy of people around the world.

The bias Judge Alito has shown in favor of the executive branch threatens to undermine the freedoms that our judiciary has historically protected. From his work as a government lawyer to a speech before the Federalist Society in 2000, he consistently favors the concentration of unprecedented power in the hands of the President, even endorsing the so-called “unitary executive” theory that even many conservatives view as being at the fringe of judicial philosophy. It virtually gives the presidency exclusive powers that historically have belonged to either Congress or the courts. This theory is an activist theory, not a theory that reflects mainstream American thinking or values. In fact, the Supreme Court has largely rejected it.

Judge Alito has also backed granting absolute immunity to high-ranking Government officials who authorized illegal, warrantless wiretaps of American citizens, which is another position the Supreme Court has rejected. As far back as the Reagan administration, he has advocated that the President issue signing statements in an effort to shape the meaning of legislation. President Bush has often used this practice, most tellingly in December when he claimed the administration could ignore the new law banning torture whenever he sees fit. This undermines one of the coequal branches of our government, the people’s elected representatives of the United States Congress.

Judge Alito has found against congressional authority when he argued in dissent in United States v. Rybar against a ban on machine guns that five other appellate courts and the Third Circuit itself upheld. Judge Alito also authored the majority opinion in Gonzalez v. Department of Homeland Security and Economic Development, invalidating parts of the Family and Medical Leave Act for exceeding the bounds of congressional authority—a position the Supreme Court subsequently rejected.

Several in-depth reviews show Judge Alito’s rulings, especially his dissents, consistently excuse actions taken by the executive branch that infringe on the rights of average Americans. One study found that 84 percent of Judge Alito’s dissents favor the government over individual rights. Another, the Alito Project at Yale Law School conducted a comprehensive analysis of the Judge’s 15 years on the Federal bench. They found that “Judge Alito has permitted individuals to be deprived of property or liberty without actual notice or a prior hearing.”

During his hearings and in my meeting with him, Judge Alito did nothing to distance himself from these positions; in fact, by refusing to candidly acknowledge where he stands on power, he only strengthened my concerns about his views.

If it’s not where you come from, but where you will take the
nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

Back to a time when a President suspended the writ of habeas corpus; back to a time when a President ordered the internment of individuals based upon their ethnicity; and back to a time when a President ordered the unlawful break-ins and wiretaps against his opponents.

Our next Supreme Court justice must be a check and balance against broad Presidential powers that are inconsistent with our Constitution.

With respect to reproductive rights, Judge Alito told the members of the Judiciary Committee that he would look at such cases with an "open mind." However, he has, throughout his career, written that the Constitution does not protect a woman’s right to choose, worked to incrementally limit and eventually overturn Roe v. Wade, so narrowly interpreted the “undue burden” standard in one specific case as to basically outlaw this right for an entire group of women, and refused to state whether Roe is “settled law.”

What asked by Judiciary Committee Chairman SPECTER whether he continues to believe that the Constitution does not protect the right to choose, as he wrote in his 1983 job application at the Department of Justice, Judge Alito acknowledged that it was his view in 1985, but refused to say whether or not he holds that view today. I found Judge Alito’s refusal to answer this question extremely troubling.

Later, as an Assistant Solicitor General, Judge Alito wrote a memo outlining a new legal strategy that the Reagan administration could use to “advance the goals of bringing about the eventual overruling of Roe v. Wade” so narrowly interpreted the “undue burden” standard in one specific case as to basically outlaw this right for an entire group of women, and refused to state whether Roe is “settled law.”

As a judge on the Third Circuit Court of Appeals, Judge Alito alone concluded that all of the Pennsylvania restrictions, including the spousal notification provision, should be upheld as constitutional in Planned Parenthood v. Casey. Ultimately, the Supreme Court found 5-4 that the spousal notification provision was unconstitutional.

Justice O’Connor, who wrote the opinion, rejected Judge Alito’s arguments and wrote that the spousal notification provision provided an impermissible “undue burden” on reproductive rights. She concluded by saying “Women do not lose their constitutionally protected liberty when they marry.”

During our meeting, when I asked Judge Alito, “Do you believe Roe v. Wade is the ‘settled law’ of the land,” he was unwilling to say that it is settled law. During the Judiciary Committee hearing, he said multiple times in response to questions from three of my distinguished colleagues on the Committee, the principle of stare decisis, or respect for precedent, is not an “inexorable command.” While this is undoubtedly the case, this language is exactly what Justice Rehnquist used in his dissent in Planned Parenthood v. Casey when arguing that Roe should be overturned. Justice Rehnquist wrote, “In our view, authentic principles of stare decisis do not require that any portion of the reasoning in Roe be kept intact. Stare decisis is a universal, inexorable command.”

Because I was concerned that his approach to these issues is far different than Justice O’Connor’s, I gave Judge Alito every opportunity in our meeting to allay the concerns that were expressed by many New Yorkers. I regret that he did not do so.

If it’s not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

What does Morning in America look like after Judge Alito becomes a Supreme Court justice? Will it be an America where a woman’s constitutional rights are not acknowledged? Will it be an America where a woman does not have access to the best medical care? Will it be an America where women do not control their own bodies?

Our next Supreme Court justice must respect both the constitutional right to privacy and a woman’s right to choose. Our Nation’s civil rights are needed to provide equal rights in employment, voting, or disability, they are designed to eliminate discrimination from our society and to provide equal opportunity and access. These laws are often the direct result of our country’s civil rights movement.

Unfortunately, Judge Alito has consistently applied a narrow interpretation of civil rights laws. Over his 15-year judicial career, he has more often than not sided with corporations and against individuals.

In five split decisions involving a claim of sex discrimination, Judge Alito has sided with the person accused of the sex discrimination every time. In Sheridan v. E.I DuPont de Nemours, a woman brought a gender discrimination lawsuit after being denied a promotion. A jury ruled in her favor, but the trial judge threw out the verdict. The full complement of the Third Circuit voted 10-1 to reverse the judge’s decision in this sex discrimination case and remand the case for reconsideration. The dissenting judge wrote that the entire case should be dismissed. If Judge Alito’s view was the law of the land, virtually no woman who has been wrongfully denied a promotion based upon her gender would have her day in court.

In the area of race discrimination, Judge Alito voted in dissent against the plaintiff in both split decisions cases. The Third Circuit held that the plaintiff in Bray v. Marriott Hotels had shown enough evidence of possible racial discrimination to merit a trial before a jury. As in Sheridan, Judge Alito dissented, saying that the plaintiff had not produced enough evidence even to get to a trial of a jury of their peers. If Judge Alito’s view was the law of the land, virtually no person of color would be able to pursue discrimination based on race in the courts of our nation.

From the bench, Judge Alito has participated in five split decisions in the area of disability rights law and he sided with the defendant four out of the five times. In Nathanson v. Medical College of Pennsylvania, relating to a college’s knowledge of and response to the disability needs of a student, the majority, held that required a jury to hear her claims. Judge Alito disagreed with the majority, writing that Nathanson failed to prove that the college acted unreasonably in its response to her requests for alternative seating arrangements. If Judge Alito’s view was the law of the land, virtually no disabled person denied alternative accommodations could seek relief from the court.

These are only symbolic of the many cases where Judge Alito would say no to the average American citizen.

If someone’s daughter was seeking relief from discrimination based upon her gender, Judge Alito would say no. If an American of color was seeking redress from discrimination upon their race, Judge Alito would say no. If someone’s handicapped son was seeking relief from discrimination based upon his disability, Judge Alito would say no. Judge Alito would make it virtually impossible for an individual to go to court when his or her rights were violated, and have their day of judgment.

If it’s not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

Back to a time when there was not equal access to schools and government programs, back to a time when employment and fire employment just cause; and back to a time when all citizens were not guaranteed the right to vote.

Our next Supreme Court justice must truly subscribe to the inscription above the entrance to the United States Supreme Court—“Equal Justice under Law.”

The confirmation of a Supreme Court justice is one of the two most important responsibilities that a Senator has. This is the decision on war and peace, which is also about life and death. The other is deciding who will have a lifetime appointment to the Court that decides the laws of the land.

Make no mistake about it, Judge Alito is a decent, accomplished, intelligent man. A man who is proud to call our shared State of New Jersey home. But it is not enough to come from New Jersey—the test is—will you represent the values of New Jersey and this Nation on the highest court in the land?

In New Jersey we value creating opportunity, we cherish the idea of individual freedom and responsibility, and
we believe that justice is a force that should level the playing field between the individual and the powerful. I have given careful consideration to this nomination, and I entered the process with hopes of supporting Judge Alito. This is my first vote in this Senate, and I had hoped to cast it in support of this nominee, but after reviewing his record, and his testimony before my fellow Senators, I cannot.

The question for me has been will he tilt the court in its ideology so far that he will place in jeopardy decades of progress in protecting individual rights and freedoms. I am afraid that answer is yes. In good conscience, I regrettably cannot support his nomination for a lifetime appointment to be an Associate Justice of the Supreme Court of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Missouri.

Mr. SPECTER. Mr. President, on the question of the confirmation of Judge Samuel Alito, when you boil everything down and clear away all of the other issues, the most important thing each of us wants from a judge is fairness and impartiality. None of us would want a court that sided with him on the issues or the outcome he had already made up his mind before hearing our case. Whether we are rich or poor, weak or strong, but especially if we are poor or weak, victim or defendant, we need to know that he will look with fairness and impartiality at each of us.

We would not get a fair trial if we faced a judge who had already made up his mind. Not only would the deck be stacked against us, we would be dealt a losing hand if we had to face a judge with an agenda different from our case. That is what justice means—impartial and objective. That is the kind of justice we want hearing our case, and that is the kind of judge Sam Alito is.

Everything we have learned about Judge Alito from his testimony before the Senate Judiciary Committee, his lengthy record of decided cases, to the testimonials of his colleagues and peers, tells us that Judge Alito will be a fair, impartial, and objective Justice.

Judge Alito has told us how he believes a judge cannot prejudge an issue, a judge cannot have an agenda, a judge cannot have a preferred outcome in any particular case.

I was so glad to see that during his confirmation hearing Judge Alito would not allow himself to be forced into prejudging any cases. Now, many tried. They went down their list of issues and asked whether Judge Alito agreed with their agenda. They wanted to know how he would rule on one kind of case or another. They wanted him to decide cases before he even heard them.

That would not be justice, and that would not be Judge Alito.

Not only does Judge Alito know justice, Judge Alito knows democracy. Democracy means that laws governing the people can only be made by those elected by the people to make laws. He knows the Members of Congress are elected to make laws. The citizens of Missouri elected their Representatives and Senators to represent them in Congress, the legislative body. I am honored to be one of those so chosen. Judge Alito is not.

The citizens of Missouri are not electing Judge Alito to make laws. Judge Alito knows he will not have the power to make laws. Judge Alito knows he is neither a Congressman nor a Senator who can pass his own legislation from the bench. That is not the role of a judge.

Judge Alito knows he is not a politician advocating a program. That is not what a judge should do. He is not a politician responding to a stakeholder, carrying out the agenda of his constituency, whether it be New Jersey or any other State in the Nation, taking the pulse of voters or watching the polls. That is not how to be a judge.

Judge Alito has told us he will look at the facts within an open mind and then apply the Constitution and the law as written. He will not make up the law when he wants, he will not change the law when he needs.

Judge Alito also knows the law, as many of my colleagues on the Senate Judiciary Committee have pointed out. At every stage of his life, he has excelled at knowing and applying the law. As a law clerk to a Federal judge, Department of Justice official, Federal prosecutor, and now a Federal appellate judge, Judge Alito has had experience on the bench. Judge Alito is one of the most qualified ever nominated for the Supreme Court.

A very good friend of mine is an appellate judge, who in law school had the pleasure of supervising a legal document written by Judge Alito. He told me Judge Alito had the finest legal, judicial mind he had ever encountered. I trust his judgment.

Judge Alito’s peers and colleagues all agree. Judge Alito is supremely qualified for the Supreme Court. He comes highly recommended by his colleagues and members of the legal profession because of his legal knowledge and experience. Even those who have worked with Judge Alito and disagree with him on the issues or the outcome of his rulings consider him fair-minded and evenhanded.

In short, Judge Alito will make a great Supreme Court Justice. Unfortunately, there are those who want to use Judge Alito as a political football. I, for one, believe very strongly our judges and our justice system should be above partisan politics. Justice deserves better than to have the nominees dragged through the political mud.

My focus is on the nominee himself and on his legal knowledge and experience. In that regard, Judge Alito should be on the Supreme Court, and I will proudly vote to place him on the Supreme Court.

Every case he hears, he will approach with an open mind. Every case he considers, he will apply the law and Constitution as written. Every case he decides, he will check his personal feelings at the door and weigh the scales of justice.

We can expect, and should expect, nothing more from a Justice, and justice deserves nothing less.

I urge my colleagues to put aside partisan politics, to set aside pressure from special interests, to vote in cloture and then to vote on a majority vote to confirm Justice Alito to the Supreme Court.

I thank the Chair and yield the floor. THE PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I have in my hand a number of endorsement letters that have been written, starting with the Grand Lodge of the Fraternal Order of Police. I ask unanimous consent that these letters be printed in the RECORD.

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

GRAND LODGE,
FRATERNAL ORDER OF POLICE,
Washington, DC, November 18, 2005.

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

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

DEAR MR. CHAIRMAN AND SENATOR LEAHY: I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our strong support for the nomination of Samuel A. Alito, Jr. to be an Associate Justice on the United States Supreme Court.

Judge Alito has a long and distinguished career as a public servant, a practicing attorney, and a Federal jurist. He currently serves as a justice on the U.S. Court of Appeals for the Third Circuit, the very same court where he began his career as a law clerk for Judge Leonard I. Garth. Judge Alito spent four years as an Assistant U.S. Attorney before becoming an Assistant to the Solicitor General in 1981. During his tenure with the Solicitor’s office, he argued thirteen cases before the United States Supreme Court, winning twelve of them. In 1991, he served as Deputy Assistant U.S. Attorney General before returning to his native New Jersey to serve as U.S. Attorney in 1990. Nominated by President George H.W. Bush to the Third Circuit, the Senate confirmed him unanimously on a voice vote.

The F.O.P. believes that nominees for posts on the Federal bench must meet two overlapping criteria: a proven record of success as a practicing attorney and the respect of the law enforcement community. Judge Sam
Alito meets both of these important criteria. In his fifteen years as a Federal judge, he has demonstrated respect for the Constitution, for the rights of all Americans, for law, and for law officers, who often find it very difficult to successfully assert their rights as employees. Judge Alito demonstrated his keen understanding of this in a case in which police officers in Newark, New Jersey (Fraternal Order of Police Newark Lodge No. 12 v. City of Newark, 1999). The Newark Police Department sought to force these officers to shave their beards, which they wore in accordance with their religious beliefs. Judge Alito ruled in favor of the officers in this case, correctly noting that the department’s policy unconstitutionally infringed upon their civil rights under the First Amendment.

The O.P.P. is also very supportive of Judge Alito’s decision in a 1993 decision filed by a coal miner seeking disability benefits under the Black Lung Benefits Act (Curt v. Director, Office of Workers’ Compensation Programs). Judge Alito ruled in favor of a coal miner, holding that the Benefits Review Board which denied the miner’s claim had misapplied the law regarding disability. He ordered that the case be remanded for an award of benefits, instructing that the Board could not consider any other ground for denying benefits. Members of the F.O.P. and survivor families who have been forced to appeal decisions which denied benefits under the Compensation law or programs like the Public Safety Officer Benefit (PSOB) know first-hand just how important it is to have a jurist with a working knowledge of applicable law and a strong identification with the claimants as opposed to government bureaucrats looking to keep costs down.

Judge Samuel A. Alito, Jr. has demonstrated that he will be an outstanding addition to the Supreme Court, and that he has rightfully earned his place beside the finest legal minds in the nation. We are proud to support his nomination and, on behalf of the more than 321,000 members of the Fraternal Order of Police, I urge the Judiciary Committee to expeditiously approve his nomination.

Sincerely,

CHUCK CANTREBURY, National President.

November 9, 2005.

Hon. BILL FRIST, Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. HARRY REID, Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. ARLEN SPECTER, Chair, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK LEAHY, Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Members of the Senate Judiciary Committee:

We are former law clerks of Judge Samuel A. Alito, Jr. We are writing to urge the United States Senate to confirm Judge Alito to the position of Associate Justice of the United States Supreme Court.

Our party affiliations and views on policy matters span the political spectrum. We have worked for servants of Congress on both sides of the aisle and have actively supported and worked on behalf of Democratic, Republican and Independent candidates. What unites us is our strong support for Judge Alito and our deep belief that he will be an outstanding Supreme Court Justice.

Judge Alito’s qualifications are well known and beyond dispute. Judge Alito graduated from Princeton University and Yale Law School. Prior to his appointment to the bench of the United States Court of Appeals for the Third Circuit for 15 years and has more judicial experience than any Supreme Court nominee in more than 70 years. During his time on the bench, Judge Alito has issued hundreds of opinions, and his extraordinary intellect has contributed to virtually every area of the law.

As law clerks, we had the privilege of working closely with Judge Alito and saw firsthand how he reviewed cases, prepared for argument, reached decisions, and drafted opinions. We collectively were involved in thousands of cases, and it never once appeared to us that Judge Alito had pre-judged 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 full and careful consideration of all relevant legal arguments and experience. We have come to believe that Judge Alito was guided by his profound respect for the Constitution and the limited role of the judicial branch. Where the Supreme Court or the Third Circuit had spoken on an issue, he applied that precedent faithfully and fairly. Where Congress had spoken, he gave the statute its commonsense reading, eschewing both rigid interpretations which undermined the statute’s clear purpose and attempts by litigants to distort the statute’s plain language to advance policy goals it did not achieve.

In short, the only result that Judge Alito ever tried to reach in a case was the result dictated by the applicable law and the relevant facts.

Our admiration for Judge Alito extends far beyond his legal acumen and commitment to principled judicial decision-making. As law clerks, we experienced Judge Alito’s willingness to consider and debate all points of view. We witnessed the way in which Judge Alito treated everyone he encountered—whether an attorney at oral argument, a clerk, an intern, a member of the court staff, or a fellow judge—with utmost courtesy and respect. We were touched by his humility and decency and saw his absolute devotion to his family.

In short, we urge that Judge Alito be confirmed as the next Associate Justice of the Supreme Court.

Sincerely,

Signed by 51 former clerks.
 According to statistics compiled by the Court of Appeals for the Third Judicial Circuit, Judge Alito has dissented only 16 times in the last six years, fewer times than some of his colleagues for relatively inactive cases. His co-panelists agreed with Judge Alito’s votes and written opinions 94 percent of the time. It is possible to take issue with some of his views in these cases, but this isn’t the record of a judge on the fringe of mainstream judicial thinking. During 18 hours of hearings—almost twice as long as his predecessor, John Roberts—Judge Alito displayed a deep understanding of the legal issues the court is likely to confront and kept cool under fire. He demonstrated a willingness to learn how he would rule on some of the controversial issues, but that is hardly surprising. Unfortunately, given the divisiveness in Washington today too much candor can prove fatal to a nominee. In nominating Judge Alito, President Bush fulfilled a campaign promise to appoint judges who shared the views of Justices Clarence Thomas and Antonin Scalia. Thus, he delivered a candidate with sound credentials, but a conservative record that many find troubling. This record includes a narrow view of abortion rights, apparent support for the expansion of presidential powers in wartime and a narrow interpretation of the regulatory authority of Congress. Judge Alito likely will help move the court rightward, and some senators and voters may find this a compelling reason to vote against him. No justice should be denied a seat on the court, however, solely on the basis of judicial philosophy, particularly someone of Judge Alito’s proven ability and experience. The best way for critics—Democrats, mostly—to prevail when it comes to selecting federal judges is to prevail at the ballot box.

According to reports based on his recent chief justice confirmation hearings, Alito refused to state that Roe vs. Wade is settled law. He did assert that it is ‘set in the Culture of Life’ and should be respected as precedent. A stronger statement would have been more reassuring, but in a breathing space, a bit more, much, in settled. Were it so, then Plessy vs. Ferguson, which the Supreme Court used in 1896 to enable decades of segregation under a separate but equal rule, could not have been undone by the court in 1954. Americans should take some comfort in Alito’s acknowledgment of a right to privacy in the Constitution. His refusal to be pinned down more concretely on this point is defensible. Given that the court will rule on abortion issues such as where the president can declare war and whether any judicial check on executive power is possible. True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We would have a ready grasp of case law and nuance. Alito, a member of the Philadelphia-based Third Circuit Court of Appeals, demonstrated during three days of questioning that he possesses unlimited power, even during war. Third, his objections to the ‘one man, one vote’ doctrine appeared mostly technical. For example, he wondered whether it meant congressional districts should have an exactly equal amount of voters each term. But he rejected any belief in building upon previous decisions. True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We’d sum it up this way: Based upon his testimony, we’d feel very misled and deeply disappointed if he joined in an overthrow of Roe.

Second, he played down how he wholly prefers presidential power. He left wiggle room on issues such as where the president can declare war and whether any judicial check on executive power is possible. He rejected any belief in building upon previous decisions. True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We’d sum it up this way: Based upon his testimony, we’d feel very misled and deeply disappointed if he joined in an overthrow of Roe.

Well, I think he’s a good enough lawyer, a good example, that he will think through previous decisions. He would make light of checks and balances. Most notably, he agreed presidents don’t possess unlimited power, even during war.

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Second, he played down how he wholly prefers presidential power. He left wiggle room on issues such as where the president can declare war and whether any judicial check on executive power is possible. He rejected any belief in building upon previous decisions. True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We’d sum it up this way: Based upon his testimony, we’d feel very misled and deeply disappointed if he joined in an overthrow of Roe.

Well, I think he’s a good enough lawyer, a good example, that he will think through previous decisions. He would make light of checks and balances. Most notably, he agreed presidents don’t possess unlimited power, even during war.

Third, his objections to the ‘one man, one vote’ doctrine appeared mostly technical. For example, he wondered whether it meant congressional districts should have an exactly equal amount of voters each term. But he rejected any belief in building upon previous decisions. True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We’d sum it up this way: Based upon his testimony, we’d feel very misled and deeply disappointed if he joined in an overthrow of Roe.
He does bring a cast of mind that causes some legitimate concern. But Alito showed he has the experience, modest temperament, reverence for the law, and mastery of his profession that has served him well on the bench.

A common complaint about confirmations has been that nominees stonewall the committee. Alito tried to answer nearly every question. Democrats may not have liked his responses, but Alito dodged very few questions. This endorsement is not enthusiastic. Alito is a more conservative nominee than anyone concerned with the nation’s drift toward excessive executive power and disdain for civil liberties.

But the Supreme Court should not be stocked with justices all of the same political persuasion, left or right. As the replacement for Sandra Day O’Connor, Alito might very well move the court perceptibly to the right. But his methodical, just-the-facts approach to the law does not portend a shocking shift, and would not justify a filibuster of his nomination.

Alito did fall to allay some important concerns. On abortion, he rebuffed entreaties by Democrats to characterize Roe v. Wade as “settled law.” Chairmen Arlen Specter (R., Pa.) commended Alito for discussing the issue in more depth than did Chief Justice John G. Roberts Jr. At the same time, this exchange was less than encouraging. Alito, who wrote in 1985 that the Constitution does not guarantee the right to abortion, would not say he would have ruled differently today.

He pledged to “keep an open mind” on abortion cases. But he also said Supreme Court precedent is not “an inexorable command” if he considers the Constitution a living document, as he testified, he should weigh carefully the expressed desire of a majority of Americans to preserve reproductive freedoms.

On the question of presidential power, concerns linger that Alito would give undue deference to the executive branch. For all President Bush’s talk about “strict constructionism,” his freewheeling notions about his powers would have appalled many of the Constitution’s framers, who deeply feared an authoritarian executive.

At the hearings, Alito sought to temper the enthusiasm for presidential prerogative he expressed in writings with that of the government. And it is a lesson I never for-forgot. (By Jeffrey N. Wasserstein)

As a former clerk for Judge Samuel Alito, I can tell you he is not the conservative ideologue portrayed in a recent article by Knight Ridder reporters Stephen Henderson and Howard Mints (“Alito Opinions Reveal Pattern of Conservatism”).

I am a registered Democrat who supports progressive causes. (To my wife’s consterna-
tion, I still can’t bring myself to take my “Kerry for President” bumper sticker off of my car.) I clerked for Judge Alito from 1997 to 1999. While the two men worked with Judge Alito, until I read his 1985 Reagan job application statement, I could not tell you what his politics were. When we worked on the same cases, we reached the same result about 96 percent of the time. When we disagreed, it was largely due to the fact that he is a lot smarter than I am (indeed, than most people) and is far more experienced.

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.

One example that I witnessed of Judge Alito’s ability to approach cases with an open mind occurred in the area of criminal law, an area in which Judge Alito—a former federal prosecutor—had particular expertise. One time, I was looking at a set of legal briefs in a criminal appeal. The attorney for the criminal defendant had submitted a sloppier brief, a very slip-shod affair. The prosecuting attorney had submitted a neat, pre-prepared brief. I suggested (in my youth and naivete) that this was an easy case to decide for the government.

Judge Alito stopped me cold by saying that that was an unfair attitude to have before I had said anything. We conducted the necessary additional research needed to ensure that the defendant received a fair hearing before the court.

Perhaps not what one would expect from a conservative ideologue (and former federal prosecutor), but it is indicative of the way Judge Alito approaches each case with an open mind, and it is a lesson I’ve never forgotten.

Another example, which reached a result that may not be obvious, was a doctrine that is now a staple of the Constitution. While I was clerking for Judge Alito, I read in a-O’Connor decision that settled cases carried stare decisis, the doctrine that settled cases should not be continually revisited. Judge Alito has served on the U.S. Court of Appeals for the 3rd Circuit for 15 years, and has compiled a distinguished record that conclusively demonstrates respect for precedent.

The best indicator of how a justice may act on the Supreme Court is the judicial record the justice had before elevation to the court.

While a bald statement that “the Constitution does not protect a right to an abortion” in a vacuum might be cause for concern, Judge Alito’s statement made in open court in 2001, in the case of Planned Parenthood v. Casey, when he embraced a restrained approach to the law, deferring to a prior court decision even if he may have disagreed with its logic.

While a balm statement that “the Constitution’s respect for precedent and the important role of stare decisis—the doctrine that settled cases
the filibuster attempt is futile and this nominee will be confirmed.

So what could possibly be the motivation? The Senator from Missouri, who just spoke before me, alluded to this. I think it is common knowledge that it really is outside interest groups that are putting, in some insidious pressure on Senators to oppose this nomination, even though they realize the delay and the potential filibuster are futile. These are groups that have declared—and I quote, in one instance, it, we’ll do whatever it takes to defeat Judge Alito. I am very sorry that some of my colleagues have fallen under the spell of some of these groups. In my view, it is wrong to place the wishes of these interest groups before the wishes of the American people. I think it is also a mistake to waste the valuable time of the Senate, time we could be using to address other real and urgent needs that no doubt the President will address tomorrow night in his State of the Union speech which are well known to each of us here. We have more important things to do than to stage events to facilitate fundraising by special interest groups.

I urge all of my colleagues to stand up against these interest groups and to put the American people first by voting against the filibuster. I also continue to be struck by the lengths some will go in order to defeat this good man and good judge. This raises the question of ‘Why?’ Why do liberal special interest groups and their allies in this body oppose Judge Alito so vehemently?

I believe, at bottom, the reason they oppose his nomination is because he has refused to do their bidding. After all, Judge Alito is a judge who believes in judicial restraint, who understands the differences between the roles judges and legislators—elected representatives of the people—are to play in our government. He believes judges should respect the legislative choices made by the American people through their representatives. And he believes, as I do, judges have no warrant to impose their own beliefs on the rest of us under the guise of interpreting the Constitution.

It is sad but true that the prospect of a Supreme Court Justice who will respect the legislative choices of the American people scares the living daylights out of certain interest groups and their ilk. Why? Because the legislative choices of the American people are not the legislative choices of these interest groups.

There are some in this country who are entitled to their opinion. Their views are so extreme they will never prevail at the ballot box. The only way they could possibly hope to get their views enacted into law would be to circumvent the Democratic process and pack the courts with judicial activists who will impose their views on the rest of us.

What are these views? Well, one organization I think makes the point. The American Civil Liberties Union is one example. They represent child pornographers because they believe that child pornography is free speech. Yet at the same time, they litigate against schoolchildren who want to recite the Pledge of Allegiance because it invokes “one nation under God.” They believe the Constitution protects the right to end the life of a partially born child. Yet at the same time, they believe the Constitution does not protect marriage between only one man and one woman.

They seem to believe that criminals have more rights than victims. And they believe that terrorists should receive special rights never before afforded to enemy combatants during a time of war.

This is the hard left’s version of America. It is a place where criminals and terrorists run free on technicalities, where pornographers may speak but people of faith must keep quiet, where true values are replaced by social experimentation.

The liberal special interest groups and those who agree with them in this body to oppose Judge Alito do so because Judge Alito’s America is not the hard left’s America. But why? Why do they believe the Constitution protects the wishes of these special interest groups while denying the decency of an up-or-down vote, and some will do it. Judge Alito’s treatment by this hard core of left-leaning groups and their supporters says more about them than it does Judge Alito.

What, then, is Judge Alito’s America? Well, I found one of the best answers to that question in, of all places, the New York Times. On January 12, one of their columnists, David Brooks, wrote: ‘We are living in a culture where the differences between Judge Alito’s America and the America envisioned by some on the hard left...’ He wrote:

‘If he’d been born a little earlier, Sam Alito probably would have been a Democrat. In the 1950s, the middle-class and lower-middle-class whites in places like Trenton, N.J., where Alito grew up, were the heart and soul of the Democratic Party.’

But by the late 1960s, cultural politics replaced New Deal politics, and liberal Democrats did not even win white ethnic voters. Big-city liberals launched crusades against police brutality, portraying working class cops as thuggish storm troopers for the Establishment. The liberals were doves; the ethnic voters were hawks. The liberals had ‘Question Authority’ bumper stickers; the ethnics had been taught in school to respect authority. The liberals thought that an unjust society caused poverty; the ethnics believed in working their way out of poverty.

Sam Alito emerged from his middle-class neighborhood about that time, made it to Princeton and found ‘very privileged people behaving irresponsibly.’

Alito wanted to learn; the richer liberals wanted to strike. He wanted to join the ROTC; the liberal Princetonians expelled that organization from campus. He was ordered and respectful; they were disorderly and disrespectful.

Mr. Brooks continues:

‘If there is one lesson from the Alito hearings, it is that the Democratic Party continues to represent (middle-class white) voters just as vigorously as ever.

If you listened to the questions of [Republicans], you heard [Senators] exercised the power to delay legislation...'

Deliberation and debate are hallmarks of the Senate. Our tradition has been that once a judicial nomination
has reached the Senate floor, we debate and then we vote on confirmation. There is no need to revisit all of the arguments regarding judicial nomination filibusters. Suffice it to say that American history contains but a single example of failing to invoke cloture on and then confirm a Supreme Court nomination. The 1968 nomination of Abe Fortas to be Chief Justice, however, bears no relationship to the current situation.

First, while the Fortas nomination did not have majority support, the Alito nomination clearly does. Judge Alito enjoys majority bipartisan support. I realize his opponents are not happy that Judge Alito will be confirmed; no one likes to lose. But the correct response to failure is to pick yourself up and try another day, not to dig the process to get your way.

Second, opposition to cloture on the Fortas nomination was almost evenly bipartisan, with 23 Republicans and 19 Democrats. As we are about to see, opposition to cloture on the Alito nomination will be entirely partisan. The most important reason why the Fortas cloture vote is no precedent for this one is that there had not yet been full and complete debate on the Fortas nomination when the vote ending debate occurred. Senator Robert Griffin of Michigan stated clearly at the time that not all Senators had had a chance to speak and that the debate was being kept alive for legitimate purposes. The debate settled some of the issues and concerns raised by the Fortas nomination. Senators were debating, not obstructing, the nomination.

The same cannot be said today. Those raising this last-minute call for a filibuster have had a full and fair opportunity to air their views about this nomination. Let us not forget that debate over a nomination, especially to the Supreme Court, begins as soon as the President announces his intentions to nominate. The Judiciary Committee chairman, Senator Specter, accommodated Democrats and waited to hold the hearing on the Alito nomination until January. In fact, the 70 days between announcement and hearing exceeded the average time for all of the current Supreme Court Justices by more than 60 percent. Nonetheless, committee Democrats insisted on delaying the nomination for an extra week.

The nomination has now been on the floor for nearly a week. While the Senator from Massachusetts, Mr. Kennedy, says that Senators need still more time to debate, I recall the long, repeated quorum calls last week when Senators who could have spoken chose not to do so. I agree with the distinguished minority leader who last Thursday said that “there has been adequate time for people to debate. No one can complain in this matter that there hasn’t been sufficient time to talk about Judge Alito, pro or con.”

In fact, the last-ditch call for this filibuster came not from this floor or even from this country. The Senator from Massachusetts, Mr. Kerry, called for this filibuster from Switzerland. There is a difference between not having an opportunity to debate and not winning that debate. Nothing is being short-circuited here. This floor has been wide open for debate. No one can even suggest that the debate has not been a full and fair one.

To their credit, some of my Democratic colleagues who oppose the nomination itself have nonetheless said that this 11th-hour filibuster attempt is not in the best interest of the Senate. The Senator from Illinois, Mr. Obama, said over the weekend that the better course for Democrats is to win elections and persuade on the merits, rather than what he called overreliance on procedural maneuvers such as the filibuster. I agree.

We should not have to take this closure vote today. It only further politicizes and distorts an already damaged judicial process. Moving beyond that, it is clear that the case for Judge Alito’s confirmation is compelling. Last week I outlined three reasons why Judge Alito should be confirmed. He is highly qualified. He is a man of character and integrity, and he understands and is committed to the properly limited role of the judiciary, judges.

During the debate on this nomination, other Senators have explored these matters as well, including the Senator from Texas, Mr. Cornyn, who preceded me here today. Senator Cornyn is a distinguished member of the Judiciary Committee and a former State supreme court justice. His perspective and insight on judicial matters has been and is extremely valuable.

I wish to explore one specific issue that relates to Judge Alito’s judicial philosophy which, unfortunately, has been the subject of a disinformation campaign by Judge Alito’s opponents. That issue is Judge Alito’s view on the role of precedent or prior judicial decisions in deciding cases. Judges settle legal disputes by applying the law to the facts in the cases that come before them. The law that judges apply comes in two basic forms.

There is the written law itself in the form of constitutional provisions, statutes, and regulations. There are past decisions in which the courts have addressed the same issue. The Latin phrase for following precedent or prior decisions is “stare decisis,” which means “let the decision stand.” Mr. President, every judge believes in the doctrine of stare decisis. Every judge believes that prior decisions play an important role in judicial decision-making. That includes Judge Alito.

As I will explain, Judge Alito’s views on precedent are sound, traditional, and principled. When the Judiciary Committee hearing on this nomination opened, I outlined several rules which should guide the confirmation process.

The first was that we should take parts or elements of Judge Alito’s record on their own terms, in their own context for what they really are. That certainly applies to Judge Alito’s views regarding the issue of precedent.

Rather than acknowledging what Judge Alito said about stare decisis, however, some of his opponents have created a caricature of those views, which serves their political purposes but which misleads our fellow citizens about both Judge Alito’s record and the very important question of how we conduct senatorial business.

Let me start with Judge Alito’s own words. No one expresses his view of precedent better than he does. On January 11, 2006, Judge Alito offered this summary of his views:

I have said that stare decisis is a very important legal concept and doctrine. It described why we think precedent is so important. One of his points stood out, and I believe it is worth repeating. Let me just refer to that point. He said:

I think the doctrine of stare decisis is a very important doctrine . . . [It] limits the power of the judiciary . . . it’s not an inexorable command, but it’s a presumption that courts are going to follow prior precedent.

Precedent is an important element of judicial restraint. In contrast to the grandiose picture painted by some on the other side of the aisle, the judiciary doesn’t exist to right all wrongs, correct all errors, heal social wounds, and otherwise usher in an age of domestic tranquility. Judges have a specific role to play, but, like legislators and the executive, they must stay in their proper place.

Judge Alito believes that giving precedent an important role in deciding cases limits the power of the judiciary. If his opponents believe instead that judges should have unlimited power and may disregard precedent at will, let them try to persuade the American people.

Let me refer again to Judge Alito’s summary of his views on precedent. In addition to stare decisis being an important legal doctrine, Judge Alito also said that there is a general presumption that decisions of the Court will not be overruled. If that presumption did not exist, there would be little point in paying attention to prior decisions at all. In fact, it is that presumption which makes precedent useful in limiting the power of the judiciary.

Judge Alito also said that overruling a prior decision requires a special justification. Some of Judge Alito’s opponents suggest that he has taken a carelessly narrow or sterile view of the precedents of the court on which he now sits. I assume that, by this suggestion, they want people to believe that
Judge Alito would play fast and loose with Supreme Court precedent once he joins the Court. The suggestion is certainly false.

Judge Alito has voted to overrule his own court's precedents only four times in the 15 years on the U.S. Court of Appeals—only four times. In each of those cases, in which all of the judges in the circuit participated, he was in the majority, and in two of them the decision was unanimous. Judge Alito has demonstrated that judges should not needlessly overrule past decisions.

As he explained it, the factors helping judges to handle precedents, including ones to overrule or reaffirm them, include whether the decision has really been challenged and the Court has decided to retain it. This would, of course, not include cases in which the validity of a prior decision was neither challenged nor decided. It is, after all, another name for the judicial review of prior judicial decisions, a power held by judges, according to the judicial constraint which Judge Alito also endorsed, that courts should not decide constitutional questions unless absolutely necessary. That would include deciding whether prior decisions, especially constitutional issues, should be overruled or reaffirmed.

Obviously, a court does not decide an issue unless it actually addresses and decides it, and a court cannot be said to reaffirm or uphold a prior decision unless it actually addresses or decides that issue.

That said, a court strengthens the presumption that a precedent will be followed when the court actually does reaffirm or uphold a decision. At the same time, Judge Alito has said that adhering to prior decisions is not an inexcusable command. Those are not his words. As he pointed out at his hearing, the Supreme Court has repeatedly used stare decisis as an official restraint, which Judge Alito also endorsed, that courts should not decide constitutional questions unless absolutely necessary. That would include deciding whether prior decisions, especially constitutional issues, should be overruled or reaffirmed.

This only makes sense. While following prior decisions is a presumption, it is a rebuttable presumption. Here is where Judge Alito’s opponents cry foul the loudest and where they expose their real agenda.

Many of Judge Alito’s opponents do not really care about legal doctrines; they only care about political agendas. For them, the political ends justify the judicial means, and so-called principles are infinitely flexible so long as the political goal is achieved. They do not care about precedents in general; they only care about certain precedents in particular.

While Judge Alito has presented a thoughtful, principled approach to handling any prior decision, his opponents have but one simple, hard, political rule: Don’t touch the political heavy lifting and preserving particularly the Supreme Court’s role as policymaker in chief.

The real issue for Judge Alito’s opponents is not that he rules too often for this group or that group, as if judges are supposed to make the numbers satisfy some political interest group rather than faithfully apply the law. It is not really about theories such as what Justice Scalia calls a activism, a command which to Judge Alito apparently means nothing more unusual than that the head of the executive branch should be able to control and lead the executive branch. It is not about guilt-by-association accusations of affiliation with groups wanting to preserve Princeton’s all-male tradition made by Senators belonging to all-male clubs.

No. Mr. President, this is about abortion. That is the be-all and end-all issue of those who oppose Judge Alito. I admit there may be an exception or two over there, but I really believe it comes down to that. That is what is driving this, and that is what the outside special interests, the leftwing groups, are driving them. The 800-pound room in the room is Roe v. Wade. That is the decision Judge Alito’s opponents want left alone at all costs.

Many Senators and leftwing interest groups have demanded to know whether Judge Alito, if confirmed, would ever vote to overrule Roe v. Wade. I applaud their creativity in getting as close as possible to directly asking him that question. For most of Judge Alito’s opponents, Roe v. Wade was correctly decided doesn’t matter. Whether it was a legitimate interpretation of the Constitution does not matter. No, abortion advocates take a fluidly flexible approach to precedent, at least until they get the one they want. Then they become the most rigid and doctrinaire defenders of precedent, insisting on keeping what they have. This all seems like a judicial version of heads I win, tails you lose.

Mr. President, I am glad to say that Judge Alito follows principle rather than adhering to precedent. At the same time, Judge Alito has said that adhering to prior decisions is not an inexcusable command. This only makes sense. While following prior decisions is a presumption, it is a rebuttable presumption. Here is where Judge Alito’s opponents cry foul the loudest and where they expose their real agenda.

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While Judge Alito has presented a thoughtful, principled approach to handling any prior decision, his opponents have but one simple, hard, political rule: Don’t touch the political heavy lifting and preserving particularly the Supreme Court’s role as policymaker in chief. The judiciary must be guided by principles, not by politics. The Supreme Court has repeatedly said that the role of precedent is actually the weakest in the court’s decision process for one very simple reason. When the Supreme Court construes one of our statutes incorrectly, we can correct that error in short order. When the Supreme Court interprets the Constitution incorrectly, correction comes only through the cumbersome constitutional amendment process or the Court’s willingness to review its past decisions.

I am confident that a list of Supreme Court decisions affirming the principle that precedent is weakest in constitutional cases be printed in the RECORD.

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

**Stare Decisis Is Weakest in Constitutional Cases**

Apgostin v. Felton, 521 U.S. 293,295 (1997)


‘‘As we have often noted, “[s]tare decisis is not an inexcusable command.” That policy is at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or overruling on prior decisions.’’


(Quoting Helburn v. Hallock, 309 U.S. 196,119 (1940) and Burnet v. Coronado Oil & Gas Co., 285 U.S. 359,407 (1932)—Chief Justice Rehnquist:)

‘‘Stare decisis is not an inexcusable command. Rather, it is a principle of policy and not a mechanical formula of adherence to the latest decision. This is particularly true in constitutional cases, because in such cases “correction through legislative action is practically impossible.”’’


‘‘I have long recognized, of course, that the doctrine of stare decisis is less rigid in its application to constitutional precedents.”

Glidden v. Zdanok, 370 U.S. 530,543 (1962)—Justice Harlan: ‘‘... this Court’s considered practice not to apply stare decisis as rigidly in constitutional as in nonconstitutional cases...’’


‘‘In constitutional questions, where correction depends upon amendment and not upon legislative action, this Court throughout the history of the Court has had only a limited application in the field of constitutional law. And it is a wise policy which largely restricts it to those areas of the law in which correction can be had by legislation. Otherwise the Constitution loses the flexibility necessary if it is to serve the needs of successive generations.”


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St. Joseph Stock Yards Co. v. United States, 98 U.S. 38,94 (1876)—Justices Stone and Cardozo, concurring in the result.

‘‘The doctrine of stare decisis... has only a limited application in the field of constitutional law.”


‘‘[I]n cases involving the Federal Constitution, stare decisis is an inexorable command which to Judge Alito apparently means nothing more unusual than that the head of the executive branch should be able to control and lead the executive branch. It is not about guilt-by-association accusations of affiliation with groups wanting to preserve Princeton’s all-male tradition made by Senators belonging to all-male clubs.

No. Mr. President, this is about abortion. That is the be-all and end-all issue of those who oppose Judge Alito. I admit there may be an exception or two over there, but I really believe it comes down to that. That is what is driving this, and that is what the outside special interests, the leftwing groups, are driving them. The 800-pound room in the room is Roe v. Wade. That is the decision Judge Alito’s opponents want left alone at all costs.

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Mr. President, I am glad to say that Judge Alito follows principle rather than politics on the bench. Can you imagine if the attitude of his opponents regarding this one precedent, Roe v. Wade, actually prevailed across the board? What if adherence to prior decisions was actually an inexorable command? What if the Supreme Court’s interpretation of the Constitution, once on the books, could never be changed? If the doctrine of stare decisis were an inexorable command, decisions such as Dred Scott v. Sanford and Plessy v. Ferguson would still be on the books.

Judge Alito put it: ‘‘I don’t think anybody would want a rule in the area of constitutional law that... said that a constitutional decision once handed down can never be overruled.

The judiciary must be guided by principles, not by politics. The Supreme Court has repeatedly said that the role of precedent is actually the weakest in the court’s decision process for one very simple reason. When the Supreme Court construes one of our statutes incorrectly, we can correct that error in short order. When the Supreme Court interprets the Constitution incorrectly, correction comes only through the cumbersome constitutional amendment process or the Court’s willingness to review its past decisions.

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There being no objection, the material was ordered to be printed in the RECORD, as follows:
of precedent. It is a very important legal doctrine that serves to limit judicial power. There is a general presumption that past decisions will not be overruled, but this is not an inexorable command.

Judge Alito takes a sounds, traditional principle of view the role of precedent in judicial decisionmaking, and I hope my colleagues will consider Judge Alito’s view for what it actually is.

In closing, let me say that the debate over this nomination has been going on for about 3 months. It has been long and vigorous, both inside the Senate and across the country. I wish to note some of the opinions outside of this body on the nomination before us.

Some of my colleagues on other side of the aisle are fond of quoting liberal law professor Cass Sunstein’s statistical analysis about which sides have won or lost in different categories of cases before Judge Alito. They have often cited his dissent and claimed his bigger will find his true judicial philosophy. I wonder whether they will credit Professor Sunstein’s conclusions about Judge Alito’s dissents, published last November in the Washington Post.

He held on the contrary:

None of Alito’s opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfaithfully respectful. His dissents are lawyerly rather than bombastic. He does not berate his colleagues...Nor has Alito proclaimed an ambitious or controversial theory of interpretation. He avoids abstractions.

That was November 1, 2005.

Here is the conclusion of New York Newday, which is titled “Qualifications:”

Samuel Alito is a modest, decent man and an accomplished jurist, well within the country’s conservative mainstream. On that basis he should be confirmed. But the Nation will need him to be a strong guardian of the constitutional rights and protections that make this country great.

I ask unanimous consent that three other editorials from the Washington Post, Chicago Tribune, and the Newark Star-Ledger be printed in the RECORD.

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

[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 it looks—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 be— 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.

There is reason to worry that he would curtail abortion rights. And his approach to the balance between govern’s power and the states, while murky, seems un-promising. 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 rejudge 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 and restrained jurist. He pays proper care to the careful attention to the record and doesn’t reach for the political outcomes he desires. His colleagues and his opponents speak highly of him. His integrity, notwithstanding efforts to smear him, remains unimpeached.

Humility is called for when predicting how a Supreme Court justice will interpret 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 judicial philosophy 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 many judges who know less 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 determining factor. To go down that road is to believe that the law is not the same law, not the same legal doctrine that serves to limit judicial review. 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.

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do with Alito’s fitness to serve on the nation’s highest court.

Despite the spectacle of the hearings, we are convinced Alito, a New Jerseyan who sits on the Third Circuit Court of Appeals, is eminently qualified to serve as an associate justice of the U.S. Supreme Court and should be confirmed by the committee and ultimately by the Senate, and, yes, with the support of New Jersey’s two Democratic senators.

Our support is not an uncritical ode to homegrown talent. It is based, in part, on the respect and praise Alito has garnered from those who have worked with him throughout his judicial and judicial career. Democrats and Republicans, conservatives and liberals, many of whom, perhaps, philosophically disagree with Alito, have consistently maintained he is well-suited for the court.

We think they make a compelling case. Among those who speak highly of him are Rutgers University Law School Associate Dean Ronald Chen, an outspoken liberal who was just named by Gov.-elect Jon Corzine to be public advocate; retired Chief Judge John Gibbons of the Appellate Division since leaving the bench has worked aggressively to eliminate the death penalty; well-known Democratic lawyer Douglas Eakley, who was President Bill Clinton’s senior to the board of directors of the Legal Services Corp.; Democratic criminal defense attorney Edward Weinberg and former Mississippi General Robert Del Tufo, who served in Democrat Jim Florio’s cabinet and worked with Alito in the U.S. Attorney’s Office.

None of these folks had to stand up for Alito, but they did.

Similarly, the judges who sit with Alito on the 3rd Circuit in Philadelphia came forth in an unprecedented show of support, insisting he was not an ideologue, had scrupulously adhered to precedent and had shown no signs of hostility toward a particular class of cases or litigants.

The American Bar Association declared Alito “well-qualified”—the highest approval rating given by the ABA.

This is not to say we like everything we heard from Alito in the hearings.

Given our strong and long-standing support of the 3rd Circuit’s record of support, insisting Alito’s refusal to describe Roe vs. Wade as settled law could mean he would be inclined to take positions that chip away at a woman’s right to choose, we remain uncomfortable.

We reflect diverse views and constituencies and are united in our belief that Judge Alito will be an outstanding Supreme Court Justice and should be confirmed by the United States Senate.

As the Senate prepares for the confirmation process, it is important to look beyond the usual politics and ideology and focus on the judicial experience of this extremely well qualified nominee.

Judge Alito has served the United States as an Assistant Solicitor General, as a United States Attorney, and for the past 15 years, as a Judge on the Third Circuit Court of Appeals.

Judge Alito’s record on the Third Circuit Court of Appeals demonstrates judicial restraint. He has proven that he seeks to apply the law and does not legislate from the bench. Judge Alito’s judgments while on the bench have relied on legal precedent and current law, and he has a long-standing reputation for being both tough and fair. In short, he has demonstrated that he is the best of the federal bench and we believe he will be an excellent Supreme Court Justice.

We urge the Senate to hold an up or down vote and confirm Judge Alito.

Sincerely,


and discussed the way Judge Alito approached questions before that court, the way he acted during deliberations among other members of the court about the decision that should be reached in each case, and generally the way he went about discharging the enormously important duties he had as a member of that court. And despite differences in politics and viewpoints and backgrounds among some of the judges with him, they were all enthusiastically supporting his confirmation for service on the Supreme Court.

Judge Alito has earned the respect of those who know him best—his colleagues on the Federal courts, as well as his current and former law clerks, and the members of the bar who have appeared before him in court. He is widely respected for his even temperament, his integrity, his sound legal judgment, and his respect and courtesy for others.

I am confident Judge Alito will serve with great distinction as a Justice on the Supreme Court. I think reciting Judge Alito’s own words is the best way for me to conclude my remarks. He said:

Fifteen years ago, when I was sworn in as a judge of the Court of Appeals, I took an oath. I put my hand on the Bible, and I swore that I would administer justice without respect of persons, that I would do equal right to the poor and the rich, and that I would carry out my duties under the Constitution and the laws of the United States. And that is what I have done to the very best of my ability for the past 15 years. And if I am confirmed, I pledge to you that that is what I would do on the Supreme Court.

It is time to confirm this President’s nomination of Judge Samuel Alito. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I know there are a number of people who wish to speak on Judge Alito. I want to add a few comments of my own on this nomination. If I may inquire of the Chair, is there time that needs to be yielded?

The PRESIDING OFFICER. The Senator may speak up until 5 o’clock.

Mr. BROWNBACK. I thank the Chair. Mr. President, I sat in on the hearings for Judge Alito. I personally interviewed Judge Alito. I talked with him in my office. I sat through the hearings and was able to question him in the Judiciary Committee. I am on the Judiciary Committee, so I sat through those hearings to hear his testimony. I feel as if we had a good chance to take the measure of the man, and he is outstanding. I believe he is going to be an outstanding jurist.

He answered hundreds of questions, more than I believe any prior nominee has answered in the history of the Republic. He answered them with an encyclopedic knowledge of the law. It was amazing to me to see that he did not have a note in front of him the whole time, and if you asked him any constitutional law question, at any time in the history of the Republic, he would say here are the facts of that case, here is how the law was decided, this case is still in question or it isn’t. He is a brilliant jurist. He wasn’t particularly good at quoting constitutional law, getting the statutory law right, and I was particularly glad to hear he wasn’t good on law, on what would happen in other countries.

He has a long history on the bench which I think is important. For a series of years now, only so-called stealth candidates could be approved. Judge Alito is a man with years of experience on the Third Circuit Court of Appeals. He has written a number of opinions that we could dissect them and see whether his people were in the background, trying to determine does he lean this way or that way, but he has hundreds of published opinions, and through them we can see which way he leans.

He is a known commodity—well known, well respected, and well regarded across the board. I do think where he is going to contribute to the country, the Republic, is in the areas of religious freedom and free expression. This is an area that has been used much, but I think we are dealing with an all-powerful judiciary in every area, and I strongly doubt all the States would resolve them the same. I doubt a State in a certain part of the country would be identical to another one. Yet I do think it would reflect the will of the people. But we do not know how Judge Alito will rule on this issue. The Democrats don’t know, the Republicans don’t know, I don’t know. This is an issue I care deeply about, and we don’t know. That is probably as it should be because it is an area of active case law and one that is going to come in front of us.

The other area he was challenged so much on was Executive rights and privileges. I believe this man will be very clear in standing up to the executive branch when the executive branch needs to be held in check. I have no doubt at all about that.

One area we talked about that has not again gotten much review, but needs a lot, is the area of judicial restraint. We need a judiciary that will restrain itself. There are three separate branches of Government, each having a specific duty and not to overlap the other. The judiciary has not restrained itself in the past. Judge Alito, along with John Roberts, previously coming before the committee and this body, both spoke significantly and clearly about the need for judicial restraint. I believe if we don’t start seeing a judiciary that shows some restraint and says it is not an all-powerful judiciary in every area, it cannot appropriate money, that is left to the Congress, that we will start seeing the bodies remove judicial review by the Constitution compromised in the Constitution. It is not an area that has been used much, but I think we are going to start seeing it used much
more, if the judiciary does not show some level of restraint. This has been expressed by both John Roberts and Samuel Alito.

I believe Judge Alito will be an outstanding jurist if we are able to get closure in this body to end debate, to get the facts, to get to end debate. He is one of the most qualified individuals we have had. His is a beautiful story of immigrant parents coming to the United States and working hard to get a good education.

He is one of outstanding character. Probably one of the saddest chapters that has taken place is the challenge to his character, which is nothing short of sterling. This is a gentleman who has worked all his life to uphold the traditions of his family, to make his family proud and see his dad pleased that his son stood for right against wrong.

At the end of the day, I believe he will exercise justice and righteousness, doing both what is just and what is right. That is what we need in this country, a country that is both just and right.

In the greatest traditions of this Nation, we need to do what is right, and we need to be just to the strong, to the weak, to those who cannot speak for themselves. We need to stand up and speak for their rights even if they cannot speak for their own.

I support the nomination and yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 4 p.m. having arrived, the Democratic leader or his designee shall be recognized for 15 minutes.

Mr. KERRY. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I have heard a lot of my colleagues rely on the ABA’s determination that Judge Alito is “well qualified” as a reason—sometimes as reason enough—to vote for his confirmation. But there is a reason why an ABA ranking alone is not all that is required to be confirmed to the bench, let alone the highest Court in the land.

With a decision as fundamental—as irrevocable—and as important to the American people as the confirmation of a Supreme Court Justice, it is important we tell the Americans the full story about the ABA and those rankings.

When making its determination, the ABA considers analytical skills. They consider knowledge of the law. They consider integrity, professional competence, and judicial temperament. But United States Senators must consider more than these criteria.

What the ABA does not look at is the balance of the Supreme Court. What they do not look at is judicial activism.

Vote today is the consequences of a judge’s ideologically driven decisions for those who have been wronged and who just want to get their day in court. No matter how smart he may be, no matter how cleverly his opinions may be written, no matter how skillfully he manipulates the law, their standards don’t consider the impact of his decisions on average Americans. In short, they don’t measure the consequences to those who are disadvantaged Americans if Judge Alito becomes Justice Alito. That is our job.

None of these measurements consider whether Judge Alito routinely cuts off access to justice for disadvantaged Americans—that need it the most. They don’t ask whether he consistently excuses excessive government force when it intrudes into the privacy of individuals. They don’t consider that the only statement he has ever made about a woman’s right to privacy is that she doesn’t have one.

These are things that we must consider here in the United States Senate. These are things that are on the line in this vote this afternoon. And these are the reasons why the Americans want us to consider. We have to consider whether a judge we confirm to a lifetime appointment to the Supreme Court will undermine the laws that we have already passed that benefit millions of Americans like the Family Medical Leave Act. We have to consider whether Judge Alito will place barriers in the way of addressing discrimination, whether he will serve as an effective check on the abuse of executive power, whether he will roll back women’s privacy rights or whether he will enforce the rights and liberties that generations of Americans have fought and bled and even died to protect. None of the rights we are talking about came easily in this country. There were always those in positions of power who fought back and resisted. What we need in a Justice is somebody who is sensitive to that history. Senator after Senator has described specific cases and the way in which Judge Alito has handled them to have one.

I think the remainder of the time Senator KENNEDY will use. I thank those who have stood to be counted in this effort and who will continue to take a stand with their vote.

I particularly thank my senior colleague from Massachusetts, Senator KENNEDY. I think the remainder of the time Senator KENNEDY will use.

Mr. KENNEDY. I have 7 minutes, am I correct in that?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I will yield myself 7 minutes.

First of all, I thank my friend, Senator KERRY, for his strong commitment on this issue and his eloquence, passion, and support of this position. This is a time in the Senate that a battle needs to be fought. This vote that we are casting with regard to Judge Alito is going to have echoes for years and years to come. It is going to be a defining vote about the Constitution of the United States. It is going to be a defining vote about the rights of Americans. It is going to be a defining vote about the American people. And when we vote tomorrow, when we vote in a position that we will not be able to look back and say, ‘Well, we were wrong, and this was the wrong vote.’

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The Constitutions, they are a promise, of equal rights for all. That is a position that we can and we should defend anywhere, at any time.

I thank those who have stood to be counted in this effort and who will continue to take a stand with their vote. I particularly thank my senior colleague from Massachusetts, Senator KENNEDY, for his strong commitment on this issue and his eloquence, passion, and support of this position. This is a time in the Senate that a battle needs to be fought. This vote that we are casting with regard to Judge Alito is going to have echoes for years and years to come. It is going to be a defining vote about the Constitution of the United States. It is going to be a defining vote about the rights of Americans. It is going to be a defining vote about the American people. And when we vote tomorrow, when we vote in a position that we will not be able to look back and say, ‘Well, we were wrong, and this was the wrong vote.’
United States, about our protections of our rights and our liberties in the Constitution of the United States.

People in my State at this particular time are concerned about the difficulties they are having with prescription drugs. They are concerned about the problems they are having in paying their oil bills. They are concerned about their problems in paying for the education of their children. They are troubled by what they see as a result of Katrina. They are bothered by what they hear about the corruption in Washington and are deeply troubled by what is happening in Iraq. They have not had a chance to focus on what is the meaning of this vote in the Senate this afternoon.

But all you have to do is look back into history. Look back into the history of the judiciary. Look back to the history of the Fifth Circuit that was making the decisions in the 1960s. Look at the record of Justice William Judge Tuttle, Judge Johnson of Alabama and the courage they demonstrated that said at last we are going to break down the walls of discrimination in this country that have gripped this Nation for 200 years. Our Founding Fathers were. Our Founding Fathers foresaw this day. It is not going to be similar to Sandra Day O’Connor who, in the Hamdi case, said: Oh, no. No President, even in times of war, is above the law in this country. He is not going to be similar to Warren Burger, who said—No. President. No, you have to surrender your judicial authority.

If you care about the disabled, the Rehabilitation Act that we passed, the IDEA Act to include children in our schools, that we passed, that has been on the books for 25 years now, with Disabilities Act that we have passed to bring all of the disabled into our society, if you are looking for someone who is going to be a friend of the disabled— it is not going to be Judge Alito.

Finally, if you are looking for someone who is going to be willing to stand up to the executive branch of Government at a time that he is going to exceed his power and authority and the law of this country—it is not going to be Judge Alito. Alito is not going to be similar to Sandra Day O’Connor who, in the Hamdi case, said: Oh, no. No President, even in times of war, is above the law in this country. He is not going to be similar to Warren Burger, who said—No. President. No, you have to surrender the papers,” at the time of the Watergate break-ins. “No. Mr. President.”

This is the time. This is the issue. This happens to be the wrong judge at the wrong time for the wrong Court.

I hope this body will give us the time to be able to explain this in greater detail to our fellow Americans so a real vote can be taken. When it is, I believe this nomination approves. I understand my time has expired.

Mr. LEAHY. Mr. President, I began the hearing on this nomination by putting forward what for me was the ultimate question during the consideration of a successor to Justice Sandra Day O’Connor: Would Judge Alito, if confirmed by the Senate to the Supreme Court, protect the rights and liberties of all Americans and serve as an effective check on government overreaching?

Since this debate began last Wednesday, I have posed the fundamental question that this nomination raises for this body: whether the Senate will serve its constitutional role as a check on Executive power by preserving the Supreme Court as a constitutional check on the expansion of Presidential power.

This is a nomination that I fear threatens the fundamental rights and liberties of all Americans now and for generations to come. As astonishing as the facts may seem, it does not overstate them to point out that the President is in the midst of a radical realignment of the powers of the government and of its intrusiveness into the private lives of Americans. This nomination is part and parcel of that plan.

I am concerned that if confirmed, this nominee will further erode the checks and balances that have protected our constitutional rights for more than 200 years. This is a critical nomination, one that can tip the balance on the Supreme Court radically away from constitutional checks and the protection of Americans’ fundamental rights.

The procedural vote just taken was in large measure symbolic. It resulted in a formal Senate majority standing on the floor of the Senate and taking a majority view on a complex and controversial issue. That vote will be debated for just 5 days over the weekend. It will affect not only our rights but the fundamental rights and liberties of our children and our children’s children. In short, it matters, and it matters greatly. The vote the Senate will take tomorrow will determine whether Samuel A. Alito, Jr., replaces Justice Sandra Day O’Connor on the Supreme Court of the United States.

I appreciate why Senators who voted against cloture believe this matter deserves more searching attention by Senators and the American people. Among Democratic Senators, each is voting his or her conscience and best judgment. There will be many Democratic Senators who, like the Democratic members of the Judiciary Committee who have closely studied the record of this nominee, will be voting against the nomination. There will be some Democratic Senators who will confirm this assessment. Among those voting against, there are some who believe that it is not appropriate to withhold the Senate’s consent by extending the debate. The Senate debated Chief Justice Roberts’ nomination during 8 days and over a 10-day calendar period. Although much more divisive and controversial, the Alito nomination will be debated for just 5 days over a 7-day calendar period by the time the vote is called tomorrow.

It is true that Democratic Senators do not have the votes in hand. Each Democratic Senator individually gives these questions serious consideration. They honor their constitutional duty. I am
Of the many Supreme Court nominees who have not been confirmed, Justice Powell resigned in 1987. A personal view may prove right. I took Judge Ginsburg’s role than a full andpersonal role than a full and constructive role. The President withdrew his nomination of Harriet Miers as a nominee are the most recent Supreme Court nominations over the past few months is to be con- mended.

I thank and commend the many Democratic Senators who came to the floor, who spoke, who set forth their concerns and their views. That includes Democratic Senators opposing the nomination and those in favor. It is quite a roster: Senators Kennedy, Duk- cin, Mikulski, Clinton, Kerry, Nelson of Florida, Reed, Murray, Feinstein, Inouye, Harkin, Bingaman, Lincoln, Lieberman, Salazar, Carper, Levin, Obama, Dayton, Feingold, Johnson, Sarbanes, Stabenow, Lautenberg, Menendez, and, in addition, Senator Jeffords. These Senators approached the matter seriously, in contrast to those partisan cheerleaders who rallied behind the White House’s pick long be- fore the first day of hearings.

I respect those Senators who are giv- ing this critical nomination serious consideration but come to a different conclusion than I, just as I continue to respect those Senators who voted against the Roberts nomination. I have candidly acknowledged that over the course of history, their judgment and vote may prove right. I took Judge Roberts at his word in the belief that he had understood them to be creating had meaning. I continue to hope that as Chief Justice he will fulfill his promise and steer the Court to serve as an ap- propriate check on abuses of Presi- dential power and protect the funda- mental liberties and rights of all Ameri- cans.

Filibusters of judicial nominees— and, in particular, of Supreme Court nominees—are hardly something new. When President Reagan drew his previous nominee for this va- tion of the Senate’s role as a full and constructive role. The President should have re- nomenes. That is what I mean by judicial phi- losophy. The same remains true today as we consider a successor to Justice Sandra Day O’Connor. I strongly believe that judicial philosophy is too deferential to the government and too unprotective of the fundamental lib- eralties and rights of ordinary Americans for his nomination by President Bush to be confirmed by the Senate as the replacement for Justice O’Connor. Judicial philosophy comes into play time and again as Supreme Court jus- tices wrestle with serious questions about which they do not all agree. These include fundamental questions about how far the government may intrude into our personal lives. Senators need to assess whether a nominee will protect fundamental rights if con- firmed to be on the Supreme Court.

Several Republican Senators said that judicial philosophy and personal views do not matter because judges should just apply the rule of law as if it were some mechanical calculation. Senator Feinstein made this point ex- tremely well in her debate. Personal views and judicial philosophy often come into play on close and con- troversial cases. We all know this to be true. Why else did Republican sup- porters fail to support Bush to with- draw his previous nominee for this va- cancy, Harriet Miers, before she even had a hearing? She failed their judicial philosophy litmus test.

Indeed, Harriet Miers is the most re- cent Supreme Court nominee not to have been confirmed. It was last Octo- ber that President Bush nominated his White House Counsel Harriet Miers to succeed Justice O’Connor. He did so in the wake of the Senate’s return to the partisan pressure from the ex- treme rightwing of his own party by withdrawing his nomination of Harriet Miers to the Supreme Court after re- porters force President Bush to with- draw his previous nominee for this va- cancy, Harriet Miers, before she even had a hearing? She failed their judicial philosophy litmus test.

At his hearing, Judge Alito began by asking how he got this critical nomination. Over the course of the hearings, I think, we began to understand the real answer to that question. It has little to do with Judge Alito’s family story and a great deal to do with the pressures...
that forced the President to withdraw the nomination of Harriet Miers and this President’s efforts to avoid any check on his expansive claims to power.

This is a President who has been conducting a secret and warrantless eavesdropping on Americans for more than 4 years. This President has made the most expansive claims of power since American patriots fought the war of independence to rid themselves of the overbearing Court of King George III. He has done so to justify illegal spying on Americans, to justify actions that violate our values and laws against torture and protecting human rights, and in order to detain U.S. citizens and others on his say so without judicial review or due process. This is a time in our history when the protections of Americans’ liberties are at risk as are the checks and balances that have served to constrain abuses of power for more than 200 years.

Judge Alito’s opening statement skipped over the reasons he was chosen. He ignored his seeking political advancement within the Meese Justice Department by proclaiming his commitment to an extreme and activist right-wing philosophy. The Senate ignored his seeking political advancement within the Meese Justice Department by proclaiming his commitment to an extreme and activist right-wing philosophy. He sought to minimize the Federalist Society and his seeking to use it to justify actions that violate our values and laws against torture and protecting human rights, and in order to detain U.S. citizens and others on his say so without judicial review or due process. This is a time in our history when the protections of Americans’ liberties are at risk as are the checks and balances that have served to constrain abuses of power for more than 200 years.

This is a President who has been conducting a secret and warrantless eavesdropping on Americans for more than 4 years. This President has made the most expansive claims of power since American patriots fought the war of independence to rid themselves of the overbearing Court of King George III. He has done so to justify illegal spying on Americans, to justify actions that violate our values and laws against torture and protecting human rights, and in order to detain U.S. citizens and others on his say so without judicial review or due process. This is a time in our history when the protections of Americans’ liberties are at risk as are the checks and balances that have served to constrain abuses of power for more than 200 years.

This is a nomination to a lifetime seat on the Nation’s highest Court that has often represented the decisive vote on constitutional issues. The Senate needs to make an informed decision about this nomination. This process is the only opportunity that the American people and their representatives have to consider the suitability of the nominee to serve as a final arbiter of the meaning of Constitution and the law. Has he demonstrated a commitment to the fundamental rights of all Americans? Will he allow the government to intrude on Americans’ personal privacy and freedoms?

In a time when this administration seems intent on accumulating unchecked power, Judge Alito’s views on government power are especially important. It is important to know whether he would serve with judicial independence or as a surrogate for the President who nominated him. Based on a thorough review of his record and from his hearing, I have no confidence that he will act as an effective check on government overreaching and abuses of power.

As we began the hearings, I recalled the photograph that hangs in the National Constitution Center in Philadelphia, PA. It shows the first woman ever to serve on the Supreme Court of the United States taking the oath of office in 1981. Justice Sandra Day O’Connor has played a model Supreme Court Justice. She is widely recognized as a jurist with practical values and a sense of the consequences of the legal decisions being made by the Supreme Court. I regret that some on the extreme right have been so critical of Justice O’Connor and have adamantly opposed the naming of a successor who shares her judicial philosophy and qualities. Their criticism reflects poorly upon them. It does nothing to tarnish the record of the woman who served as an Associate Justice of the Supreme Court of the United States. She is a Justice whose graciousness and sense of duty

**CONGRESSIONAL RECORD — SENATE January 30, 2006**
fueled her continued service nearly 7 months after she announced her intention to retire.

As the Senate prepares to vote on President Bush’s current nomination—this third—for a successor to Justice O’Connor, I believe it is necessary to examine our critical role on the Supreme Court. Her legacy is one of fairness that I want to see preserved. Justice O’Connor has been a guardian of the protections the Constitution provides the American people.

Of fundamental importance, she has come to provide balance and a check on government intrusion into our personal privacy and freedoms. In the Hamdi decision, she rejected the Bush administration’s claim that it could indefinitely detain a U.S. citizen. She upheld the fundamental principle of judicial review over the exercise of government power and wrote that even war “is not a blank check for the President when it comes to the rights of the Nation’s citizens.” She held that even this President is not above the law.

Her judgment has also been crucial in protecting our environmental rights. She joined in 5-to-4 majorities affirming reproductive freedom, religious freedom, and an adherent to the same philosophical trend through its judicial appointments, litigation, and public debate, the President is my hope that even greater advances can be achieved during the second term, especially with Attorney Meese’s leadership at the Department of Justice.

When I first became interested in government and politics during the 1960s, the greatest influences on my views were the writings of William F. Buckley, Jr., the National Review, and Barry Goldwater’s 1964 campaign. In college, I developed a deep interest in constitutional law, motivated in part by disagreement with Warren Court decisions particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment. I discovered the writings of Alexander Bickel advocating judicial restraint, and it was largely for this reason that I decided to go to Yale Law School.

It is as the elected representatives of the American people—all of the people—and as the Senate that Senatorial responsibility with heightened forming our constitutional advice and consent responsibility with heightened forming our constitutional advice and consent.

The Federal judiciary is unlike the other branches of Government. Once confirmed, federal judges serve for life. There is no court above the Supreme Court of the United States. The American people deserve a Supreme Court Justice who inspires confidence that he or she, will not be beholden to the President but will be immune to pressures from the government or from partisan interests.

The stakes for the American people could not be higher. At this critical moment, Democratic Senators are performing a constitutional advice and consent responsibility with heightened vigilance. I urge all Senators—Republicans, Democrats and Independents—to join with us. The Supreme Court is the guarantor of the liberties of all Americans. The appointment of the next Supreme Court Justice cannot be made in the people’s interest and in the Nation’s interest, not to serve the special interests of a partisan faction.

I have voted for the vast majority of President Reagan’s, President Bush’s, and President Clinton’s judicial nominees. I recommended a Republican to President Clinton to fill Vermont’s seat on the Second Circuit, Judge Fred Parker, and recommended another Republican to President Bush to fill that seat after Judge Parker’s death. Judge Peter Hall. 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. In fact, I have voted for eight of the nine current Justices of the Supreme Court.

I want all Americans to know that the Supreme Court will protect their rights and will respect the authority of Congress to act in their interest. I want a Supreme Court that acts in its finest tradition as a source of justice. The Supreme Court must be an institution where the Bill or Rights and human dignity are honored. In good conscience, based on the record, I cannot vote for this nomination. I urge all Senators to use this last night of debate to cast their best judgment before casting their votes tomorrow. That vote will matter.

In my 30 years in the Senate, I have cast almost 12,000 votes here in the Senate. Few will be as important as the vote we cast tomorrow.

Mr. President, I now ask unanimous consent that the application to which I referred be printed in the RECORD.

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

PPP NON-CAREER APPOINTMENT FORM

From: Mark R. Levin.
To: Mark Sullivan. Associate Director, PPP.

Date Sent: 11/18/85.

Candidat: Samuel A. Alito, Jr., Department: Department of Justice.
Job Title: Deputy Assistant Attorney General.

Grade: ES-I.
Supervisor: Charles J. Cooper.
Race: White.
Sex: Male.
Date of Birth: Apr. 1, 1950.
Home State: New Jersey.

Previous Government Service: Yes.

A complete Form 171, political and personal resumes, complete job description, and letters of recommendation included for White House clearance to begin.

1980 Domicile (State): New Jersey.

Please provide any information that you regard as pertinent to your philosophical commitment to the policies of this administration, or would show that you are qualified to effectively fill a position involved in the development, advocacy and vigorous implementation of those policies.

Have you ever served on a political committee or been identified in a public way with a particular political organization, candidate or issue?

(Please be specific and include contacts with telephone numbers.)

I am and always have been a conservative and an adherent to the same philosophical views that I believe are central to this Administration. It is obviously very difficult to summarize a set of political views in a sentence but, in capsule form, I believe very strongly in limited government, federalism, free enterprise, the supremacy of the elected branches of government, the need for a strong defense and effective law enforcement, and the legitimacy of a government of checks and balances. In the field of law, I disagree strenuously with the usurpation by the judiciary decisionmaking authority that should be exercised by the branches of government responsible to the electorate. The Administration has already made major strides toward reversing this trend through its judicial appointments, litigations, and public debate, the President is my hope that even greater advances can be achieved during the second term, especially with Attorney Meese’s leadership at the Department of Justice.

When I first became interested in government and politics during the 1960s, the greatest influences on my views were the writings of William F. Buckley, Jr., the National Review, and Barry Goldwater’s 1964 campaign. In college, I developed a deep interest in constitutional law, motivated in part by disagreement with Warren Court decisions particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment. I discovered the writings of Alexander Bickel advocating judicial restraint, and it was largely for this reason that I decided to go to Yale Law School.

As a federal employee subject to the Hatch Act for nearly a decade, I have been unable to take a role in partisan politics. However, I am a life-long registered Republican and have made the sort of modest political contributions that a federal employee can afford to Republican candidates and conservative causes, including the National Republican Congressional Committee, the National Conservative Political Action Committee, Rep. Christopher Smith (4th Dist. N.J.), Rep. James Courter (12th Dist. N.J.), Governor Thomas Kean of N.J., and Jeff Bell’s 1982 Senate campaign. I am a member of the Federalist Society for Law and Public Policy and a regular participant at its lunch meetings and a member of the Princeton Alumni Association, a conservative alumni group. During the past year, I have submitted articles for publication in the National Review and the American Spectator.

Applicant Signature: Samuel A. Alito, Jr.
Date: Nov. 15, 1985

PPP Director Recommendation: Approved, Mark Sullivan.

Mr. DORGAN. We work on many important issues here in the Congress, but none more important than choosing a Justice to serve on the Supreme Court. This filling a seat on the U.S. Supreme Court is a very serious matter for both the President and the U.S. Senate. Our choice will impact...
our country well beyond the term of office for the President and for most of the Senate.

Those nominations are also very important to the citizens of our country and my State of North Dakota, many of whom—on both sides—have contacted my office and whose counsel I have heard and valued.

This is the second nomination for the U.S. Supreme Court that has been sent to the President Bush in the span of a few short months.

During consideration of the nomination of Judge John Roberts to become Chief Justice of the Supreme Court, I studied his record carefully. I reviewed the hearing record of his appearance before the Senate Judiciary committee as well as his record as a Federal judge on the Circuit Court.

And in the end, I voted to confirm Judge Roberts. I concluded that he was very well qualified, and I also felt after meeting with him that he would not bring an ideological agenda to his work of interpreting the U.S. Constitution.

In short, I felt he would make a fine Chief Justice.

The Supreme Court nomination we are now considering is that of Judge Samuel Alito.

This has been a difficult decision for me.

Judge Alito has substantial credentials. His education, work history, and his 15 years of service on the Circuit Court are significant.

However, in evaluating Judge Alito’s rulings, writings, and his responses during his nomination hearings, I have been troubled by several things.

First, he has a clear record over many years of a tendency to favor the big interests over the small interests. That is, when an individual is seeking personal freedom and liberty, or will not do enough to stand up against the government or a large corporation, Judge Alito’s rulings are often at odds with the rulings of his colleagues on the Court and tend to overwhelmingly favor the government or the big interests.

People who live in small States like North Dakota have, over many years, found it necessary to use the courts to take on the big economic interests. Whether it is taking on big corporations, the railroads, big financial interests, or the U.S. Government, as farmers have had to do in recent decades, I think it is important that a Supreme Court Justice be someone who will give the poor and the fair hearing.

Judge Alito’s rulings on the circuit court have, I believe, tilted heavily on the side of the big interests.

One of the key questions for me about a new Justice for the Supreme Court is how Judge Alito would interpret the Constitution in a manner that expands personal freedom and liberty, or will this person interpret it in a way that restricts personal freedom and liberty?

I believe Judge Alito’s record is one that leans in the direction of restricting the freedom and liberty of individual citizens.

I am also concerned by Judge Alito’s view of what is referred to as the unitary executive. This is an issue about Presidential power in our form of government. The judicial branch of Government is designed to be a check and balance on the expansion of Presidential power.

Judge Alito’s answers in the Judiciary Committee to questions about the unitary executive tilt toward showing deference toward expanded and unchecked Presidential authority. His views on this issue concern me.

For all of these reasons, I have decided to cast my vote against the nomination of Judge Samuel Alito. I take no joy in opposing his nomination, but for the reasons I have mentioned above, I am not comfortable voting to confirm him for a lifetime appointment on our Nation’s highest Court.

Over the years, I have supported about 97 percent of the nominees for the Federal court sent to us by President Bush. My record has been one of substantial support for the President’s nominees.

But for me, a nomination to the Supreme Court carries much more weight and greater potential consequences for the country.

Judge Alito is replacing Justice Sandra Day O’Connor on the Court. Justice O’Connor has been a key swing vote on so many issues that have been decided by a 5-to-4 vote in recent years.

I believe that Judge Alito’s nomination, if approved by the Senate, would tilt that Court in a direction that will restrict personal freedoms, strengthen the role of government and corporations in our lives, and allow the expansion of power of the Presidency.

For those reasons, I have decided to vote no on this nomination.

Mr. ROCKEFELLER. Mr. President, I rise today to share my thoughts and concerns about the President’s nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court.

It goes without saying that the decision whether to confirm a nominee for a lifetime position on the Supreme Court is among the Senate’s most serious and solemn constitutional obligations.

My ultimate test for whether to support a nominee to the Supreme Court rests with two questions: will the nominee protect the best interests of West Virginians through letters, telephone calls, and personal conversations. Many have expressed strong opposition to Judge Alito, and many have expressed strong support for him. I have weighed all of their views carefully.

I also have labored over Judge Alito’s record—his early writings, his rulings, his speeches, and his Senate testimony—and I met personally with Judge Alito. I wanted to hear directly from him, in his own words, what kind of an Associate Justice he would be.

There is no question he is an intelligent man with a deep knowledge of our legal system. During our conversations, he was a gentleman in every sense of the word. But for me these important character traits are not enough to warrant elevation to the U.S. Supreme Court.

I have concluded that although Judge Alito is a well-qualified jurist, I cannot in good conscience support a nominee whose core beliefs and judicial record exhibit simply too much deference to power at the expense of the individual.

Particularly in the committee hearings, when pressed on issues such as individual rights and Presidential power, Judge Alito’s answers troubled me—they were limited and perfunctory. I was left with a strong sense of his ability to recite and analyze the law as it stands but with very little sense of his appreciation for the principles and the real people behind those laws.

Unfortunately, Judge Alito’s record does not allay those concerns. As a government lawyer, a Federal prosecutor, and a 15-year Federal judge on the Third Circuit, with lifetime tenure, Judge Alito has repeatedly sided against people with few or no resources. The average person up against a big corporation, an employer, or even
the government itself, all too often comes out on the short end of the stick in front of Judge Alito.

I am particularly troubled by one case, RNS Services v. Secretary of Labor. In RNS Services, Judge Alito argued against, as a dissenting opinion, protecting workers in a Pennsylvania coal plant by not enforcing the jurisdiction of the Mine Safety and Health Administration, MSHA. Judge Alito claimed that the mine plant was closer to a factory than a mine, and therefore should be governed by the more lenient Occupational Safety and Health Administration, OSHA, standards. Fortunately for the miners, the majority was the majority opinion which would allow the President to act independently on the miners’ protection.

Outside the courtroom, Judge Alito has at various times in his career suggested, directly and indirectly, that he supports a controversial theory known as the “unitary executive” which would allow the President to act in contravention of the laws passed by Congress and carry out his policies. As a mid-career government lawyer, his writings showed a solicitude deference to the executive branch and a willingness to undercut the constitutional authority of Congress. As recently as 2000, Judge Alito forcefully argued in support of a controversial theory known as the “unitary executive” which would allow the President to act in contravention of the laws passed by Congress and carry out his policies. As a mid-career government lawyer, his writings showed a solicitude deference to the executive branch and a willingness to undercut the constitutional authority of Congress.

The interaction between the President and the Congress on matters of national security, classified and unclassified, is incredibly important to our safety and future. Today there is a serious legal and constitutional debate going on in our country about whether the President, who already has enormous inherent powers as the leader of our country, has expanded his executive reach beyond the bounds of the law and the Constitution. The fact is the President does not write the laws, nor is he charged with interpreting them—the Constitution is unequivocally clear that lawmaking resides with the Congress and interpretation resides with the courts—yet this President, on many fronts, is attempting to do both. This alarming trend has been exacerbated by the fact that we have a single party controlling both the White House and the Congress, resulting in minimal congressional oversight of an overreaching executive branch.

The Supreme Court, in the coming months, will be forced to rule on any cases related to expansion of Executive power. This nominee will play a pivotal role in settling the legal questions of today and charting a course for the legal questions of our children’s and grandchildren’s generations.

These are core questions: What is the scope of presidential power under the Constitution? What is the appropriate balance between the President and the Congress? When must the constitutionally protected rights of average Americans—workers’ rights, families’ rights, and individuals’ rights—prevail? Where does the President stand when faced with the fear that Judge Alito brings to the Court a longstanding bias in favor of an all-powerful presidency and against West Virginians’ basic needs and interests.

Mr. LEVIN. Mr. President, while I had expected that the Senate would move directly to an up-or-down vote on Judge Alito’s nomination to the Supreme Court without a vote on cloture, because I strongly oppose this nomination, as I explained in my remarks last week, and because the filibuster has been a time-honored and accepted part of the checks and balances on the President’s appointment powers, I will vote against cloture on this nomination.

Mr. GREGG. Mr. President, I rise today to speak on the nomination of Judge Samuel A. Alito, Jr., to become an Associate Justice of the Supreme Court. After following the confirmation process and reviewing Judge Alito’s qualifications, I am pleased to support this nomination and congratulate President Bush on another outstanding pick for our Nation’s highest Court. Although there are no guarantees about how any judicial nominee will carry out his or her responsibilities once confirmed, I believe that Judge Alito will serve our country well as Justice Sandra Day O’Connor has done for almost a quarter of a century on the Supreme Court.

To explain why I support the nomination of Judge Alito, let me first begin my remarks by referring to article II of the U.S. Constitution—in particular, section 2, which states that it is up to the President to appoint individuals to the highest Court. As he pleased the voters who elected him, President Bush has exercised his appointment powers to pick someone who firmly believes in the rule of law, the importance of protecting the rights of all Americans, and the Founding Fathers’ wisdom of leaving policy decisions to the elected branches of Government. The President has followed through on his promise to the American people by choosing Judge Alito.

Wish that said, Judge Alito is not simply the fulfillment of a campaign promise—he is also one of the sharpest legal minds in the Federal appellate ranks and a dedicated public servant. A former editor of the Yale Law Journal and Army reservist, Judge Alito has served as a law clerk for Judge Leonard Garth of the Third Circuit, an assistant U.S. attorney for New Jersey, an Assistant to the Solicitor General, Deputy Assistant Attorney General in the Department of Justice, Judge’s Office of Legal Counsel of the U.S. Department of Justice—New Jersey. After his first 15 years of public service, he then went on to serve as a judge on the Third Circuit, for which he was unanimously confirmed by the Senate in 1990. In total, Judge Alito has served our Nation for 30 years, using his legal experience and talents for public good rather than for personal profit. We should applaud and support such a record of public service, especially when you consider the fact that Judge Alito has more judicial experience than any Supreme Court nominee in over 70 years.

Unfortunately, however, there are a number of my colleagues from across the aisle who somehow believe that this record of public service is something to deride and distort. Forget the fact that nearly everyone who has worked with Judge Alito or has taken an impartial review of this man’s record and credentials, such as the American Bar Association, supports this nomination wholeheartedly.

Forget the fact that Judge Alito has garnered the near unanimous support of his colleagues on the Hill and lawmakers from both parties—including Governor Ed Rendell of Pennsylvania—who know him best. Forget the fact that Judge Alito has ruled in favor of minorities who have alleged racial discrimination or women’s concerns of reproductive rights. Forget that Judge Alito is known by those who have worked with him as a good and decent man who does not put ideology over public responsibility. Some of my colleagues do not want to consider any of these facts, or they try to cherry-pick and distort them as they try to smear the President’s nominee. And why? Well, because Judge Alito is simply that; he is President Bush’s nominee.

As someone who supported both of President Clinton’s nominations to the Supreme Court, I find this type of partisanship appalling. Instead of accepting the obvious fact that Judge Alito is more than well qualified to serve on the Supreme Court, some of my colleagues want to cherry-pick and distort a few opinions out of the hundreds that he has written, hype up his alleged relationship with a university organization, or huff and puff about the Vanguard recusal matter even though the American Bar Association and most well-regarded legal ethics experts have found nothing unethical. As opposed to qualifications, some of my colleagues across the aisle want to focus solely on these petty matters that are borne out of personal attacks or the echo chamber of liberal blogs. They now want the Senate and the American people to forget everything else and base this important vote on a few dubious claims.

None of this is healthy for the Senate or for our Nation. It does not take a genius to realize that most Americans are tired of this petty partisanship, and the personal attacks on Judge Alito and the distortion of his record will only further discourage, not encourage, future nominees who have lengthy records of public service and judicial experience. This is troubling, and I hope that the previous few months are

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not more evidence of a trend towards partisanship at all costs. Whether some may like it or not, President Bush was elected by the American people. His nominees therefore deserve fair and dignified consideration by the Senate, even by those who opposed the President’s selection or his views on certain issues.

Perhaps these past few months should not have been a surprise to people like me who believe that the Senate should not let politics or ideology stand in the way of qualified nominees. After all, maybe all of this was foreseen by the Founding Fathers when they established the nomination process in Article II, Section 2 of the Constitution and gave the Senate only a limited advice and consent role. As Edmund Randolph noted, “Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications, not politics. They include the majority leader and the chairman of the judiciary Committee, who both do a commendable job of moving this nomination forward and giving us the opportunity to have an up-or-down vote. I congratulate them on their efforts and look forward to casting my vote in support of Judge Alito. He certainly deserves it, as well as the support of the rest of the Senate.”

Ms. COLLINS. Mr. President, I rise today to speak in favor of the nomination of Samuel Alito to serve as Associate Justice of the Supreme Court.

The question is entrusted with an enormous power—the power to interpret the Constitution, to say what the law is, to guard one branch against the encroachments of another, and to defend our most sacred rights and liberties.

The decision of whether to confirm a nominee to the Supreme Court is a solemn responsibility of the Senate and one that I approach with the utmost care. It is a duty that we must perform despite the fact that nominees are constrained in the information they can provide us.

Some interest groups, and even some of my colleagues, have called on nominees to promise a view of the law or a guarantee in the outcome of cases involving high-profile issues. These efforts are misguided.

To avoid prejudging and to ensure impartiality, a nominee should not discuss his legal philosophy. To keep this philosophy as much as possible “alive”—where cases are likely to come before the Court. Parties before the Court have a right to expect that the Justices will approach their case with a willingness to fully and fairly consider both sides.

The cases that come before the Supreme Court each year present legal issues of tremendous complexity and import, and Justices should not be expected to speculate as to how they would vote, or make promises in order to win confirmation. Justice Ginsberg stated during her hearing that a nominee may provide “no hints, no forecasts, no previews” on issues likely to come before the Court. Justice Ginsberg’s statement underscores, the Justices should reach a conclusion only after extensive briefing, argument, research, and discussion with their colleagues on the Court.

We must also recognize that there are limits to our ability to anticipate the issues that will face the Court in the future. Twenty years ago, few would have expected that the Court would hear cases related to a President’s declared opinions, try to make sense of copyright laws in an electronic age, or would face constitutional issues related to the war on terrorism.

While we cannot know with certainty how a nominee will rule on the future cases that will come before him or her, we are not without information on which to base our judgement. We must engage in a rigorous assessment of the nominee’s legal qualifications, integrity, and temperament, as well as the principles that will guide the nominee’s decisionmaking. In fact, in Judge Alito’s case, I note that we have significantly more information on which to base our judgement than with other nominees, given his long tenure as a judge on the Third Circuit Court of Appeals.

The excellence of Judge Alito’s legal qualifications is beyond question. Even his fiercest critics acknowledge that he is an exceptionally jurist with an impressive knowledge of the law, a conclusion also reached by the American Bar Association, ABA.

The ABA Standing Committee on the Judiciary conducted an exhaustive review of his qualifications. During this process, the Committee contacted 2,000 individuals throughout the Nation, conducted more than 300 interviews with Federal judges, State judges, colleagues, cocounsel, and opposing counsel, and formed reading groups to review his unpublished opinions, and other materials. Based on its review, the committee found Judge Alito’s integrity, his professional competence, and his judicial temperament to be of the highest standard, and decided unanimously to rate him “well qualified”—the highest possible rating.

When asked at his hearing what type of Justice he would be, Judge Alito directed Senators to his record as a judge on the Third Circuit. I agree this is the appropriate focus.

During his 15 years of service on the Third Circuit, Judge Alito has voted in more than 4,800 cases and has written more than 350 opinions. His record on the bench is one of steady, cautious, and disciplined decisionmaking. He is careful to limit the reach of his decisions to the particular issues and facts before him, and he avoids inflammatory or politically charged rhetoric. And despite this extensive record, there is no evidence that his decisions are results-oriented. For example, in the area of reproductive rights, I note that he has reached decisions favoring competing sides of that debate.

After reviewing Judge Alito’s dissenting opinions, Cass Sunstein, a well-known liberal law professor from the University of Chicago, reached the following conclusion: “None of Alito’s opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfailingly respectful. His dissents are lawyerly rather than bombastic. . . . Alito does not place political ideology in the forefront.”

During his hearing, the committee heard the testimony of seven judges from the U.S. Court of Appeals for the Third Circuit, the court on which Judge Alito currently serves. The panel was comprised of current and retired judges, appointed by both Democratic and Republican Presidents, and holding views ranging across the political spectrum.

Who better to know how Judge Alito thinks, reasons, and approaches the law, than those with whom he worked so closely over the past 15 years? And it is significant that these colleagues were unanimous in their praise of Judge Alito—in his legal skills, his integrity, his evenhandedness, and his dedication to precedent and the rule of law.

As Judge Becker commented, “The Third Circuit, the court on which Judge Alito currently serves. The panel was comprised of current and retired judges, appointed by both Democratic and Republican Presidents, and holding views ranging across the political spectrum.”

Judge Aldisert, who was appointed by President Johnson, had this to say: “The great Cardozo taught us long ago that the judge, even when he is free, is not wholly free. He is not free to innovate at pleasure. This means that the crucial values of predictability, reliance and fundamental fairness must be honored. . . . And as his judicial record makes plain, Judge Alito has taken this teaching to heart.”

Judge Lewis, a committed human rights and civil rights activist who described himself as “openly and unapologetic pro-choice,” said: “I cannot recall one instance during conference or during any other experience that I had with Judge Alito . . . when he made a remark resembling an ideological bent. . . . 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.’

Judge Alito’s colleagues provided compelling testimony of his deep and abiding commitment to the rule of law, the limited role of a judge, and the obligation to decide the case based on the facts and the record before him. They also testified that Judge Alito’s decisions have been constrained by established legal rules and specifically by a respect for the rules of precedent. The weight of the evidence is substantial—they know far more about Judge Alito’s judicial philosophy than we could hope to learn in a few days of public hearings.

A nominee’s judicial philosophy matters to me. When I met with Judge Alito, I specifically asked him about his views on the importance of precedent and stare decisis—the principle that courts should adhere to the law set forth in previously decided cases.

During both of our meetings, at his hearing, Judge Alito evidenced a strong commitment to the principle of stare decisis. Judge Alito acknowledged the importance of this principle to reliance, stability, and settled expectations.

At his hearing, Judge Alito, referring to the landmark Roe v. Wade decision, testified as follows: “[I]t is a precedent that is protected, entitled to respect under the doctrine of stare decisis.”

Similarly, Chief Justice Roberts, who was confirmed with a strong bipartisan support, made a nearly identical statement at his hearing. He said that Roe is “a precedent of the court, entitled to respect under the principles of stare decisis.”

After a careful comparison of these statements and others, I find that on substance, there is little that distinguishes the two nominees’ statements on this issue. Both nominees clearly acknowledged the importance of precedent, the value of stare decisis, and the factors involved in analyzing whether a prior holding should be revisited. Both agreed that the Constitution protects the right to privacy, and that the analysis of future cases involving reproductive rights begins not with Roe but with the Casey decision, which reaffirmed Roe’s central holding. And both testified that when a case has been reaffirmed multiple times, as Roe has, this increases its precedential value.

Despite the strong testimony of both Chief Justice Roberts and Judge Alito, the reality is that no one can know for certain how a Justice will rule in the future. History has shown us that many predictions about how other Justices would decide cases have proven wrong.

At her hearing in 1981, Justice O’Connor vigorously defended her record but that abortion was wrong and stated that she found it “offensive” and “repugnant.” Justice Souter once filed a brief as a State attorney general opposing the use of public funds to finance what was referred to in the brief as the “killing of unborn children.” Justice Kennedy once denounced the Roe decision as the “Dred Scott of our time.”

Yet, in 1992, all three of these Justices joined the joint opinion in Casey reaffirming Roe based on the “precedential force” of its central holding.

Based on my review of his past decisions, I doubt that I will agree with every decision Judge Alito reaches on the Court just as I do not agree with all of his previous decisions. I anticipate, however, that his legal analysis will be sound, and that his decision-making will be limited by the principle of stare decisis and the particulars of the case before him.

Judge Alito has demonstrated his fitness for this appointment with his clear dedication to the rule of law. After an exhaustive review process, the ABA has given him its highest possible rating. His colleagues on the Third Circuit, both Republican and Democrat appointees alike, have been unqualified in their praise of his nomination.

Based on the record before me, I believe that Judge Alito will be a Justice driven by his judicial duties to guide not by personal views, but based on what the facts, the law, and the Constitution command.

For these reasons, I will vote to confirm Judge Alito. I hope and expect that he will serve with distinction and that his record on the Supreme Court will show the same deference to precedent, respect for the limited role of a judge, and freedom from ideologically driven decisionmaking that he has demonstrated during his tenure on the Third Circuit.

Mr. KYL. Mr. President, I explained last Wednesday that I would support the nomination of Judge Alito. Since then, I have been somewhat frustrated at the lack of attention and respect paid to the record and the Supreme Court's decision on the Third Circuit.

I would like to take a few minutes and walk through just a few of those misstatements.

First, let me address the case of Sheridan v. DuPont.

On January 26, the junior Senator from Colorado indicated that Judge Alito was unlikely to support principle-driven decisionmaking. He ruled against a female plaintiff in a gender discrimination case. The Senator said, “In Sheridan, Judge Alito registered the lone dissent among thirteen judges voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial.” The Senator’s summary of the case requires additional elaboration, though.

According to the record of that case, the plaintiff, Barbara Sheridan, was employed as head captain of the Green Room restaurant in the Hotel DuPont. Initially, she received good performance reviews, but DuPont claimed that her performance began to deteriorate in 1991. At that point, her manager met with her to ask her to stop using the restaurant bar for smoking and grooming. Apparently Sheridan was frequently late to work, and other employees had complained about food and drink. In 1991, the hotel decided to reassign Sheridan to a non-supervisory position that did not involve the handling of cash. She would not suffer any reduction in pay because of this job transfer. Rather, she was to work the same hours and earn the same amount of money. She resigned in April 1992 and sued for gender discrimination.

When the case came before him on appeal, Judge Alito joined a unanimous three-judge panel that ruled for Ms. Sheridan. He held that her case should go to trial because it was plausible that a jury could agree with her. Judge Alito explained, “a rational trier of fact could have found that duPont’s proffered reasons for the constructive termination were pretextual. In Sheridan, Judge Alito registered the lone dissent among thirteen judges voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial.”

Last year, however, the case was heard by the full Third Circuit. At that time, Judge Alito expressed doubt about the applicability Third Circuit precedent. Hesitant about the court’s broad rule applying generally to all factual situations, he explained that when the employee makes out a case like this, she should usually, but not always, be accorded a trial. He reached this conclusion after parsing the Supreme Court’s 1993 decision in St. Mary’s Honor Center v. Hicks. And most importantly for present purposes, the Supreme Court later agreed with Judge Alito’s view in a unanimous opinion authored by Justice O’Connor.

That case, Reeves v. Sanderson Plumbing Products, can be found at 533 U.S. 133, and was decided by the Supreme Court in 2000.

The job of an appellate court judge is to faithfully interpret the Constitution and the Supreme Court’s interpretation of statutes. This case demonstrates that Judge Alito got it right when he examined pleading standards in title VII cases.

Let’s move on to another case, the 1996 case of U.S. v. Rybar, in which Judge Alito dissented.

On January 25, the Senator from Rhode Island said that Judge Alito “advocated striking down Congress’s ban on the transfer and possession of machine guns.” He further said that Judge Alito was “convincing this Court to strike down a rational law on an issue he had not convinced Congress.”

Judges Alito’s dissent in that case had nothing to do with being “convincing” by Congress’s findings. Rather, Judge
Alito based his dissent in part on the fact that Congress made no explicit findings regarding the link between the interstate activity regulated by these laws, the mere possession of a machine gun, and interstate commerce. Note that this concept about possession, not trafficking or commercial activity.

Second, the dissent had nothing to do with Judge Alito’s own policy preferences regarding the possession of machine guns. Rather, it was a careful application of the then-recent decision in United States v. Lopez, with which reminded courts to take seriously the limits of Congress’s powers under the commerce clause. In Lopez, the Supreme Court had held that Congress’s power to regulate commerce among the several States did not include the power to regulate possession of a gun near a school where the gun never crossed State lines. It was for the Third Circuit to decide whether Congress’s power to regulate interstate commerce included the power to regulate possession of a machine gun where the machine gun never crossed State lines. In Judge Alito’s view, the Supreme Court’s decision “require[d] the court to invalidate the statutory provision at issue.” He relied on and cited Lopez at least 22 times in his 9-page dissenting opinion.

Again, this is the job of an appeals court judge: to interpret Supreme Court precedent and apply it to new cases. I should also point out that Judge Alito’s dissenting opinion provided a virtual roadmap for how Congress could regulate the possession of guns in a way consistent with the Constitution and Supreme Court case law. This is hardly the behavior of someone bent on imposing a “policy preference” against regulating machine guns. According to Judge Alito, all Congress had to do was make findings as to the link between the possession of firearms and interstate commerce, and the power to regulate possession of a machine gun where the machine gun never crossed State lines. In Judge Alito’s view, the Supreme Court’s decision “require[d] the court to invalidate the statutory provision at issue.” He relied on and cited Lopez at least 22 times in his 9-page dissenting opinion.

Let me add one last word on the Third Circuit’s decision. As a postscript, when Riley was given a new trial by the Third Circuit, he was again convicted of all charges. When he again appealed, the Delaware Supreme Court found the case to a jury. And Judge Alito said no. Let me turn to another case, one also discussed by the senior Senator from Illinois, but during his January 25 floor speech, that of Pirolli v. World Flavors. The Senator from Illinois stated: “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.” The plaintiff in this case, a man who had a sexual harassment claim, Judge Alito required evidence on which to base his ruling and refused to rely on the proposed stereotype.

As a matter of policy, the sad reality is that drug dealers often hide weapons and drugs on children in the home. As a result of a long-term investigation of a John Doe for suspected narcotics dealing, officers of the Schuykill County Drug Task Force sought a search warrant for Doe and his residence. The typed affidavit in support of the warrant stated, among other things, that a reliable confidential informant had purchased methamphetamine on several occasions from John Doe at his residence. The affidavit sought permission to “search all occupants of the residence and their belongings.”

However, the printed sheet entitled “Search Warrant and Affidavit” contained an entry naming only John Doe under the question, “Specific description of premises and/or persons to be searched.” When the officers entered the house to commence the search, they decided to search Jane Doe and her daughter, Mary, age 10, for contraband. A female officer removed both Jane and Mary Doe to a upstairs bathroom where she searched them for drugs. No contraband was found. Once the search was completed, both mother and daughter returned to the ground floor to await the end of the search. As a matter of policy, the sad reality is that drug dealers often hide weapons and drugs on children in the home. Judge Alito acknowledged in his opinion that he found the fact that the
search occurred to be unfortunate. Accordingly, police officers sometimes request warrants that allow them to search all persons found during a drug bust. The Does sued the police officers personally and the municipality. The issue was how to read the warrant in light of the affidavit. And the legal question was whether a reasonable officer could have believed that the search warrant allowed the officers to search everyone in the house. Two judges on the panel said no, while Judge Alito said yes.

Why did Judge Alito believe that the police officers should not be liable personally? He concluded that a reasonable police officer could think that the warrant should be read in conjunction with the attached affidavit. Judge Alito reasoned that a “commonsense and realistic” reading of the warrant authorized a search of all occupants of the premises. Judge Alito found that the officers in this case did not exhibit incompetence or a willingness to flout the law. Instead, they reasonably concluded that the magistrate had authorized a search of all occupants of the premises.

So, the law, Judge Alito did not, as he has been accused repeatedly over the past few days, authorize the strip-search of a 10-year-old girl. He just tried to sort out a practical, on-the-ground problem for law enforcement. It is said that Senator Specter’s comment about Senator Alito’s inaccuracy of that case, with its inflammatory facts, would come up repeatedly, but repetition is not going to change the record of what happened.

Mr. President, let’s move on. I want to address a claim by the junior Senator from Illinois in a January 26 speech that, whenever Judge Alito has discretion, he will rule against an employee or a criminal defendant. To quote, the Senator said, “If there’s a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there’s a claim between prosecutors and defendants if the Supreme Court has not provided a clear role of decision, then he’ll rule in favor of the state.”

This just is not the case. There are 4,800 cases that could be reviewed to demonstrate the inaccuracy of that claim, but let’s just look at a few.

In one case, an employee claimed that AT&T had fired him based on his race, but the record was far from clear. Judge Alito clearly had room to rule against the employee. After all, the other two judges deciding the case on appeal did so and threw out the employee’s claim. They held that the employee had waited too long to bring his claim. In contrast, Judge Alito issued a lone dissent arguing that the employee was entitled to bring his discrimination claim. Later, the Supreme Court unanimously vindicated Judge Alito’s view.

As another example to counter the Senator from Illinois’s claim, consider the case of United States v. Igbonwa. There, a criminal defendant argued that the prosecutor had failed to honor his plea agreement. The majority of the court voted against the defendant and in favor of the prosecutor. Clearly, the most obvious role Judge Alito could do the same. Instead, Judge Alito issued a lone dissent arguing that the prosecutor was required to fulfill this promise to the defendant.

In yet another example, in Crews v. Horn, Judge Alito ruled that a prisoner was entitled to more time to bring his habeas petition. Again, the Supreme Court and Third Circuit had never decided the question, and the statute was unclear. Judge Alito could have ruled either way, yet he ruled in favor of the prisoner’s claim.

This is a good time to remind the Senate what Third Circuit Judge Edward Becker, who served with Judge Alito for 15 years, had to say on this point. He testified, “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.” As Judge Becker summarized Judge Alito’s career, “His credo has always been fairness. Mr. President, I want to turn to some of the mischaracterizations of Judge Alito’s past record as a government official. In her January 23 speech, the junior Senator from New York said that Judge Alito had written that “in his estimation it is not the role of the federal government to protect the health, safety, and welfare of the American people. As best I can tell, the Senator is referring to a 1986 document addressing the Truth in Mileage Act, a bill to require States to change their automobile registration forms to include the mileage every time it was sold. That document did not, as the Senator said, offer Alito’s “estimation” on anything. Judge Alito was drafting a veto message for President Reagan. Accordingly, he drafted that message in President Reagan’s voice and restated President Reagan’s policy on federalism. The first-person pronoun in that message is President Reagan, not Alito.

It is also worth nothing that Judge Alito did not challenge Congress’s powers. His cover memo acknowledged that “Congress may have the authority to pass such legislation.” He did point out that the legislation was “in large part unconstitutional.” Furthermore, States and the District of Columbia do not already have “title forms that meet this requirement.

Let’s move to another statement from the Senator from New York. She stated that Judge Alito’s “situation on the bench shows an unapologetic effort to undermine the right to privacy and a woman’s right to choose.” In fact, Judge Alito’s record confirms that he is not an ideologue on a crusade to curtail Roe v. Wade. In his 15 years on the bench, he has confronted seven restrictions on abortion, and he struck down all but one. Judge Alito 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 Health Center for Women v. Knoll, Judge Alito struck down two abortion restrictions for 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.

There was no binding Supreme Court precedent on point, and Judge Alito easily could have upheld the abortion restrictions if he had such a preset agenda. 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 jurist who understands the importance of precedent.

The junior Senator from New Jersey came to the floor earlier today and criticized the work Judge Alito had done on behalf of the Reagan Justice Department on abortion cases. He suggested that those efforts showed a bias against Roe v. Wade that would matter in the future. But the record shows just the opposite, as discussed above. How else to explain the Knoll case? Moreover, the Senator said that Judge Alito would not describe Roe v. Wade as, quote, “settled law.” Judge Alito addressed this question during the hearing. A judge cannot call an area of law “settled” when it is likely that cases dealing with that area will come before him. This demand to say that Roe is settled is little more than a desire to prejudge all those cases, including cases pending before the Supreme Court today. Judge Alito simply cannot do that without violating his judicial ethics and depriving those litigants of their fair day in court.

I will move on. Earlier today, the junior Senator from Michigan said that Judge Alito had “been criticized by his colleagues for trying to legislate from the bench in order to reach the result that he desires.” I am not aware of a single example of any member of the Third Circuit, or of any other court in the Nation, claiming that Judge Alito had any tendency toward quote, “legislating from the bench.” The opposite is true. It is especially surprising to hear such a claim given the testimony of Judge Alito’s colleagues on the Third Circuit.
Would seven current and former Third Circuit judges testify for Judge Alito if they believed he was a judicial activist or otherwise unqualified for the bench? Those listening now or reading the CONGRESSIONAL RECORD in future years should go to the Judiciary Committee record on the Internet and read what those judges had to say when they testified on January 12. When I spoke last week, I entered in the RECORD a series of excerpts from that testimony that the Senate Republican Policy Committee, which I chair, had compiled. The complete testimony is worth reviewing, too. Again, I am not aware of a single time that any judge has accused Judge Alito of legislating from the bench.

As one last point, I must address this unitary executive issue. The senior Senator from New Jersey and others have said that Judge Alito somehow believes in making the executive more powerful than the legislative and judicial branches. One wonders how many times this misstatement has to be corrected. Judge Alito made clear during his testimony that his past comments regarding the unitary executive theory only—only, Mr. President—dealt with who has the power to control executive agencies. As he said repeatedly, insofar as this theory deals with the scope of Presidential power, he does not—repeat, does not—subscribe to it. What else can he say? He has made this extremely clear. He has said it repeatedly.

Mr. President, there have been other misstatements and mischaracterizations of Judge Alito’s record. I can only respond to so many. I will simply encourage future students of this debate to look at the cases in question, and to carefully review the Committee record, before reaching conclusions based on floor debate.

I look forward to Samuel Alito serving on the Supreme Court for many years to come.

The PRESIDING OFFICER. Under the previous order, the majority leader, or his designee will be recognized for the final 15 minutes prior to the vote on the motion to invoke cloture.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded.

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

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

Mr. SPECTER. Mr. President, I urge my colleagues to invoke cloture on the nomination of Judge Alito to the Supreme Court and to support him on the final vote.

As the chairman of the Judiciary Committee, I sat through every minute of the proceedings, reviewed in advance some 250 cases of Judge Alito’s, his work in the Justice Department, his work as U.S. Attorney, as Assistant U.S. Attorney, his academic record, and I found him to be eminently well qualified.

The objections which have been raised to the nomination turn on those who think he should have been more specific on these particular questions. But to have been more specific, he would have had to in effect state how he would rule on cases to come before the Court, and that is going too far. He went about as far as he could go.

With the critical question of women’s right to choose, his testimony was virtually identical to Chief Justice Roberts, and he affirmed the basic principles of stare decis, a Latin phrase which means “let the decision stand.” He is not an originalist. He characterized the Constitution as a living document, as Cardozo did, reflecting the values of our country, the importance of the reliance on precedent, and articulated those views. He also indicated his reference to the Court’s role in the issue of a woman’s right to choose, notwithstanding what he had done in an advocacy role for the Department of Justice, notwithstanding any views he had expressed at an earlier date.

When it came to Executive power, again he discussed the considerations which would guide him on his decisions but necessarily stopped short of how he would decide a specific case.

He disagreed with the Supreme Court of the United States, which has declared acts of Congress unconstitutional because of our method of reasoning. The reason for the failure was defective compared to the Court’s method of reasoning. Judge Alito rejected that.

Perhaps most importantly in evaluating the prospects as to how Judge Alito will rule, we have to bear in mind that history shows the rule to be that there isn’t a rule. Justice Sandra Day O’Connor, Justice Anthony Kennedy, Justice David Souter before coming to Court all expressed their sharp disagreement with abortion rights; once they got to the Court they have upheld a woman’s right to choose. Then there is the classic case of President Truman’s nominees on the big Youngstown case on steel seizure, voting contrary to what the President, their nominee, had expected.

We heard enormously powerful testimony coming from seven circuit judges, some past, some senior, and some currently active who have worked with Judge Alito. There were precedents for other judges coming forward to testify on behalf of a nominee—but not quite in this number, not quite in this magnitude. The seven judges were uniform in their assessment that Judge Alito has no agenda and has an open mind. These are jurists who know his work, jurists who go with him after oral arguments into a closed room—no clerks, no secretaries, no advocates—tell us how he thinks and how he considers cases.

I think two judges were especially significant. The first was Judge Edward R. Becker, the winner of the Devitt Award as the outstanding Federal jurist a couple years ago. Judge Becker has sat with Judge Alito on more than 1,000 cases. He is well known as a centrist and is a highly respected judge. He testified that Judge Alito and he had disagreed on a very small number of cases, about 25. Then there was Judge Timothy Lewis, an African American who identifies himself as being very strongly pro-choice, very strong for civil rights. He was seated on the left-hand side of the panel—he did not appear in his position on the philosophical spectrum—and testified very strongly on Judge Alito’s behalf, saying that if he did not have any confidence in Judge Alito he would not have appeared as a witness in the proceedings.

The prepared statement which I filed in the record last week details a great many cases where Judge Alito has decided in favor of the so-called little guys.

In the context of the hundreds of decisions that Judge Alito has written and the thousands of cases where he has sat, you could pick out a few and put him with any position on the philosophical spectrum of the Court. He is an A plus. When we look at the traditional standard of character, again he is an A plus. When you look at the traditional standard of character, again he is an A plus. When you look at the standard of experience and public service, he is an A plus. When you look at his analytical style as a jurist, again he is an A plus.

Some have objected to nominees because, as some have put it, there is no guarantee. Guarantees are for used cars and washing machines, not for Supreme Court nominees.

I believe Judge Alito is well qualified to receive an affirmative vote by the Senate and be confirmed as an Associate Justice of the Supreme Court.

Mr. FRIST, Mr. President, I will be using some leader time. For my colleagues, the vote will be in about 10 minutes or so.

The PRESIDING OFFICER. The majority leader is proceeded.

Mr. FRIST. Mr. President, it was decided by the distinguished majority leader on the floor. The time left before the cloture vote—almost a full minute—I yield to Senator Frist.

The PRESIDING OFFICER. The majority leader is proceeded.
Before we vote, I want to take a minute to reflect just a bit on the progress that we have made in this overall judicial confirmation process over the last 12 months.

In the Senate, I really wear three hats, as Senator from the great State of Tennessee; second, the Republican leader; and third, majority leader. Wearing the third hat as majority leader, I have become a steward of our institution, steward in the sense of its rules and its precedents, its practices and traditions of this Senate. My job is to bring Senators together, both sides of the aisle, to govern. That is why we are here, to govern with meaningful solutions to people’s real problems, problems today, problems in the future, to identify what those problems are and then to resolve them and to secure America’s future by honoring its past and by building on a record of accomplishment every day as we move forward.

Three years ago, when I assumed this position as majority leader, there was probably no single greater challenge or obstacle than the judicial confirmation process. In a word, it was broken. The minority party had decided to put partisan politics into the judicial confirmation process by, at that time, orchestrating regular, almost routine filibusters to block what we all knew were highly qualified nominees from getting fair up-or-down votes. This partisan obstructionism was unprecedented. This routine use of the filibuster was wrong. Never in 214 years had a minority declared a nominee with majority support that fair up-or-down vote. The minority had used the filibuster to seize control of the appointments process. They used it unfairly to apply a new political standard to judicial nominees and to deny a vote to any nominee who did not subscribe to a liberal, activist, ideological agenda.

To justify this unprecedented obstruction, Democratic leaders unfairly attacked the character of these nominees. They tried to paint these extremists and radicals and threats to our society and our institutions. But the American people saw through the attacks. They saw them for what they were, purely partisan.

Finally, early this year the Republican leadership said: Enough is enough; enough obstruction, enough partisanship, enough disrespect to these good, decent, and accomplished professionals. We put forward a very simple, straightforward principle. A nominee has the support of a majority of Senators deserves a fair up-or-down vote. And we led on that principle. Because we did that, seven nominees who had been previously filibustered, or blocked, obstructed in the last Congress—and we were told at the time would be blocked in this Congress—got fair up-or-down votes and were confirmed and now sit on our circuit courts. A new Chief Justice of the United States, Justice Roberts, now sits at the helm of the High Court. If we had not led on principle, there would have been no Gang of 14. Filibusters would have become even more routine and led to more obstruction. However, the minority leader has been sheathed because we are placing principle before politics, results before rhetoric.

With the nomination of Sam Alito before the Senate, this Senate must again choose principle or partisanship. Should we choose to lead on the principle that judicial nominees, whether nominated by a Republican or a Democrat, deserve an up-or-down vote, or should we revert to the partisan obstructionism and confirm a bipartisan group of Senators will choose today to put principle first.

Last week, the distinguished minority leader said there has been adequate time for people to debate. No one can continue to claim that there has not been sufficient time to talk about Judge Alito, pro or con. I could not agree more with my colleague and friend. It is time to end debate. It is time to move on. Since President Bush nominated Judge Alito on October 31, Senators have had 91 days to review his nomination, to review his records, his writings.

To put that in perspective, Chief Justice John Roberts’ confirmation took 72 days, even including an extra week’s delay to pay respects to his predecessor, Chief Justice Rehnquist. Justice O’Connor, who Judge Alito will replace, was confirmed in 76 days. President Clinton’s two Supreme Court nominees, Justices Ginsburg and Breyer, got a fair up-or-down vote in an average of 62 days. Judge Alito today is at 91 days.

During this 3-month period since Judge Alito was nominated, Members have had an abundance of his written materials, documents, and opinions to review. They have had over 4,800 opinions from his tenure on the Third Circuit Court of Appeals spanning 27,000 pages; another 1,000 pages of documents from Judge Alito’s service at the Department of Justice; his published speeches and news articles. The list goes on and on.

Members have had 30 hours of testimony from Judge Alito’s judicial committee hearings; statements of 23 witnesses, including 7 nominees, including 7 nominees; Judge Alito’s colleagues on the Third Circuit; Judge Alito’s answer to over 650 questions, doubling the number of questions that either of President Clinton’s Supreme Court nominees answered; and days of debate in the Senate. Despite all this, some Members have launched a partisan campaign to filibuster this nominee and have forced the Senate to file cloture which we will be voting on. Certainly, it is any Senator’s right to force this vote, but it sets an unwelcome precedent for the Senate.

As a reminder to my colleagues, the Senate did not have a cloture vote on any of the nine Justices currently sitting on the Supreme Court. Judge Alito has majority support. A bipartisan majority of Senators stands ready to confirm him and have announced their support. Judge Alito deserves to be confirmed. He has the professional qualifications, the judge temperament and integrity our highest Court deserves.

Whether Members agree with me, whether Members support him, we should not prevent Judge Alito from getting a vote. I urge my colleagues to join me in voting for cloture. It is our constitutional obligation of advise and consent, because it is fair and because it is the right thing to do.

A vote today for cloture is a vote to support all we have done over the past 3 years to repair what was broken. True, it is a vote to bring Sam Alito’s nomination to a fair up-or-down vote, but it is also a vote that is so much more. It is a vote to demonstrate Members working together to end partisan obstructionism and to lead on that simple principle that every judicial nominee, with majority support, deserves a fair up-or-down vote. In closing, if I may borrow the words of my good friend Senator Kennedy from 1998:

We owe it to Americans across the country to give these nominees a vote. If our [colleagues] don’t like them, vote against them. But give them a vote.

I agree with Senator Kennedy’s statement. I say to my colleagues, if you do not like Judge Alito, vote against him. That is your right. But let’s give him a vote. That is our constitutional duty.

The PRESIDING OFFICER. Mr. REID. Mr. President, I will use leader time.

I want the record spread with the fact that Senator Ensign will miss the vote today. The Senate is very fortunate. He was in a head-on collision in Las Vegas going to the airport to return to Washington, DC. I spoke to him from the hospital. He is going to be fine. He has no head injuries. The bags line were very great. Bodily pain. I talked to him. He was under some medication. He said he is sore but he is going to be fine.
With all the travel we do, we all live on the edge of something happening. I am so happy Senator Ensign is fine. He is a wonderful man. He has great faith. He is a good friend of mine and to all of the Senate. I know all of our thoughts and prayers will be with him. I am confident he is going to be fine.

As indicated, I spoke with him. I want Darlene, especially, to know our thoughts are with her and the children.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 4:30 having arrived, the Senate will proceed to a vote on the motion to invoke cloture on Executive Calendar No. 490.

Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

Bill Frist, Elizabeth Dole, Michael B. Enzi, Jim DeMint, Wayne Allard, Kit Bond, Joe Lieberman, Arlen Specter, Rick Santorum, Kay Bailey Hutchison, Pete Domenici, Judd Gregg, Lisa Murkowski, Norm Coleman, George Allen, Mitch McConnell.

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

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 490, the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Nevada (Mr. ENSIGN) and the Senator from Nebraska (Mr. HAGEL).

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN) is necessarily absent.

I further announce that if present and voting, the Senator from Iowa (Mr. HARKIN) would vote "nay."

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

The yeas and nays resulted—yeas 72, nays 25, as follows:

[Rolecall Vote No. 1 Rk.] YEAS—72

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The obstacle to America's energy independence is clear: it is the blockade formed by the Democratic Party. In seeking to appease far-left interest groups, Democrats have blocked Republican efforts to reduce our dependence on foreign oil and have needlessly allowed prices to climb higher and higher for America's families.

Senator Reid likes to say Democrats can do better. I think he is right. Democrats should do better. They have been conducting a war of rhetoric for years, during which any substantive initiative to the public debate. Americans are rightly frustrated with a Democratic Party that will say anything but do nothing.

Now let me address what has become the favorite sound bite of the Democratic Party. Senator Reid said it today and many times over the last week, what he likes to call the "culture of corruption." Apparently, Democrats believe this media strategy will carry them to a sweeping electoral victory in November. I have news for my Democratic colleagues: The problem of outside influence on Congress is not a partisan issue. This is a bipartisan problem and requires a bipartisan solution.

For those hoping to usher in a new Democratic majority in Congress on a media sound bite, history teaches us that elections are won on ideas, not rhetoric. Americans are far too smart to buy into appealing sound bites of what Democrats used to call "a menu of the candidates" for the American people because he has promised to aggressively fight the war on terror to protect American families, and he wants women in uniform. He wants us to fix the mess this President and this Congress made in the Medicare prescription drug benefit. He wants us to take care of our men and women in uniform. He wants to make sure the budgets are balanced. He believes our families have health care, that we are moving forward on homeland security, and cleaning up the culture of corruption which has been brought to us by the ruling party. Remember, we have one party that rules Washington.

Yet, as Senator Reid demonstrated today, Democrats still do not understand that Americans want solutions, not more partisan rhetoric. I know there are some Democrats who do have some good ideas and desire to work together to improve the lives of Americans. I have talked to many of my colleagues on the other side of the aisle who do seem to understand the reality, but their leadership refuses to allow them to break free from the party line. I urge the Democratic Party to think long and hard about the war of rhetoric they are waging. It is poisoning the atmosphere in the Senate, and it is turning off Americans from the public debate. The consequences of these actions will be fewer and fewer Democrats returning next year. This has been proven out during the last elections, as I and my fellow freshman Republican Senator from California know.

If Democrats sincerely want the opportunity to govern again, they need to abandon this "say anything, do nothing" stance and put forward some ideas and solutions. Regardless, the Republican Party should be wcw ready to gain a majority in November. We will continue to secure America's future with a bold, positive agenda.

The PRESIDENT. Senator from California.

Mr. BOXER. Mr. President, I wish to amend the unanimous consent agreement to add an additional 10 minutes for Senator Baucus, which will give him 30 minutes.

The PRESIDENT. The OFFICER. Without objection, it is ordered that Mr. DeMint, Mr. President, I ask the Senator to add to her request that following the Democratic-allowed time that has already been agreed to, Senator Inhofe be recognized for up to an hour.

Mrs. BOXER. Certainly. I ask that at the conclusion of Senator Biden's remarks, Senator Inhofe be recognized for up to an hour.

The PRESIDENT. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Mr. President, I was listening to the Senator from South Carolina. I thought he was going to make some comments about the vote that just took place on one of the most important issues facing the Senate. Instead, he launched into an attack on Senator Harry Reid.

Shakespeare once said something to this effect: When someone acts that way, he is protesting too much. So Senator, here is a chord with the Senator from South Carolina, and there are reasons for it.

Senator Reid speaks straight from the heart, straight from the shoulder. He is fighting for the American people. He wants us to fix the mess this President and this Congress made in the Medicare prescription drug benefit. He wants us to take care of our men and women in uniform. He wants to make sure the budgets are balanced. He believes our families have health care, that we are moving forward on homeland security, and cleaning up the culture of corruption which has been brought to us by the ruling party. Remember, we have one party that rules Washington.

So I think his remarks must have deeply touched the Senator from South Carolina for him to launch into such a personal attack on the Democratic leader. I stand here and say: Keep it up, Senator Reid. You must be doing something right to elicit that kind of outrageous response.

Mr. President, many of us have been in elected life for more than a decade—in my case, three decades—and we know that when certain issues come before us, they are so profound, they are so important to the people we represent, they are such a watershed that they need to be marked, not rushed. The vote on Samuel Alito to be a Justice of the Supreme Court is such a moment in our history. Yes, we are having two votes on this nomination, one just completed, which gave me and other opponents of the nomination an opportunity to signal that this nomination should be sent back to the President for a mainstream nominee in the mold of Sandra Day O'Connor.

We fell short of the 41 votes we needed to send this nomination back. But yet I am still glad I had the opportunity to go on record twice. And do you know why? Because the Supreme Court belongs to the people of America. It is their court. It is not George Bush's court. It is not any Senator's court. It is the people's court, and the highest court. It is their freedoms that are at stake, their protection from a power-hungry Executive, their right to clean air, to clean water, and safe communities, their right to make private decisions with their doctors, with Senators and Congressmen and a President or Vice President breathing down their necks.

So although we knew the votes were not there for the filibuster of Judge Alito, we felt it was appropriate to use that historic Senate debate tool so the American people would know that we were willing to pursue even a losing effort because the stakes are so high.

Tomorrow, we will cast our votes on the nomination itself, and I want the record to reflect why I will be voting no.

Mr. President. Every judicial nomination is important, but rarely are the stakes as high for the Nation as they are in the case of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court.

We now have a divided Court, a divided Congress, a divided electorate, as evidenced in the last two Presidential elections. Unfortunately, we also have a President who failed to remember his promise, which he made in the campaign of 2000: to govern from the center—to be "a uniter, not a divider." If he had kept that promise, he would not have nominated Samuel Alito.

Judge Alito was nominated to take the seat of Justice Sandra Day O'Connor, the first woman on the Court. She has long been the swing vote, and a commonsense voice of moderation, 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.

The right thing to do for the court and for the Nation would have been to nominate someone 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 is experienced, intelligent, and capable. His
family should be proud of him, and all Americans should be proud that the American dream was there for him and for the Alito family.

But these facts do not outweigh my deep conviction that Judge Alito’s extremeviews of the law make him the wrong person for this job.

As a Senator, I have no more solemn duty than to vote on a nomination for the Supreme Court of the United States. These are lifetime appointments, with extraordinary power to shape the law of the land, and to affect the lives of Americans, not just those living now, but for generations to come.

In the 218 years since our Constitution was adopted, our Nation has made great strides toward achieving the more perfect Union that the Founding Fathers dreamed of. Women were given the right to vote. African-Americans were given civil rights. A right to personal privacy has been recognized for women and families. The accused have a right to a fair trial. Americans should be proud that the people who do not understand this fundamental constitutional protection.

Would Justice Alito vote to stop citizens from polluting their communities? The record says no. In a 1997 case, Judge Alito voted to stop citizens from taking the polluting company to court, as they were authorized to do under the Clean Water Act. Fortunately, in another case, the Supreme Court overturned Alito’s narrow reading of the law.

In the 21st century, it is astounding to think that a nominee for the Supreme Court, by a 5 to 4 vote, found that a police strip search of a 10-year-old girl was lawful, even though she was not named in the warrant. Judge Alito thought the employee was, in essence, a woman’s right to make reproductive choices for herself—has been reaffirmed many times since it was decided.

In the 21st century, it is astounding that a nominee for the Supreme Court would not view Roe v. Wade as settled law. The fundamental principle of Roe—a woman’s right to make reproductive choices for herself—has been reaffirmed many times since it was decided.

Would Justice Alito vote to protect Americans from illegal searches in violation of the fourth amendment? Judge Alito’s record says no. In 2004, he was one of the only judges to say that a warrant for the home of a 10-year-old girl was lawful, even though she was not named in the warrant. Judge Alito said that 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 cavalier attitude toward one of our most basic constitutional guarantees—the fourth amendment right against unreasonable searches—is stunning. As Judge Alito’s own court said regarding warrants, “a particular description is the touchstone of the fourth Amendment.” Americans have reason to fear a Supreme Court justice who does not understand this fundamental constitutional protection.

Would Justice Alito vote to let citizens stop companies from polluting their communities? The record says no. In a 1997 case, Judge Alito voted to stop citizens from taking the polluting company to court, as they were authorized to do under the Clean Water Act. Fortunately, in another case, the Supreme Court overturned Alito’s narrow reading of the law.

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Would Justice Alito vote to let women stop men having their day in court against employers who discriminate against them? Judge Alito’s record says no. In a 1997 case, Judge Alito was the only judge to say that a hotel employee claiming racial discrimination could not take her case to court. His colleague, Justice Thomas, said that if his standard for getting to a jury were required of a plaintiff, it would “eviscerate” title VII of the Civil Rights Act of 1964, which prohibits discrimination in the workplace. Another case, almost inarguably for a woman claiming discrimination in the workplace to get to trial.

Would Justice Alito be an effective check on an overreaching executive branch? Judge Alito’s record says no. As a Judiciary Department lawyer, Alito wrote a memorandum proposing that the President assert his own interpretations of statutes by issuing “signing statements” when the laws are enacted. He said this would give the Executive “the last word” on interpreting the laws.

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 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.”

During the hearings, we all felt great compassion for Mrs. Alito when she became emotional in reaction to the
When asked about this analogy during the last six Presidential elections, I worry about the tears of a 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. It was 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 the 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, his views have been confirmed in these cases. But if he sits on the Supreme Court, he will have a much more powerful voice. His voice that will replace one of moderation and balance, and he will join the voices of other Justices who share his severe views.

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 all African-Americans and 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 lefthanders 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 murderer is not dealt with as if it contained only the axioms and corollaries of a book of logic.

What Holmes means 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 must oppose this nomination.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized.

Mr. BAUCUS. I ask unanimous consent the order for recognition of Senator BIDEN be vitiated.

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

Mr. BAUCUS. Mr. President, on the corridor of the first floor of this Capitol building appear the words of Samuel Adams:

“Freedom of thought and the right of private judgment in matters of conscience direct their course to this happy country.”

America still stands as the world’s beacon of individual rights and liberties. Of that I know we are very proud. In large part, it is because of our Supreme Court. Our Founding Fathers were very wise in setting up three separate branches of Government, including a very strong, independent judiciary, something many countries have struggled to attain, and their failure to achieve greatness is largely because they do not have a very strong, independent judiciary—and I mean independent.

The Senate protects the independence of the Supreme Court. How? By seriously exercising its responsibility to advise and consent in the nominations to that honorable Court. It is in the Constitution. We all take that duty seriously. We take it seriously by examining nominees. I personally have three criteria I use to examine nominees. They are professional competence, personal integrity, and a view of important issues within the mainstream of contemporary judicial thought. Let me review those three criteria.

First, professional competence. The Supreme Court must not be a testing ground for the development of a jurist’s basic values. Nor should a Justice require further training. The stakes are simply too high. The nominee must be an established jurist already. Of that we must be very clear.

A second criteria is personal integrity. Nominees to our Nation’s highest court must be of the highest caliber.

I reviewed the nomination very carefully. I reviewed including states rights, anti-discrimination laws, immigrant rights, due process, privacy, equal protection, ethical considerations, and broad judicial philosophy. Judge Alito responded truthfully, but that is not the de\t. Members of the Committee attempted to pin Judge Alito down on many of his views, but Judge Alito did not offer detailed answers to their questions, at least not enough information to get a sense of who he was and where he was. Judge Alito appeared well prepared for these hearings—very well prepared, I might add. He appeared to have been advised to say as little as possible.

On January 24, the Judiciary Committee voted to report Judge Alito’s nomination on a party-line vote. Unfortunately, but that is how it turned out; again, I think in part because of the nature of the nominee’s views.

The third criterion I examine Judge Alito’s nomination in greater detail against the criteria I have laid out. First, professional competence. Mr. Alito received an excellence. He holds an undergraduate degree from Princeton and a law degree from Yale School of Law. Judge Alito also has extensive experience as a judge, serving 15 years as a
Mr. Alito’s work prior to his judicial appointment focused exclusively on representing one client, the Government. Some have raised questions about Judge Alito’s experience protecting the rights of individuals rather than the Government. I conclude that Judge Alito is professionally competent to serve as a Supreme Court Justice.

Second, personal integrity. Several issues arise from Judge Alito’s promise to avoid conflicts of interest as a judge. Some raised questions about Judge Alito’s sensitivity to the avoidance of conflicts of interest, and some raised questions about how steadfastly Judge Alito keeps his commitments to the Senate.

In 1990, Judge Alito told the Senate Judiciary Committee that he would disqualify himself from any cases involving entities in which he had personal connections. Those matters were the Vanguard Companies, the brokerage firm of Smith Barney, the First Federal Loan of Rockee, New York, his sister’s law firm, and matters that he worked on or supervised at the United States Attorney’s Office in New Jersey. In the period of 1995 to 2002, however, Judge Alito heard cases involving those matters.

Judge Alito initially blamed the conflicts of interest on a computer glitch. In subsequent correspondence with Senators on the Judiciary Committee, Judge Alito argued that his promise during his 1990 confirmation hearings referred to only his “initial service.” He argued that as his service continued, he found unduly restrictive his 1990 promise to recuse himself from cases involving entities in which he had a personal interest. And he argued that the mutual funds in which he was invested were not at issue in the case that he heard.

In his responses to questions concerning Vanguard, Judge Alito testified:

I think that once the facts are set out, I think that everybody will realize that in this instance it was not only complied with the ethical rules that are binding on federal judges—and they are very strict—but also that I did what I’ve tried to do throughout my career as a judge, and that is to go beyond the letter of the ethics rules and to avoid any situation where there might be an ethical question raised.

But Judge Alito also admitted to Senator Kennedy that “if I had to do it all over again, I would have handled this differently.”

Judiciary Committee members also asked about Judge Alito’s membership in an organization called Concerned Alumni of Princeton. In his 1985 job application to the Reagan Justice Department, Judge Alito listed Concerned Alumni of Princeton as one of his extracurricular activities. Concerned Alumni of Princeton is an alumni group that took the extreme position of arguing against letting women and minorities attend Princeton. When questioned about Concerned Alumni of Princeton, Judge Alito claimed that he had no recollection of ever having been a member of the group.

Judge Alito testified:

I really have no specific recollection of that organization. But since I put it down on that statement, then I certainly must have been a member at that time. . . . I have tried to think of what might have caused me to sign up for membership, and if I did, it must have been around that time. And the issue that had rankled me about Princeton for some time was ROTC. I was in ROTC when I was at Princeton and then until it was expelled from campus, and I thought that was very wrong.

Judge Alito’s response about Concerned Alumni of Princeton raises concerns. In 1985, he apparently thought that his membership in this discriminatory organization was important enough to put on his page-and-a-half job application. His failure of memory now about the extracurricular position then raises questions about his credibility.

I am also disappointed that the White House has chosen not to release Judge Alito’s tax returns for review by the Joint Committee on Taxation. On December 13 of last year, I introduced a bill that would require all Supreme Court nominees to submit 3 years of tax returns to the nonpartisan Joint Committee on Taxation for review on a confidential basis. The Joint Committee would report its findings on the nominee’s tax compliance to the Finance and Judiciary Committees.

I might add that all nominees who are referred to the Finance Committee—from Cabinet Secretaries to Federal Judges—have their tax returns reviewed for compliance. The reviews are discreet and confidential. We protect nominees’ personal information. And I might say that in several cases we found errors of facts, matters that had to be attended to—and they were.

I understand the administration does a “tax check” for all Supreme Court nominees. They say they already do one. But I believe it is important for Congress to do its own due diligence on a nominee’s tax returns. After all, this is a person who serves on the judiciary.

That is a separate branch, not the executive, not the judicial. Both entities—namely both the Executive and the Judicial—must have a stake in making sure that the nominee’s tax returns comply with the law.

I might also say, as I mentioned earlier, many so-called tax checks the administration has taken on other nominees have basis. Inadequate, full of mistakes, and we have had to correct them.

The Finance Committee views proof of the nominee’s tax compliance as a testament to the nominee’s integrity. What individuals do on their tax returns is a window on their ethical decision making. It is a good test of integrity and character.

The American people expect their national leaders to comply faithfully with the tax laws. A showing that leaders in the Federal Government faithfully comply with the tax laws sends an important message to people who might consider cheating on their taxes.

On January 19, President Bush appeared to agree. He told small business leaders in Sterling, VA, that public officials’ tax returns should be public, because public officials have a “high responsibility to uphold the integrity of the process.”

When I met with Judge Alito, I asked him to release his tax returns for such a review. He initially agreed to do so. But the White House official got at the meeting immediately intervened to block the release saying that he cannot do so.

The President was right when he said in Virginia that the release of public officials’ tax returns contributes to the integrity of our whole tax system. And his White House was wrong to withhold that information on Judge Alito. I will continue to press future nominees to allow this kind of neutral review of their tax returns because I think it is the right thing to do.

Let me turn now to judicial philosophy.

I do not believe that any Senator should oppose a nominee just because the nominee does not share that Senator’s particular judicial philosophy. But the Senate must determine whether a nominee is in the broad mainstream of judicial thought. Is this a wise person, not an ideologue of the far left or the far right. The Senate must determine whether a nominee is committed to the protection of the basic Constitutional values of the American people.

What are those values?

One is the separation of powers of our Federal Government—including the independence of the Supreme Court itself.

Another is freedom of speech. Another is freedom of religion. Another is equal opportunity. Another is personal autonomy—the right to be left alone. And yet another is an understanding of the basic powers of the Congress to pass important laws like those providing for protection of the environment.

These are not unimportant matters. They are hugely difficult—all of these are.

The stakes are high. The Senate has a duty to ensure that the nominee will defend America’s mainstream Constitutional values.

Judge Alito’s record calls into question his ability to act as a check on executive powers. Recently, many have noted with concern the National Security Agency’s surveillance of American citizens. At the Judiciary Committee’s hearing, a number of questions focused on Judge Alito’s interpretations of executive power, and the role of the court’s role as an effective check on overreaching presidential power and on government intrusion.
Judge Alito responded that “no person is above the law.” But he did not provide assurances that he would act on the Court to balance executive authority. His prior statements and court rulings indicate that he has an expansive view of the scope of executive power. He also expressed a view of Congress’s authority to legislate.

In a 1984 memorandum, Mr. Alito argued that the Attorney General serves blanket protection from lawsuits when seeking in the name of national security even when those actions involve the illegal wiretapping of American citizens.

In a 2000 speech to the Federalist Society, Judge Alito said that “the theory of a unitary executive . . . best captures the meaning of the Constitution’s text and structure.” Judge Alito said: “The President has not just some executive powers, but the executive power—the whole thing.” Some have thus interpreted the theory of a unitary executive to support the position that the Constitution reserves all executive power exclusively for the President. The theory would thus prohibit other branches of government from carrying out any power that one could thus have having executive characteristics. This view of executive power could limit Congress’s ability, for example, to create independent agencies such as the SEC with oversight duties. And some believe that this view would allow the President the ability to legislate through signing statements.

When Senator Leahy pressed Judge Alito about his view of the unitary executive as well as his strategy of utilizing presidential signing statements to expand executive authority, Judge Alito responded that he did not see a connection between these two principles.

In a 1986 memo, Mr. Alito argued that “the President’s understanding of the bill should be just as important as that of Congress.” He argued that signing statements would allow the President to “increase the power of the Executive to shape the law.”

President Bush has employed this method of presidential signing statements to document his interpretation of congressional legislation, again even though he is certainly not a member of Congress. He didn’t write the law. How could he judge what Congress intended to do? He has, in fact, issued 185 signing statements expanding his executive interpretation of the laws passed by Congress.

Judge Alito’s judicial rulings on the Third Circuit Court of Appeals, as well as his 1985 job application to the Reagan Justice Department, do not indicate an expansive view of civil rights and civil liberties. In his 1985 job application, Judge Alito wrote that he developed a deep interest in constitutional law, but disagreed by dissatisfaction with the Warren Court.” Many credit the Warren Court with expanding civil rights and civil liberties.

Judge Alito has narrowly construed constitutional criminal procedural protections, such as the fourth amendment restrictions on search and seizure. In the case of Doe v. Grody, for example, Judge Alito wrote a dissent. He argued that the strip search of a 10-year-old daughter without a proper search warrant did not violate their constitutional rights.

That is his dissent, that is his view. Judge Alito testified:

“It was a rather technical issue about whether the action submitted by the police officers was properly incorporated into the warrant for purposes of saying who could be searched. And I thought that it was quite clear that the magistrate had authorized a search for people who were on the premises. That was the point of disagreement.”

Judge Alito also refused to agree that Congress cannot take away the Supreme Court’s ability to protect Americans’ First Amendment rights.

In contrast, both Chief Justice Roberts and former Chief Justice Rehnquist have supported the proposition that Congress cannot take away the Supreme Court’s ability to protect Americans’ first amendment rights.

This is sometimes called “court stripping.” It is extremely critical, extremely important. It is no academic matter. Basically it is that the Congress can say to the Supreme Court it does not have jurisdiction to hear any cases with respect to, say, the first amendment brought by an individual citizen; that is, Congress can take away the Court’s ability to interpret the Constitution with respect to the first amendment. That is what that view held. I think it is an outrageous view. I don’t understand how anybody can tentatively hold that view.

Judge Alito defended his viewpoint, saying this is an academic debate on which scholars are divided. I am astounded at that answer.

Judge Alito’s rulings on civil rights cases appear to set a high bar for proving unlawful racial discrimination. For example, Judge Alito concluded that: “notification requirement did not place a burden on women”. When questioned specifically about the landmark case of Roe v. Wade, Judge Alito commented that he understands the principle of stare decisis—that courts should honor precedents. But he also said that this principle is not “an inexorable command.”

Here again, Judge Alito’s statements contrast with then-Judge Roberts’ comments during his hearings. Judge Roberts said in his hearings that Roe v. Wade was settled law. When Senators asked Judge Alito about Judge Roberts’ statements, Judge Alito responded that “I think it depends on what one means by the term settled.”

I am also concerned by Judge Alito’s responses to privacy questions at the Judiciary Committee hearings which conflict with his past statements. In his 1985 job application, Mr. Alito wrote:

“It has been an honor and a source of personal satisfaction for me to serve in the office of the Solicitor General during President Reagan’s administration and to help to advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions in recent cases in which the government in the Supreme Court . . . the Constitution does not protect a right to an abortion.”

In June 1985, Mr. Alito wrote a 17-page memo providing a strategy for using the Government in the case of Thornburgh v. American College of Obstetricians and Gynecologists as an “opportunity to advance the goal of bringing about the eventual overruling of Roe v. Wade, and in the meantime, of making its effect on the law ad supported.” He advocated a strategy of creating a series of burdens on a woman’s right to choose.

In the hearings, however, Judge Alito responded to Senator Feinstein that he “did not advocate in the memo that an argument be made that Roe be overruled.”

In his hearings, Judge Alito acknowledged that the Constitution protects a right to privacy generally. He agreed with the premise in the Griswold case, that the Constitution protects the privacy of the contraceptives. It is unclear, however, how widely the right to privacy extends for Judge Alito.

When pressed, Judge Alito refused to acknowledge that the Constitution protects a woman’s right to choose. Judge Alito explained that he would approach privacy cases with an open mind.

On the Third Circuit Court of Appeals, Judge Alito also wrote a dissent in the case of Planned Parenthood of Southeastern Pennsylvania v. Casey. In that dissent, he argued that upholding Pennsylvania’s restrictive spousal notification requirement did not place an undue burden on women.

In a 1985 job application, Judge Alito wrote that the spousal notification requirement “embodies a view of marriage consonant with the common law status of married women, but repugnant of our present understanding of marriage as one of the natural rights secured by the Constitution.”

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Judge Alito to clarify the discrepancy between answering cases about one-person one-vote, but not responding to questions about abortion and precedent. Judge Alito did not give a clear answer.

Judge Alito appears to support deference to the Framers’ original intent. Judge Alito testified:

I think we should look to the text of the Constitution, as we should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption.

That is called originalism.

Judge Alito’s judicial philosophy of original intent raises concerns about whether the Court could adapt to a changing society. And his philosophy indicates that he may not take an active role in extending Constitutional protections to new situations in the 21st century.

I have some concern about one ruling that Judge Alito issued related to the environment. In 2001, in the case of W.R. Grace & Company v. United States Environmental Protection Agency, Judge Alito threw out the Environmental Protection Agency order under the Safe Drinking Water Act for an ammonia-spill cleanup near Laning, MI. Judge Alito concluded that the government cleanup standard was “arbitrary and capricious.” He explained that the reason for not upholding the order was that the EPA lacked a rational basis for imposing the cleanup standard on the company. This case raises sensitivities for me, because in my home state, W.R. Grace has acted with complete disregard of the health effects for Montanans in Libby, where illness from tremolite asbestos caused by W.R. Grace has hit the community hard.

In 1988, Judge Alito commented that Robert Bork was “one of the most outstanding nominees of this century.” When I asked Judge Alito about that, he did not provide an adequate response. He ducked the question.

He did not respond adequately to many of my questions. He evaded my questions, questions I asked in good faith, intended to elicit what kind of Justice he might be.

He was vague. He seemed not to want to talk to me. He seemed not to want to have an honest discussion about what kind of person he is. That is why I find it very difficult to support this nominee.

I supported Judge Roberts for Chief Justice in large part because of Judge Roberts’ hearing testimony and responses when he met with me personally.

Judge Alito does not meet my standards for a Supreme Court Justice. Judge Alito has explained that he will be “the same person that I was on the Court of Appeals.” Judge Alito’s record demonstrates that he is a very conservative judge who rules often in favor of expanding executive authority and of limiting civil rights and civil liberties. If the Senate confirms Judge Alito to Justice O’Connor’s seat, he could change the balance of the Court, tipping it in a direction that could reverse or restrict important constitutional protections.

Based on all this information, I will vote against this nomination. I believe that Judge Alito is out of the mainstream. He is not the right choice for our country.

On a corridor on the first floor of this Capitol building appear the words of former Court Justice Louis D. Brandeis, who said:

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

I shall thus vote against this nomination to carry out seriously my responsibility as a Senator to Advise and Consent on nominations to that honorable Court. I shall vote against this nomination because I believe the nominee is well-meaning, but without sufficient understanding of the importance of our civil rights and liberties. And I shall vote against this nomination to help keep this great country the world’s beacon of freedom.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Oklahoma. The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is now recognized for up to 20 minutes.

Mr. DODD. Mr. President, I wish to commend my colleague, Senator MAX BAUCUS from Montana, before he leaves the Floor, for a very fine statement. I appreciate his thoughts and comments.

I rise today to discuss my vote on the nomination of Judge Samuel Alito to the United States Supreme Court. First of all, I wish to briefly comment on the cloture vote that occurred this afternoon. I voted not to invoke cloture on the nomination. I want to explain why.

As many of my colleagues know, I went through minor surgery to have a knee replacement before the holidays and I have been home in Connecticut recuperating. I looked forward to coming back to participate in the debate on the Alito nomination and I followed the confirmation process closely from home. For this reason, I was somewhat stunned to learn that Senator FRIST filed a cloture motion on the nomination a day after it was voted out of the Judiciary Committee. I was able to call the nominee for a quarter of a century and I have voted to confirm the majority of the judicial nominations that have come before this Senate. I, too, like my colleague from Montana, voted with enthusiasm for the nomination of Chief Justice Roberts only a few months ago. The majority leader’s action was surprising to me. It is exceedingly rare that a cloture motion is filed on debate regarding a Supreme Court nomination. In my experience, cloture motions have rarely been used. I got frustrated with the minority for insisting on extending debate—beyond a reasonable period of time. In this case, I feel strongly that there has not been a reasonable period of debate, let alone an extended debate.

But I am only one Member. Certainly, this institution cannot wait for one Member. I was allocated only 5 minutes of time this afternoon to comment on this nomination. However, my flight was canceled out of Hartford, CT, and thus, I lost that small window of 5 minutes to be heard. I consider the matter of confirmation of a Supreme Court Justice with great seriousness and solemnity. In my view, some of the most important votes that we make in the Senate are to fill vacancies in the Judicial Branch, second only to declarations of war. Constitutional amendments are not far behind. Therefore, to be notified that I would have only 5 minutes to comment on the nomination of a Supreme Court Justice who will serve for life, far beyond the tenure of the Chairman of the Federal Reserve Board, far beyond the tenure of the President of the United States, far beyond the tenure of a Senator or Congressman, I found rather disturbing.

We have always respected one another here, at least we try to, and to recognize this is the Senate, different from the House of Representatives. We are a bicameral body for good reason. This is the place where we spend a little more time evaluating issues that come before the Senate. To ask for a few more days to have discussion about the nominee is not an extraordinary request. The controversy in the country, seems little to ask.

Put aside the nominee for a second, put aside your decision to vote for or against the nominee, we should respect one another’s desire to be heard on these matters. Tomorrow is the State of the Union, and there will be a photo opportunity for the President. I am deeply disturbed that this Senate may have made a decision to rush this nomination to the floor. In order to provide a photo opportunity for the President, I am deeply disturbed that this Senate may have made a decision to rush this nomination to the floor. In order to provide a photo opportunity for the President, I am deeply disturbed that this Senate may have made a decision to rush this nomination to the floor. In order to provide a photo opportunity for the President, I am deeply disturbed that this Senate may have made a decision to rush this nomination to the floor. In order to provide a photo opportunity for the President, I am deeply disturbed that this Senate may have made a decision to rush this nomination to the floor. In order to provide a photo opportunity for the President, I am deeply disturbed that this Senate may have made a decision to rush this nomination to the floor.

The majority leader stated earlier that cloture motions are the decision of the Senate. In fact, the cloture motions are the decision of the minority. It is the Senate as a whole that votes on cloture motions and cloture questions. The circumstances around this nomination have been uncomplicated. The nomination came up after Harriet Miers withdrew. We had the Thanksgiving holiday and the recess coming up. In fact, the Judiciary Committee met when we were out of town. Obviously, the desire was to move this along. I have no objection to that. That seems to be a reasonable request to have the committee meet when it did. Certainly, we all had an opportunity to watch those proceedings.

The majority leader stated earlier than we have consumed an excessive amount of time on this nomination.
This statement is correct if we measure it by days on the calendar. If we measure it by days we have actually been here during the last couple of months, it is incorrect. We have been out of session. There have been only a limited number of days in session and only a limited number of votes. Obviously, the number of days that have been consumed since the nominee was presented to this Senate is more than usual due to the circumstances surrounding the nomination and holiday session.

I cannot allow the moment to pass without expressing my concerns about it and the rationale regarding why I voted the way I did. I would have preferred not to have voted on a cloture motion at all. If this were an extended debate, the majority leader might have been right to invoke cloture. I am troubled that now we are setting a new precedent for invoking cloture within only a short time after setting a new precedent for invoking cloture motion at all. If this were an extended debate, the majority leader felt that each of us who are not on the committee should have an opportunity to review the transcripts of the hearing before the committee. These questions, while relevant, and certainly need to be explored, would not have decided my vote on this nominee. I do not minimize it. If this were the only criterion, I would not have decided my vote had occurred last week, and then, in an interview with my local press in Connecticut, indicated how I would have decided my vote on this nominee. I have always reserved the right to decide how they have arrived at their decisions.

Over the last several months, these members have managed three separate nominations to the Supreme Court: Chief Justice Roberts, Harriet Miers, and now Samuel Alito. They are to be congratulated for their commitment to fair hearings and for the manner in which they discharged their duties.

The Constitution, as we know, vests the privilege and the solemn responsibility to advise and give consent to the President on Supreme Court nominations—a unique role in our governance. Framers intended for the Senate to take an active role in the confirmation process. However, the Constitution does not delineate the factors by which each Member of this body should determine the merits of a judicial nominee and to serve his or her lifetime appointment on the Federal bench. Thus, each Member of the Senate, each Senator, must determine for him or herself the acceptable criteria in judging a Supreme Court nominee.

I have never opposed a nominee solely because he or she holds different views than my own regarding the Constitution or the Court’s role in interpreting or applying it. I have supported seven of the last nine nominees to the Supreme Court, including the current President’s nomination of John Roberts to be our country’s Chief Justice. As I did it with prior nominees, I have been convinced of their intellectual competence and legal experience, and all of that. If this were the only criteria, I would be for him.

Judge Alito received his legal education from Yale University School of Law in my home State of Connecticut. He served as a Government attorney in a number of positions including: Assistant Solicitor General, Deputy Assistant Attorney General, Office of Legal Counsel, and U.S. Attorney for the District of New Jersey under President Reagan. In 1990, Judge Alito was nominated by George H.W. Bush to U.S. 3rd Circuit Court of Appeals. In the course of his 15 years on the Federal bench, Judge Alito has heard more than 3,000 cases. Furthermore, the American Bar Association has twice unanimously awarded Judge Alito with their highest rating of ‘well qualified.’ I have great respect and admiration for his intellectual, legal experience, and service to the American people as part of the Judicial Branch.

Next, I turn to character and credibility. The question is: Does Judge Alito possess the qualities of mind and temperament expected of a Supreme Court Justice? I do not question whether Judge Alito is personally decent or if he has integrity. I was impressed by the diverse group of former clerks and colleagues who testified before the Judiciary Committee who could not have given him higher praise.

Let me also say I know there were questions raised. I listened carefully regarding these concern including those regarding the Concerned Alumni of Princeton and the recusal issues that were raised by a number of committee members on the Judiciary Committee. These questions, while relevant, and certainly need to be explored, would not have decided my vote on this nominee. I do not minimize it. But if my decision were to be based solely on the recusal question or Judge Alito’s membership in the Concerned Alumni of Princeton issue, I would be here supporting this nomination.

Those are not the most important issues to this Member. But what is important, are other issues were raised during this nomination. Indeed, I am troubled that throughout Judge Alito’s hearings, Judge Alito failed to provide clear and germane responses to legitimate questions.

A few examples. For instance, when Senator SCHUMER, our colleague from New York, asked Judge Alito if he still believed his statement from the 1985 memo that said the “Constitution does not protect the right to an abortion,” rather than reply with a simple yes or no answer, Judge Alito deflected the question and instead replied. “The answer to the question is that I would address the issue in accordance with the judicial process as I understand it and as I have practiced it.”

When Senator Feinstein of California asked Judge Alito if Roe v. Wade was the settled law of the land—not an unpredictable question, a fair one, one you might ask about Brown v. Board of
Education, Griswold v. Connecticut, and there is a long list of cases that are considered established law, settled law—when she asked the nominee whether Roe v. Wade—one in that litany of cases—is settled law, instead of answering it directly one way or the other, as Justice Roberts did, in very unequivocal terms—others might have said absolutely not; that would have been a very straightforward answer—what did we hear? He said—this is reminiscent of some comments that were made by Justice Roberts in the Chittester case. He said, “I would have to choose between—and I quote—‘competing candidates of roughly equal qualifications and the candidate who is not hired or promoted is discriminating.’” The majority again criticized Alito’s approach stating that “Title VII would be viewed if our analysis were to prevail, where the dissent suggests.”

I also fear that if confirmed, Judge Alito may pose a threat to the laws that protected disabled citizens from discrimination. In Nathanson v. Medical College of Pennsylvania the majority held that the plaintiff, a victim disabled by a terrible car accident, should be denied the right to seek redress because of insufficient evidence that the college had failed to make reasonable accommodation for her disability. Alito dissented, and again the majority reacted strongly to Alito’s analysis: “few if any Rehabilitation Act cases would survive summary judgment if such an analysis were applied to each handicapped individual’s request for accommodations.”

But, I am especially troubled about Judge Alito’s dissent in the Third Circuit Case of Chittester v. Department of Community and Economic Development. That case involved an employee who was fired while taking sick leave and who sought to enforce his rights under the Family and Medical Leave Act, which became law in 1993. I was the original author of this law which has enabled more than 50 million workers to take leave for medical reasons or to care for a child or family member. A primary objective of the act is to ensure that both male and female workers have access to leave they are not punished or discriminated against because of their family responsibilities. However, Judge Alito found that the law was not a valid exercise of Congressional power to enforce the Equal Protection Clause. He said:

Unlike the Equal Protection Clause, which the Family Medical Leave Act is said to enforce, the Family Medical Leave Act does much more than require nondiscriminatory sick leave practice. It constitutes a substantive entitlement to sick leave.

The decision reflects a proscriptively narrow conception of what “equal protection” required. Real equality cannot be achieved, and the very real effects of discrimination can be remedied, without meaningful, substantive action. This is precisely why Congress enacted the Family and Medical Leave Act. The Supreme Court recognized this in the case of Chittester v. Department of Community and Economic Development. The Supreme Court held that contrary to what Judge Alito said in Chittester, a worker can sue a State employer who fired
him for taking family leave to care for his sick wife. This finding is critical to ensure that workers and their families can continue to take leave without fearing for their job. This right might be jeopardized if Judge Alito is confirmed, as during the hearing Judge Alito repeated his refusal to evidence of discrimination in personal sick leave even though there is compelling evidence in the legislative history of this law.

In these cases, the very judges who talked about our nominee as being fair and not being an ideologue, in their majority opinions had very different things to say about their colleague on some very critical cases on which this Appellate Court Judge reached different opinions, such as I have cited here, as well as in several others that came before that circuit.

I am also concerned about Judge Alito’s ruling regarding the Family and Medical Leave Act, which I authored. The legislation Judge Alito described has provided meaningful relief to millions of Americans. Judge Alito would have made significant changes, if not eliminated the law altogether, a great setback, in my view. The Supreme Court could have had a different view.

Finally, I am troubled that the rights of privacy which are so deeply valued by Americans could be eroded by a Justice on the bench who does not appreciate the importance of these issues.

I deeply regret that I didn’t have the opportunity to engage in a fuller discussion. It is somewhat disturbing, that I was only allocated 20 minutes. Because of the constraints on time, there is all this Senator can say about a document frozen in time. While his responses to questions in the Judiciary Committee may not have been as open as I had hoped, I decided that there was sufficient evidence to believe that he would honor and protect the individual rights and freedoms enshrined in our Constitution. His record showed him to be a persuasive advocate for his clients rather than a radical judge out of the mainstream of judicial thought.

I regret to say that, having reviewed his judicial record and his responses to the committee, I cannot be convinced that Judge Alito falls within the judicial mainstream. His evasiveness in the face of questioning by the committee, his established record on the bench of taking a restrictive view of individual rights, and his inability to explain his past comments on executive power all lead me to harbor significant concern. Determining whether to confirm a nominee to the Supreme Court is never an easy matter. However, I ultimately concluded that Judge Alito’s judicial temperament is out of step with our fundamental constitutional values and that his confirmation would not be in the best interests of the United States.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 1 hour.

Mr. INHOFE. Mr. President, I say to my good friend from Connecticut, I was surprised to find out he was not a conservative member of the conservative caucus. Now I know. But I would agree with him insofar as the significance of the confirmation vote that will take place...
tomorrow. There is nothing more solen, nothing more significant that we have to deal with than confirming judges, whether they are nominated by Democrats or by Republicans.

However, I respectfully disagree with the Hon. Jim Inhofe. I look forward to voting for the successful confirmation of Judge Alito. I have had a chance to talk about him. I believe he will be a strict constructionist and will do a good job for the United States, specifically for my 20 kids and grandkids.

NATIONAL SECURITY

Mr. INHOFE. Mr. President, I am not here, people will be glad to know, to talk about Judge Alito. I am here as an assignment. Serving on the Senate Armed Services Committee, as is the keeper of the chair, I have been there for quite a number of years. I have taken the assignment of giving a grade to what President Bush, prior to his State of the Union Message tomorrow night, has done in the way of national security and national defense. I am proud to say that I am very proud of the job he has done. In doing this, what I would like to do is break it down into three segments.

First, I want to talk about the problems this President inherited when he became President in terms of our national security; second, the solutions, the very solution to these problems; and third, the challenges he has for the future, for the next 2 or 3 years. In doing this, I know I will come across as being very partisan. Quite frankly, when we are dealing with national defense, I am quite partisan. I think the most important thing we have to do here is to keep America strong, make sure that we have a strong national defense system. I hate to say it, but that becomes a partisan issue. However, it is too serious an issue to try to be diplomatic, so I will not attempt to be diplomatic tonight. I will be dealing with the truth.

Winston Churchill said: Truth is incontestible. Panic may resist it, ignorance may deride it, malice may destroy it, but there it is.

First, in dealing with the problems that he inherited, I would like to outline seven huge problems that this President inherited when he became President. The first is, when he was inaugurated he received a military structure that was in total disarray. During the Clinton administration in the 1990s, I will show you in terms of dollars what happened to our system. There was a euphoric attitude everyone had that somehow the Cold War was over and we did not need a military anymore.

This is what the Clinton administration had. If you take this line right here, this is kind of the baseline solution only increased by inflation. So by doing this, we would say if that President had taken the baseline, the appropriations that he came in with and just applied the inflationary rate, it would be that top line, the black line. However, he didn’t do it. Instead, with his budget, this yellow line is what he requested.

Fortunately, in Congress we were able to get this up to what I see as a green line here. So this is actually what happened right here. This is what was actually appropriated. This would have been a static system. This is what the President wanted.

What does that mean? It means that during the years he was President, he decreased spending from the level where it was by $313 billion. If we had not raised the amount that was in his budget, his budget called for a decrease of $412 billion. We are talking about the difference between the black line and the red line. It means that the Clinton-Gore administration cut the budget by 40 percent, reducing it to the lowest percentage of gross national product since before World War II.

The first 2 years of the Clinton administration, I was in the House of Representatives. I was on the House Armed Services Committee. I knew what he was going to be doing to our military. I was involved in this during the first 2 years of his administration. Then as I saw it taking place, we were on the floor at least every week or two talking about what this President was doing to our military.

When they say the Cold War is over, we don’t need a military anymore, I look wistfully back to the days of the Cold War. During the Cold War, we knew we had one superpower out there. It was the Soviet Union. We knew what they had. They were predictable. Their policy was in place. We knew pretty much where we were. We knew we had one superpower out there. It was a military that stood up to an enemy, this circle and hold hands and unilaterally disarm, all threats would go away.

What does that mean? It means that if all countries would stand in a circle and hold hands and unilaterally disarm, all threats would go away. They don’t say that, but that is what they really think. So we have these people running for President on the Democratic side, and they don’t want to perform in terms of what the needs are from a national security standpoint.

So General Jumper, with all the credibility that he has—and there is no one in America more credible than he—is—was able to say that we have a very serious problem and we now are sending our kids out in strike vehicles where the prospective enemy has better equipment than we do.

People don’t realize it. When I go back to Oklahoma, I say: Do you realize some countries make better fighting equipment. For instance, five countries make a better artillery piece than the very best one that we have, which is the Paladin.

John Jumper said: Our best strike vehicles are the F-15 and F-16. The Russians are now making the SU-27, the SU-30s, and are proposing to make the SU-35. Those vehicles are better than the best ones we have in terms of jammers and radar.

I could get more specific in how they were better, but they were better. I agreed with him at the time and said so and applauded him when he made the statement that we need to move on with the FA-22 so we can get back and be competitive again.

People wonder why the liberals and, I say, the Democrats do not support a strong national defense. There are some reasons for this. One of the things we have in this country, which people don’t stop and really think through, is the convention system. It is kind of a miracle. In a living room in Broken Arrow, Oklahoma, and they decide what we stand for. We stand for a strong national defense, we are pro-life, all that stuff. At the same time, across the street you have the Democrats meeting. They are talking about gay rights and abortion and all the things they stand for. They decide what delegates go to the county convention. So the most activist of each side, liberals and conservatives, become the people who end up going to the conventions. Then they go to the district convention, the State convention, and then the national convention.

The bottom line is, if any Republican wants to run for the Senate or for the House or for a higher position, that person has to embrace the philosophy, that if all countries would stand in a circle and hold hands and unilaterally disarm, all threats would go away. They don’t say that, but that is what they really think. So we have these people running for President on the Democratic side, and they don’t want to perform in terms of what the needs are from a national security standpoint.

It is because if you really look at a liberal judge, they don’t think you need a military to start with. Liberals believe that if all countries would stand in a circle and hold hands and unilaterally disarm, all threats would go away. They don’t say that, but that is what they really think. So we have these people running for President on the Democratic side, and they don’t want to perform in terms of what the needs are from a national security standpoint.
the Senate, or any other Republican or Democratic Member of the Senate or House is voting, they can find out because we are ranked and rated on a daily basis. If you are back home and wondering what your Member of Congress is doing and somehow your concern is terrorism, the National Conservative Union ranks all of us in terms of what we do and what we feel in terms of taxes. If we want to increase taxes or decrease taxes, they know.

You don't have to listen to us because, unfortunately, a lot of the Members of the Senate and the House go back home and lie to the people. They tell them they are for reducing taxes when, in fact, they vote to increase taxes.

If you are concerned about whether you are a conservative, then the American Conservative Union ranks every Member of the Senate, every Member of the House in terms of whether they are conservative or liberal. I bring that up because to have the most conservative Member of the Senate this last year. I was very proud of that ranking.

If you are concerned and you are back in Sapulpa, OK, wondering which Members of Congress make no more an affordable climate for small business, the National Federation of Independent Business ranks each one of us as to what our attitude is insofar as business issues.

I say that because if you want to know how we are voting on national security issues or on national defense issues, the Center for Security Policy is a ranking organization that ranks each one of us as to what our attitude is insofar as business issues.

The way we are ranked in accordance with how we vote for national defense issues, the most recent report shows that the Republicans voted in favor of national security 82 percent of the time. The Democrats voted for security and predominance 21 percent of the time. That tells you why defending America is a partisan issue.

We all know what happened during the hollow force that followed the Carter administration. We saw what Reagan had to do to rebuild our defenses. He did it. Now we have a situation where we are going through essentially the same thing. The Bush administration inherited the Clinton military and had to start building on it. That is a serious problem, but he has done a good job.

I said there are seven things that this President inherited. The second thing is an economy that was set up to fall. We all know now that we went into the recession in March of 2001. That was prior to the time that President Bush came into office. So he inherited this recession. People have asked: What does that have to do with national security? What does that have to do with national defense? It has a lot to do with it because each 1 percent of increase in economic activity translates to $46 billion in new revenue. So if we are 5 or 6 percent down during a recession, that is money that the President can't spend.

I often say to my conservative friends when I go back to Oklahoma and they are complaining about the deficit, you hear the ranting and ravaging from this side that Republicans are responsible for it—they have to realize that this President not only inherited a military that had to be built up, he also inherited an economy that was down in the cellar and, of course, he had to prosecute a war. That is a serious problem. That is the second thing this President inherited.

The third thing this President inherited were the international challenges that he has had to deal with. In Iraq, the failure of the Oil-for-Food Program, we all know about that. We know about Saddam Hussein taking the money and using it for other purposes and denying the weapons inspectors in his country, as he had agreed to do. All these things were happening in Iraq. Sometimes I look at the way people were trying to—I don't think they are trying anymore—talk about weapons of mass destruction. That was the real issue at the time. When you stop and realize, if we hadn't gone in and done what we did to Saddam Hussein, we would have more of what we had for the 12 years, between the first and the second Persian Gulf wars.

Let me explain that a little bit. The first freedom fight came in 1991, after the first Persian Gulf war. I was one of nine people selected to go on the first freedom fight. Alexander Hauge went, and a Democrat went. We had one person I will not mention. We had a prominent Kuwaiti citizen, one of nobility, and his 7-year-old daughter. All they could talk about was they wanted to go back and see what their home looked like after the war. We had the 1993 car bomb that went off in Oklahoma.

The Defense Department—let me tell you the most significant thing and the greatest victory that we could not talk about at that time, which was the three major terrorist training camps that were located in Iraq—Samarra, Ramadi, and Salman Pak. We broke those as soon as we brought down Saddam Hussein.

I said there were seven things the President inherited—a downgraded military, a broken economy, and one was the national security challenge. The fourth one is international terrorism. We had the Cole in Yemen, which was the three major terrorist training camps that were located inIraq—Samarra, Ramadi, and Salman Pak.

We had the 1993 car bomb that went off in the basement of the World Trade Center. We saw, in 1996, Khobar Towers blow up. We remember the embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya, that were blown up in 1998. We remember, of course, the USS Cole in Yemen, when a little boat floated up and killed a bunch of our sailors. The Clinton administration regarded it as comparatively benign.

The operation "Infinite Reach" included cruise missile strikes against Afghanistan and Sudan, which were not the problem. But that was during the Lewinsky scandal, so nobody paid much attention to that.

The fifth thing was the proliferation of weapons of mass destruction. This is something we saw. When the Soviet Union fell, when the vast nuclear stockpile kind of disappeared—we had 30,000 warheads—Russia said they would get rid of the warheads, but they continued to have enough. When they got rid of the warheads, they dismantled the warheads, but they continued to have enough.

The Center for Security Policy, the most conservative organization that ranks all of us in terms of what our attitude is insofar as business issues, the American Conservative Union ranks every Member of the Senate, every Member of the House in terms of whether they are conservative or liberal. I bring that up because to have the most conservative Member of this country. In Iraq, the failure of the Oil-for-Food Program, we all know about that. We know about Saddam Hussein taking the money and using it for other purposes and denying the weapons inspectors in his country, as he had agreed to do. All these things were happening in Iraq. Sometimes I look at the way people were trying to—I don't think they are trying anymore—talk about weapons of mass destruction. That was the real issue at the time. When you stop and realize, if we hadn't gone in and done what we did to Saddam Hussein, we would have more of what we had for the 12 years, between the first and the second Persian Gulf wars.

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the Soviets had put together. That means there is about 60 to 70 percent of the stolen stockpile out there, and we are not sure where that is.

During this time, AQ Khan, the father of Pakistan's nuclear program, began selling his technology to Libya, Iran, and North Korea. I remember one thing that happened because I was in this body at that time and chaired the Armed Services Committee. I was trying to get the people across that even though President Clinton’s staff had said we don’t have a problem in terms of North Korea, I asked the question—I wrote a letter to the Clinton administration on August 24, of 1998 and I asked the question: How long will it be until North Korea has multiple-stage rockets that could send a missile that could reach the United States. I got a reply back, but it was in the Senate, they didn’t want to put it in writing. They said it would be 5 to 10 years before they will have that capability. Seven days later, on August 31 in 1998, the North Koreans fired a multiple-stage rocket with the capability of reaching America. In fact, it did reach some areas of Alaska; that is, America.

We have gone through the weapons of mass destruction proliferation, and we didn’t have a strong response to that. The strongest response we had back during the problem with Somalia and Mogadishu—you might remember that tragedy—we bailed out, “cut and run,” which is a favorite thing for liberals to do when a crisis occurs.

The sixth huge problem that the President inherited was an intelligence breakdown. It had been broken for a long time. I could not blame Democrats for that. When I was elected in 1994, I went to the Senate and replaced David Boren. Senator Boren had been chairman of the Senate Intelligence Committee for quite some time. After I was elected in that special election, he said we need to sit down and change our intelligence system. So we did. He talked about turf battles, that we have the CIA, FBI, NSA, and DIA, and none of them were cooperating or coordinating with one another. I said I will get on the Intelligence Committee, which I did, only to find out what David Boren told me was exactly the situation. We tried to correct it, and we were not successful, the same as he was not successful prior to 1994.

I remember once going down to the NSA in Virginia and they were showing me, at that time, a new listening device that could listen to somebody through 2 feet of concrete. I said: That is great, but they need to be in New York City right now. The FBI has a need for this type of technology. They said: This is ours, they cannot have it. That is the type of situation we had. It was something that had been that way for a long period of time. Nonetheless, the President did inherit that.

The last thing that falls into the class of the huge inherited problems by this President is the problem of China, and I was critical about this on the Senate floor. I stood here at this podium and said at the time that the first thing Clinton-Gore did when they assumed office was to go to our energy labs and use their security system. They did away with color-coded badges. We remember that. Everybody knew that. Do you know why? They said: This is demeaning for some-one who has a color that designates a lower form of security. We want everybody to be the same. Then they did away with background checks and with the FBI wiretapping, and as a result of that—remember Wen Ho Lee who ended up taking to China everything we had from our energy labs? We lost that and the Chinese got that.

Remember what happened with the Loral Corporation? At that time, we had a system the Loral Corporation had that was a guidance technology that we were using in the country. However, they were excluded from sending it to other countries because this was something we didn’t want anybody else to have. In order to send this to China, the President, Bill Clinton, had to sign a waiver, and he signed a waiver so we could sell the guidance technology to the Chinese so they would be more accurate in their efforts to use their missiles. I am sure it was not related at all to the fact that Bernard Schwartz, the head of Loral Corporation, was their largest single financial contributor. Now they are talking about how terrible this thing is with this guy that was contributing to both Democrats and Republicans and, yet, that wasn’t half as bad as what happened that President Clinton signed a waiver so the Chinese would have our guidance technology.

Tomorrow night is going to be the State of the Union Message. I sat in the House Chamber and watched the second or third one that President Clinton had. He made the statement—and it was documented that at the time he made the statement the Chinese had between 13 and 18 of our cities targeted, and the German government said: Not one missile is pointed at one American child tonight, not one. Everybody applauded, but at that time between 13 and 18 of our cities were targeted by the Chinese.

So we have had a problem that is a very serious one and one that the President had to deal with. Of course, we knew the Chinese were transferring the prohibited weapons technology to Pakistan, Iraq, Iran, Syria, and North Korea and other countries. That is the ninth thing the President inherited. That is the real serious problem. Yet if we look at this chart again, the President had the lowest, in terms of percentage of gross national product, since before World War II.

This President came in, and the first thing the Bush administration tried to do is rebuild this broken military system. This is what President Bush did. I want to talk about the huge inherited problem of mass destruction proliferation, and we had that capability. Seven days later, on August 31 in 1998, the North Koreans had that capability. Seven days later, on August 24, of 1998 and I asked the question: How long will it be until North Korea has multiple-stage rockets that could send a missile with the capability of reaching America. In fact, it did reach some areas of Alaska; that is America.

It is hard for me, as a conservative, to stand here and brag about the fact that we are spending more on the military, but the fact is that in order to strengthen our programs and build up our troop strength and our modernization program. Bush went in and he did a lot of other things. He helped the troops by increasing their salaries and their housing allowances. Prior to this time, they were having to spend 15 percent of their housing out of their own pockets. He took care of that for them. He increased their capabilities and readi-ness, not 5 years, but 75 percent of the Army, he moved it from the National Guard to the active Army, he moved it from concentrated on spare parts, and he now has the ships so they are out and ready and are actually out in areas that could be combat areas.

One of the changes he made was, instead of bringing it all the way back to
the United States and changing the crews, he leaves the ship in the battle area and flies the crew back and puts a new crew in. As a result, the percentage of ships routinely at sea has increased by more than 50 percent.

In Europe, the modernization program—we are back with the Joint Strike Fighter working for that, and we actually have our FA-22. It is flying. We have increased that fleet. We are actually going to be ahead of the other countries.

Keep in mind—I talked about China a minute ago—back during the time the Russians were selling the SU-27s which are better than our F-15s and F-16s, in one purchase, the Chinese purchased 240 of those. We have a long way to get back.

One of the things the President did in the Air Force was recognize our ALCs, air logistic centers, and start funding them again so we can maintain and rebuild our aging aircraft fleet. We now have they are located in Utah, Georgia, and Oklahoma.

It is amazing what they have done. The rate of aircraft grounded due to parts issues decreased by 37 percent, it has bettered our flying goal of 922,000 hours, the rate of aircraft incidents due to parts issues has decreased by 23 percent, and logistics response time has increased by 20 percent. Good things are happening, and we see tangible results.

On force posturing, this is something the President did, and I am very proud I had something to do with this. It occurred to me as a member of the Senate Armed Services Committee that we have all these families deployed in Western Europe and South Korea, and yet, as chairman of the Environment and Public Works Committee, I know what some of the far-left environmentalists are doing to our ability to have live ranges.

In Europe, that same thing was happening. So our families with our soldiers training over there could only train on live ranges, sometimes 5 days a week, sometimes 3 days a week, only during daylight hours, and the restrictions were so cumbersome that we were not able to train these guys.

It just made sense, if we tried something totally different and changed our force structure, instead of having them in Western Europe where they cannot train, put them in Eastern Europe. I went to Bulgaria and Romania and a number of places where they have training ranges that they will allow us to use free of charge. They will even billet us while we are there.

In changing our structure, we will bring all the families back. Instead of having 2-, 3-, 4-year deployments with the families going over to Western Europe, we will have 2- and 3-month deployments and not send the families, just send the equipment to the eastern areas, and they can get as much training in 3 months as they could before this in 3 years. That is one of the major changes. Right now, we are in the process of bringing back 70,000 troops, and 100,000 family members are coming back. It is a major improvement.

That is how Bush responded to the national security threats. He did it swiftly and decisively. After taking office, he faced a couple of tragedies. The first one was not quite as severe, but it was serious. That was back when the Chinese shot down one of our EP-3 Navy surveillance planes, and he was able to, because of the decisive action he took, bring the plane back and the crew back.

Then along came the tragedy of all tragedies, 9/11. I thought: Boy, am I glad we have somebody in there who is decisive and can respond. The World Trade Center and the Pentagon got hit. If it had not been for the courageous bunch of people over Pennsylvania, very likely this building, where I am speaking right now, would have been one of the targets and one of the victims. That is what we are dealing with and the choices that were made.

The third part is policy change. I am going to run through this quickly, but I would like to have people think about this. The President changed the policy, and I think we can pretty much take his rhetoric that he has lived up to and see how different this is from the decade of the nineties.

The President said: You are either with us or against us. That is what the President said to other countries. If you are not with us, you are an enemy. He said that Americans are asking how will we fight to win this war:

We will direct every resource at our command, every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every necessary weapon of war to disrupt and defeat the global war on terror network.

The President went further to say we are going to do four things. He said we are determined to prevent the attacks by the terrorist networks before they occur.

Second, we are determined to deny weapons of mass destruction to outlaw regimes and to their terrorist allies who will use them.

Third, we are determined to deny radical groups the support and sanctuary of outlaw regimes.

Fourth, we are determined to deny militants control of any nation.

Within weeks of 9/11, he sent the military to Afghanistan to remove the Taliban. Operation Enduring Freedom was successful.

He asked Congress for the PATRIOT Act.

He established the Department of Homeland Security.

He formed the 9/11 Commission. The 9/11 Commission had 39 recommendations, of which we adopted 37.

He launched a preemptive attack against Saddam Hussein, and that was Operation Iraqi Freedom. He established the National Counterterrorism Center, which is now up and running.

He established a Domestic Nuclear Detection Office where just one single Federal agency is in charge so these things don’t get lost in a barrage of bureaucracies.

He established the Terrorist Screening Center.

He established and transformed the FBI to focus on preventing terrorism.

He strengthened the Transportation Safety Administration.

He improved border screening and security through the US–VISIT entry-exit system.

For the first time, he started looking at our problems with regard to cargo coming into this country. He set up the National Targeting Center, which is responsible for that.

He expanded shipping security through the Container Security Initiative, which worked successfully.

He developed Project Bioshield. This is an organized defense against chemical, biological, or nuclear weapons, as well as nuclear attacks.

He aggressively cracked down on terrorist financing with many international partners. Over 400 individuals and entities have been designated pursuant to the Executive order, resulting in $150 million in frozen assets and millions more blocked so they cannot get to the terrorist activities.

The international successes he has had are incredible. We are safer today.

President, September 11 was a wake-up call. We are doing the right thing.

Another measure of success is Iraq. You would never know it, listening to the media. The first thing the troops ask me when I go over there is, Why doesn’t the media like us? Why don’t they understand what we are doing? I think now they are catching on that the American people are aware of our success.

They have had three successful nationwide elections. They voted for a transitional government, and drafted the most progressive democratic constitution in the Arab world, approved a new constitution, elected a new government under a new constitution, with each election less violent, with a bigger turnout than the one before.

The Sunnis, the ones who were not cooperating, are now cooperating. There was an article about a week ago in the Los Angeles Times that talked about the killing by a suicide bomber of literally hundreds of Iraqi troops, and most were Sunnis, and 225 Sunni families each offered another member of their family to replace those who had been killed. That is Iraq.

Still, there are international successes with terrorism. The terrorists who attacked on 9/11 are in jail, dead, or on the run. They are isolated. Al-Qaida and bin Laden no longer have a safe haven in which to hide. The Taliban is deposed, and democracy is in place.

The al-Qaida structure has been taken out. No major attacks on the United States have taken place since all this took place. We have had the
disruption of at least 10 serious al-Qaeda terrorist plots since 9/11. Three of those plots, incidentally, were plots to do something to the United States of America within the confines of our borders.

We read the proliferation of weapons of mass destruction that was taking place during the nineties and the AQ Khan network in Pakistan. They are no longer distributing weapons of mass destruction or information about them.

There are several talks ongoing with North Korea, and the United States is no longer alone in pressuring the North Koreans to give up their nuclear programs.

Libya opened its doors to inspection. This is really critical because Libya, during the Clinton administration of the nineties, was building weapons of mass destruction, their unconventional weapons program. I can’t help but think they equate President Bush with President Reagan because we remember what happened in 1986 when President Reagan sent about F-111s into Libya and pounded them into the ground. All of a sudden, Libya opened their doors to our inspectors, and they have admitted to being sought to develop unconventional weapons, but now they are eliminating them.

In missile defense, this is significant because since 1983 when the SDI program started and people were deriding it—the liberals didn’t want us to be able to defend ourselves against incoming missile attacks. We now have the beginning of one coming in place. We can now knock down incoming missiles into the United States. That is huge. Not many people are aware of it, but that is what is happening.

We talked about the problems he inherited and about the solutions. How much further do we have to go? In the State of the Union Message tomorrow night, we are going to hear the President talk about Iraq and about some of the things we need to continue in Iraq, the successes we have had, but also the international community, the fact they are going to have to come up with what they agreed to. They agreed to supply $3 billion toward the war in Iraq. They have not done it yet. I think he is going to invite them to do it tomorrow night.

The Iran problem, with the President of Iran declaring Israel must be wiped off the map and the Holocaust was actually a myth—a far more serious issue is Iran’s attempt to restart their nuclear program. Against the International Atomic Energy Agency directive, on January 10, Iran reopened Natanz nuclear complex. That is a serious problem.

Mexico and the borders—we have talked about that and recognize it is a serious problem.

The Army’s heavy drooping—I think the President will talk about that. Everyone is concerned about people’s feelings being hurt and not about the intervention of the President to eavesdrop and try to get information from known terrorist groups coming into this country and trying to communicate with terrorists within the country. I am really proud of this President for sticking to his guns on this issue. We need to keep that going. I am sure he will mention something about that tomorrow night.

China—I am sure he will talk about the problems with China. I have to say this: As a member of the Armed Services Committee, when during the Clinton administration, I watched the dismantling of our system. At the time, we were going down to about 60 percent of what we had at the end of the Persian Gulf war, and at that time, China had increased its military procurement by 1,000 percent. That is bad enough, and that is serious, but the other thing they are doing, their problem with us is we are the No. 1 and No. 2 country in terms of having to depend on other countries to have the energy supply for the country and certainly to fight a war.

When we do this, I see China out there all of a sudden has its $70 billion deal with Iran, and now they are importing 13 percent of their oil from Iran, they are flying airplanes along with us on sanctions against the Sudan with all the atrocities going on there. Now they are importing 70 percent of their oil from Sudan. We know what they have been doing with Chavez in Venezuela. These are real serious problems we are facing with China. I am sure he will talk about these tomorrow night.

He will talk about our overreliance on foreign oil. I cannot be critical of the Democrats or Republicans. We are all responsible for that.

Back when Don Hodel was Secretary of Interior during the Reagan administration, we had a little song and dance where we would go out to the consumption of our oil from Canada and Illinois, and we would tell them that our reliance on foreign countries for energy is really not an energy issue, it is a national security issue because we are relying on them for our ability to fight a war. Do you know what our reliance was at that time? We were relying on foreign countries for 35 percent of our total amount of oil imports, oil to run our country. Now it is at 63 percent. That is serious.

Venezuela. I have to say in conclusion I believe the President deserves excellent grades. What this administration accomplished in the last 5 years is phenomenal. If we compare where we were and where we are now, we are a more secure nation. We have finally awakened and we have started to deal aggressively with the threats that are facing us. We are no longer treating the terrorist enemies of the United States like disadvantaged people. We are no longer turning a blind eye to the problem of the United States being negotiated without the real threat of military action. Our negotiators can now go to the table with more credibility.

We are no long underfunding the readiness challenge. If we had an administration without the willingness to fund defense, take decisive action and stand up to our allies with their heads buried in the sand, we would be in worse shape today. I believe Europe is slowly awakening to the threats that exist. Fortunately we have had one very strong ally who stayed with us through this challenging period, Tony Blair. I am sure the President will renew his praise for Tony Blair and all the help he has given to us.

I wish to say one thing. Let me ask the Chair how much time I have remaining?

The PRESIDING OFFICER (Mr. TALMNT). The Senator has approximately 14 minutes remaining.

Mr. INHOFÉ. Let me make a comment about this thing. ‘The U.S. Military Threat is on the Rise. It is amazing that the media would give any attention to this group. Do you know who this group is? This group is Madeline Albright, Burger—is this the group, Podesta—these are the ones who gave us the problems in the 1990s and so they came with a report and say the military is under strain, at risk.

We are undoing the damage they did. The far-left Democrat club that gave us the broken force of the 1990s is the one in charge of this report. If you watch TV, you would think they are actually people who are seriously concerned about the United States of America and concerned about undoing the damage that has been done there when they in fact were the ones who caused damage. The Chief of Staff of the Army, General Schoomacker is a good guy. He came out of retirement and agreed to do this. He didn’t have to do it. He is not one of the guys who had to do it for a job. He is retired. He is down on a ranch. He agreed to come in and become the commander of the Army, and he read this report and said there is no truth to it. Our Army is not broken. We are actually going through modernization challenges, but it is trying to modernize, modularize, and mobilize, and fight a global war at the same time.

The accusations that were made, let’s look at one of them in particular. It says:

Nearly all of the available combat units in the U.S. Army National Guard and Marine Corps have been used in the current operations.

That is true because we started with a force that was underfunded and had been drawn down during the 1980s by the very people who came out with this brigades from 33 to 42. Congress has given us now, through the leadership of the President, authorization for 30,000 more troops.
The shortfall, that was their fault. Again, you can go in and read more of this report saying the Army is experiencing the beginnings of what could become a major recruiting crisis. Right now we are raising our number within the Army from 491,000 to 512,000 and, while that’s a little hard to call that a failure. In the first quarter of fiscal year 2006, we achieved 104 percent of the recruiting mission and 100 percent of the retention mission for the quarter.

The Guard and Reserve are all overworked, but in the first quarter, recruiting figures for the National Guard are 106 percent and the Reserves are doing even better at 122 percent. General Fuzzy Webster, who came back earlier last month during the election. Everybody expected the problems of the terrorists, the insurgents, to spike at that time, but it didn’t happen because they have run out of steam. The IEDs, they went down by 50 percent in the last 30 days before the December election. Suicide bombs went down by 70 percent in 90 days. The road from the airport that goes into the green zone, I have been on it many times, they were having about 10 terrorist activities each week and now there have not been any for 7 months. Not one. That is when we turned over the security to the Iraqis and they are taking care of their own security.

These are the successes that are taking place. We have a number of tips that come in from Iraqis, they used to be 500 a month, now they are up to 5,000 a month. This is what is happening.

When we see that this general is now in Baghdad, and more than the eastern half of Baghdad, there is not one American boot on the ground, they are all Iraqis. They are the ones taking care of their own security and the 112 battalions they have right now. Approximately 220,000 troops, 32 of those 112 battalions are at a level 2, that is, they can go into battle on their own. In January a year ago none were in that position.

Is it going to be over? People are always asking that question. People are not answering. I will answer that question. If you take the trend where we are right now, right now we have trained and equipped 220,000 Iraqi troops. By the end of this year it will be 300,000 Iraqi troops. The goal was to get to the 300,000. Why? Because all the military people tell me we need to get to 10 divisions before we can turn the security of Iraq over to the Iraqis, and that will be 325,000. We will be there by June of 2007. By June of 2007 we will have turned over the security to the Iraqis. We will still have a few troops there—we still have troops in Bosnia and Kosovo—but the security will have been turned over to them.

When you go through the towns and see the business in the businesses—$22 billion in oil reserves are going in. Yet you have several Senators coming back. Senators who, I might add, are running for President in 2008, trying to make you think things are not successful there. Senator Biden came back and said they only had 30,000 troops. It was not 30,000, it was 200,000 when he made that statement. Senator Kerry said our troops are out at night terrorizing women. I talked to the troops. None of them even know what he is talking about.

I have to conclude, and I say this in all sincerity to the authors of this report and to the 1990s crowd that got us into this mess, and I say to the naysayers, and I say to the cut-and-run caucus. I have named them—I say to the hand wringers: I am sure glad you are not in charge because, if you were, what happened to the military and national security in the 1980s would be happening again right now. We would be right back to the same path where surrender is always an option. Back where? Negotiating with terrorists. There is nothing wrong with that. Negotiate and appease, negotiate and appease.

Again, you can go in and read more of the Senate Armed Services Committee. I take very seriously my job as a member of the Senate Armed Services Committee to keep this country safe.

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

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

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.

Jason Gage is a 29 year old gay man. On March 12, 2005, he was beaten and stabbed with a piece of glass at his Waterloo, IA, apartment. According to reports, the attacker later told his girlfriend he felt sorry for him after he made sexual advances toward him.

I believe that the Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can be shown by passing this legislation and changing current law, we can change hearts and minds as well.
TRIBUTE TO FORMER SENATOR WILLIAM PROXMIRE

Mr. SESSIONS. Mr. President, I rise today to pay tribute to our late colleague, Senator William Proxmire—beloved father, husband, veteran, and former member of this body. With over 32 years of service in this institution, Senator Proxmire constantly challenged us to remain fiscally responsible. As chairman of the Committee on Banking, Housing, and Urban Affairs for four Congresses, he was constantly working to protect the taxpayers.

Most Members of this esteemed body recall the steady reminder by Senator Proxmire that “Uncle Sam is the last of the big spenders.” His firm advocacy for good sense and foresight on spending led to the creation of the “Golden Fleece” awards. Senator Proxmire would hand these awards out, to friend and foe, to highlight government waste, abuse and scandal. His “maverick” attitude toward our responsibilities with the taxpayers’ dollars should be remembered, honored, and, as I am sure he would agree, employed more today. We miss Senator Proxmire and his “Golden Fleece” awards.

Our dear Senator Proxmire this past December as he succumbed to the devastating affects of Alzheimer’s—a disease he battled daily since 1994. He spent his last years at the Copper Ridge Institute in Eldersburg, MD. Copper Ridge is a fantastic facility dedicated to the study of caring for those suffering from dementia. The goals of the Copper Ridge Institute are to share the knowledge it has acquired in the field of dementia care. For the last 10 years, staff from Copper Ridge, the Copper Ridge Institute and the Johns Hopkins University School of Medicine have worked together to develop a model of care that respects the dignity of the people battling this disease and that provides a better quality of life to them.

I had the pleasure of meeting and talking with Senator Proxmire’s wife, Ellen, in September 2004. Mrs. Proxmire sponsors an annual award in the name of her husband for those who support this dedicated Alzheimer’s research. Mrs. Proxmire has truly become the voice for those who cannot speak. She has worked diligently to see more national attention given to Alzheimer’s and the important role specific care models like that at Copper Ridge play in preserving the dignity and quality of life of those with the disease. As Mrs. Proxmire likes to point out, “Until there is a cure for the disease, learning to care for those with Alzheimer’s is paramount.”

Mr. President, we have a responsibility, as nearly 4.5 million Americans find themselves faced with this terrible disease, to work with those involved with research and medicine in this field. Our country is stronger today because the name “William Proxmire” is found on the rolls of the Senate. As we pause to remember this great man, true patriot, and fellow Senator, this institution should take heed and continue our support in the fight for an Alzheimer’s cure.

PALESTINIAN LEGISLATIVE COUNCIL ELECTIONS

Mr. FEINGOLD. Mr. President, while we are still awaiting final certification of the election results, it is apparent that the Islamic Resistance Movement, or Hamas, has obtained a significant number of seats in the new Palestinian Legislative Council. The Hamas electoral success, Hamas must use its electoral success as an opportunity to renounce its fundamental commitment to the destruction of Israel and to the use of violence to achieve its goals. Electoral results do not change the fact that a lasting, viable peace can only be obtained through a two-state solution. Hamas must use its electoral success as an opportunity to renounce its violent platform and to join in a coalition dedicated to achieving peace in the region. Renouncing terrorism and violence and accepting the right of Israel to exist are essential steps toward fulfilling the desire of the Palestinian people for a peaceful representative democracy.

NATIONAL MENTORING MONTH

Mr. GRASSLEY. Mr. President, I am pleased to join my colleagues Senator McCaIN and Senator KENNEDY in sponsoring a resolution designating the month of January as “National Mentoring Month.” Adult-to-youth mentoring has long shown positive impacts on our Nation’s young people in becoming responsible, productive adults. This January will mark the fourth annual National Mentoring Month campaign to focus national attention on the need for mentors, as well as how each of us within the public and private sector can work together to increase the number of mentors and assure brighter futures for our youth.

Currently, it is estimated that 15 million children need or want a mentor. That is 15 million young people who need the guidance to improve life-essential skills, make healthy choices, and increase their own self worth. I hope the rest of the Senate will join in supporting this resolution and supporting this very important campaign.

ABRAMOFF SCANDAL

Mr. JOHNSON. Mr. President, as both vice chairman of the Senate Ethics Committee and a member of the Senate Committee on Indian Affairs, I have been absolutely appalled at the scope and the depth of the villainy associated with the Abramoff lobbying scandal. Inasmuch as Washington recently has become consumed and distracted by the utterly shameful actions of disgraced lobbyist Jack Abramoff, I believe that it is essential to understand just how far removed from this scandal Indian tribes are. While a small handful of tribes were represented by Mr. Abramoff and were victimized by his incredibly shifty and cynical manipulation of their funds, the vast majority of our Nation’s 560 tribes and Alaskan Native villages had nothing to do with him or his practices. Less than half of those tribes operate casinos, and only a tiny proportion of those generate the kind of money that would attract the likes of Mr. Abramoff.

Most of the tribes that operate casinos are far from wealthy. The myth that all or most gaming Indian tribes are rolling in dough is wildly incorrect. The tribes in South Dakota and many around the country have large land bases and extensive enrolled memberships. Their casinos are often located in remote, rural areas far away from large numbers of affluent customers. The result is a disparity between the gaming revenues and the needs of the tribes for economic development within their reservations.

While a few Indian tribes were associated with Mr. Abramoff, the fees they paid were far beyond what most tribes could possibly afford—and in the end, their hired lobbyist abused both their money and their trust. Clearly, this scandal was a lobbying scandal, not a tribal scandal. The reality in too much of Indian Country is the consequence of chronic poverty: shocking levels of disease, inadequate housing, crime, drug and alcohol abuse, low school graduation rates, hunger, and stressed families. These tribes aren’t paying Washington lobbyists millions of dollars, but instead are struggling every day to make ends meet and to help restore the dignity of their members.

While I did not receive any money from Jack Abramoff, I did receive legal contributions from tribes who represented me. I am proud of the support Indian tribes and individual Native Americans have extended to me over the years. We must help restore the American public’s faith in good, responsible government and preserve participation by sovereign Indian tribes in our democracy.

ADDITIONAL STATEMENTS

CONGRATULATING EAGLE SCOUTS

Mr. THUNE. Mr. President, today I rise to congratulate Seth Honerman, Robert Viste, Kevin and Kyle Roades, Deseray Duda, Jordan Richter, Bayard Carlson, Ryan King, Thomas Hieber, Jeffrey Wilkes, and Travis English, Michael King, Jordan Richter, Bayard Carlson, Ryan King, Thomas Hieber, Jeffrey Wilkes, and Travis English.
Maholovich who have recently obtained the rank of Eagle Scout. The rank of Eagle Scout is the highest rank given to lifetime members of the Boy Scouts. This honor is not given lightly, and it represents their great drive and dedication to excellence.

The young men should be proud of their accomplishment. The rank of Eagle is given to only 2 percent of all Boy Scouts, and these young men find themselves among other great Americans including Neil Armstrong and Gerald Ford. I look forward to these Scouts going on to do great things as well.

I am proud to join the friends and family of these proud Scouts in congratulating them on their many and most recent accomplishments.

AWARD FOR EXCELLENCE IN EDUCATION

Mr. DAYTON. Mr. President, I rise today to honor Bamber Valley Elementary School, in Rochester, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Bamber Valley Elementary School is truly a model of educational success. The school is Rochester’s largest elementary school, serving 885 students in kindergarten through fifth grade. The successful partnership created between families and the community makes possible a school that exemplifies teamwork, pride, and excellence.

Bamber Valley is making full use of test score data to improve teaching strategies and address the specific reading and math challenges facing individual students. The administration’s quick dissemination of test data to the classroom teachers has enabled the teachers to adjust their teaching strategies, addressing the skills that students found to be the most difficult on the standardized tests.

Bamber Valley is home to the district’s programs serving the elementary deaf and hard-of-hearing children. The program’s resource teachers work with families encountering crisis situations, and a gifted and talented specialist is assigned to the school to help challenge students who excel.

For students in the first through fifth grades, the school has an after-school program, which combines laughter and high energy comb to create a learning environment that is safe, welcome, and fun.

Much of the credit for Bamber Valley Elementary School’s success belongs to its principal, Ms. Becky Gerdes, and her dedicated teachers. The students and staff at Bamber Valley Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Bamber Valley Elementary School should be very proud of their accomplishments.

I congratulate Bamber Valley Elementary School in Rochester, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.

AWARD FOR EXCELLENCE IN EDUCATION

Mr. DAYTON. Mr. President, I rise today to honor Mayo High School, in Rochester, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Mayo High School is truly a model of educational success. Several years ago, the school established three major goals and developed an action plan to achieve them: No. 1, to improve the graduation rate; No. 2, to address a disproportionate number of suspensions of racial minority students; and No. 3, to improve poor math and reading test scores.

Several key school leaders are largely responsible for the school’s attaining these goals.

Ms. Joan Leachman, who chaired the diversity committee, initiated a multiyear plan, working with the community, staff, and students to make Mayo High School a more welcoming place for all students. Through her leadership, the school has won the District Diversity Award for the last 4 years. She also won the Rochester Diversity Council’s Educators Award last year.

Ms. Jeri Brown oversees the school’s conflict mediation program and trains students in conflict mediation skills.

The students who receive conflict mediation training perform nearly 400 mediations per year, achieving a 93-percent success rate.

Mr. Ron Randall, chair of the math department, and Barb Milburn, chair of the English department, have done a superior job in improving the academic performance of all students. Last year, Mayo received the State Five Star rating in math.

Recognizing that many of the students receiving suspensions for behavioral reasons were the same students who least could afford time away from school, Mayo modified its policies. By focusing on addressing causes of student suspensions, it has avoided a loss of valuable class time. Consequently, suspension rates have improved, and graduation rates have dramatically risen. Last year, the school boasted a 95-percent graduation rate.

Much of the credit for Mayo High School’s success belongs to its principal, Dr. John Frederikson, and his dedicated teachers. The students and staff at Mayo High School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Mayo High School should be very proud of their accomplishments.

I congratulate Mayo High School in Rochester, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.

AWARD FOR EXCELLENCE IN EDUCATION

Mr. DAYTON. Mr. President, I rise today to honor Eagle Lake Elementary School, in Eagle Lake, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Eagle Lake Elementary School is truly a model of educational success, having earned a Five Star rating from the Minnesota Department of Education. The school, which is part of the Mankato Area School District, serves 290 students from the communities of Eagle Lake and Madison Lake. Although relatively small, Eagle Lake Elementary offers a variety of educational opportunities, including all-day kindergarten, special education services, assurance of mastery program for at-risk students, a school psychologist and social worker, a structured study center, afterschool academic assistance, speech and language assistance, an artist-in-residence program, mentoring program, lyceum programs, and challenging opportunities for highly capable students.

Eagle Lake Elementary’s “300 Club,” a school-wide home reading program, encourages students to spend at least 100 minutes per week reading. At the end of each month, a school-wide celebration honors those who have read over 400 minutes for the month. The “Reading Buddies” program pairs early elementary students with fourth and fifth grade students to explore reading through weekly themed projects and activities. The older buddy learns role models and leadership, while the younger buddy is encouraged to develop lifelong reading habits. The school also boasts an orchestra program, a science fair, a Quiz Bowl, Peace Makers, which teaches peer mediation and conflict resolution, novel study, word masters, art masterpiece, geography and spelling bees, Jump Rope for Heart, and a variety of after-school activities.

Parents’ involvement in the education of their children is also very high at Eagle Lake Elementary. This fall, 99 percent of all parents participated in parent-teacher conferences.

Much of the credit for Eagle Lake Elementary School’s success belongs to principal, Jason Scherber, and his dedicated teachers. The students and staff at Eagle Lake Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of
Not content to keep this information to himself, Mr. Cummings sought to make the State’s history public knowledge so that the people of Newark would love his adopted home as much as he did. As an employee of the Newark Public Library for over 40 years, Mr. Cummings took pride in curating public exhibitions that shed light on the history of Newark and brought to life the stories of those who lived there. Mr. Cummings shared the history and accomplishments of Newark with the city’s residents by conducting walking tours of the city and writing a regular column for the The Star Ledger of New Jersey called “Knowing Newark.” He also served as an affiliate member of the Rutgers University Federated Department of History, where he taught a popular undergraduate course on the history of Newark.

There has hardly been a person, past or present, who has cared about the history of Newark the way Mr. Cummings did. He was an indispensable resource for journalists, historians, and citizens alike. While Mr. Cummings will be missed by the people of New Jersey, he will be forever cherished as a loyal friend, a great man, and a true Newark treasure.

Mr. President, I ask my colleagues to join me in paying tribute to Charles F. Cummings and the immeasurable contributions he has made to the city of Newark and the State of New Jersey.

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–5391. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the report of a rule entitled “Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Control Volatile Organic Compound Emissions; Volatile Organic Compound Control for Facilities in the Dallas/Fort Worth Ozone Nonattainment Area” (FRL No. 8020–5) received on January 18, 2006; to the Committee on Environment and Public Works.

EC–5390. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Promulgation Plans; New Mexico, Visibility” (FRL No. 8025–5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5389. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Promulgation Plans; New Mexico, Visibility” (FRL No. 8025–5) received on January 25, 2006; to the Committee on Environment and Public Works.

HONORING THE LIFE OF CHARLES F. CUMMINGS

Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to Charles F. Cummings, the official historian of Newark. Mr. Cummings passed away on December 21, 2005, at the age of 68.

Mr. Cummings was born in Puerto Rico and raised in Virginia, but it was Newark, NJ, to which he pledged his life’s work. With a master’s degree in American History from Vanderbilt University, Mr. Cummings arrived in New Jersey in 1963 to begin a job with the Newark Public Library. He adapted quickly to his new home, studying the history and traditions of both the city and the surrounding communities. Before long, Mr. Cummings was renowned for having an encyclopedic knowledge of all things New Jersey.
of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Promulgation of Air Quality Implementation Plan Revisions for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards” (FRL No. 8011-1) received on January 25, 2006; to the Committee on Environment and Public Works.

EC-5410. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revisions for Colorado; Long-Term Strategy of State I Plan for Class VI Visibility Protection” (FRL No. 8010-2) received on January 25, 2006; to the Committee on Environment and Public Works.

EC-5411. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Promulgation of Air Quality Implementation Plan Revisions for Montana; Final Rule” (FRL No. 8012-5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC-5412. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Promulgation of Implementation Plans (the 1990 Amendments to the Clean Air Act): Kentucky; Revisions to the Administrative Rules of Montana; New Source Performance Standards for Montana; Final Rule” (FRL No. 8012-9) received on January 25, 2006; to the Committee on Environment and Public Works.

EC-5413. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Thymol; Exemption from the Requirement that a Pesticide be Tolerated for Use on Tobacco” (Docket No. FV09-930-1 FR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC-5414. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Bracelineis in Cattle; State and Area Classifications; Idaho” (Doc. No. 06-001-1) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC-5415. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2005-2006 Marketing Year” (Docket No. FV06-982-1 FR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC-5416. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2005-2006 Marketing Year” (Docket No. FV06-982-1 IFR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC-5417. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Markets of Performance for Stationary Sources of Hazardous Air Pollutants; Ozone Transport Prevention Initiative” (FRL No. 8012-10) received on January 25, 2006; to the Committee on Environment and Public Works.

EC-5418. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Market Order Marketing Program; Pecan Milling Area—Final Order” (Docket No. AO-361-A39; DA-04-03-A) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC-5419. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Markets of Performance for Stationary Sources of Hazardous Air Pollutants; Ozone Transport Prevention Initiative” (FRL No. 8012-10) received on January 25, 2006; to the Committee on Environment and Public Works.
Treasury, transmitting, pursuant to law, the report of a rule entitled “Statutory Mergers and Consolidations” (RIN1545–BA06, RIN1545–BD16) (TJD9242) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5430. A communication from the Acting Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled “Low- and Medium-Voltage Diesel-Powered Electrical Generators” (RIN1219–AA96) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5431. A communication from the Acting Director, Standards, Regulations and Variances, Mine Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled “Training Standard and Slope Control for Miners at Underground Mines” (RIN1219–AB35) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5432. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled “Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans” (29 CFR Part 404) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5433. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “Food Labeling: Health Claims; Soluble Dietary Fibre From Certain Foods and Coronary Heart Disease” (Docket No. 2004P–0512) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5434. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals; Withdrawal” (Docket No. 2005N–6546) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5435. A communication from the Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “Partial Withdrawal of the Office of Foreign Assets Control’s Proposed Rule Published January 29, 2005, Relating to the Economic Sanctions Enforcement Guidelines” (31 CFR Part 501) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5440. A communication from the Associate General Counsel for Legislation and Regulations, Office of Community Planning and Development, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled “Prohibition on Use of Community Development Block Grant Funds for Job-Pirating Activities” (RIN2506–AC94) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.


EC–5446. A communication from the Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled “Federal Acquisition Circular 2005–08” (Fed. Reg. 71, No. 24, p. 7276) received on January 25, 2006; to the Committee on Energy and Natural Resources.

EC–5447. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Federal Acquisition Circular 2006–AK36” received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5448. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Federal Acquisition Circular 2006–AK15” received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5449. A message from the President of the United States, transmitting, pursuant to law, the report of the continuation of the national emergency with respect to terrorists in Cuba; the report of the Department of Veterans Affairs’ Efforts to Reduce Veterans’ Suicide Rates; and the report of the Department of State’s Diplomatic Peace Corps; to the Committee on Banking, Housing, and Urban Affairs.

EC–5450. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report of a rule entitled “Mines Safety and Health Administration: Change in the Survey Cycle for the Harrison, Mississippi, Nonappropriated Fund Federal Wage System Wage Area” (RIN3206–AK36) received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5451. A communication from the Assistant General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled “Small Business Size Standards, Inflation Adjustment to Size Standards; Business Loan Program; Disaster Assistance Loan Program” received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5452. A communication from the Deputy General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled “Prohibition on Use of Community Development Block Grant Funds for Job-Pirating Activities” (RIN2506–AC94) received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5453. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of a Program Acquisition Unit Cost (PAUC) and Acquisition Procurement Unit Cost (APUC) breach relative to the National Polar-orbiting Operational Environmental Satellite System; to the Committee on Armed Services.

EC–5454. A communication from the Assistant Secretary of Defense (Health Affairs), transmitting, pursuant to law, a report entitled “Fiscal Year 2005 Report on Medical Informatics”; to the Committee on Armed Services.

EC–5455. A communication from the Acting Chief of Staff, Federal Mediation and Conciliation Service, transmitting, pursuant to law, the report of the Conciliation and Arbitration Service under the Federal Managers’ Financial Integrity Act for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5456. A communication from the Acting Chairman of the Broadcasting Board of Governors, transmitting, pursuant to law, the report of a rule entitled “Partial Withdrawal of the Office of Foreign Assets Control’s Proposed Rule Published January 29, 2005, Relating to the Economic Sanctions Enforcement Guidelines” (31 CFR Part 501) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5457. A communication from the Associate Director, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Prohibition on Use of Community Development Block Grant Funds for Job-Pirating Activities” (RIN2506–AC94) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5458. A communication from the Associate Director, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Partial Withdrawal of the Office of Foreign Assets Control’s Proposed Rule Published January 29, 2005, Relating to the Economic Sanctions Enforcement Guidelines” (31 CFR Part 501) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.


EC–5460. A communication from the Principal Deputy General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled “Accounting and Financial Reporting for Public Utilities Including RTOs” (Docket No. RM04–12–000) received on January 25, 2006; to the Committee on Energy and Natural Resources.


EC–5462. A communication from the Acting Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled “Partial Withdrawal of the Office of Foreign Assets Control’s Proposed Rule Published January 29, 2005, Relating to the Economic Sanctions Enforcement Guidelines” (31 CFR Part 501) received on January 25, 2006; to the Committee on Energy and Natural Resources.

EC–5463. A communication from the Administrative Secretary of the Interior, transmitting, pursuant to law, the report of a rule entitled “Federal Acquisition Circular 2006–AK36” received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5464. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Federal Acquisition Circular 2006–AK15” received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.
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 06-01-06-08); to the Committee on Foreign Relations.

EC-5460. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled “Amendment to the International Traffic in Arms Regulations: Registration Fee Change” (RIN 1406-A997) received on January 25, 2006; 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. DE MINT:
S. 2207. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

S. 2200. A bill to suspend temporarily the duty on para-Chlorophenol; to the Committee on Finance.

S. 2209. A bill to suspend temporarily the duty on 4-Chloro-[3-[3-(4-methoxyphenyl)-1,3-dioxo]-1-propyl]-2-hydroxymethyl decyl ether; to the Committee on Finance.

S. 2210. A bill to extend the temporary suspension of duty on 2.6 Dichlorotoluene; to the Committee on Finance.

S. 2211. A bill to extend the temporary suspension of duty on Fluorobenzene; to the Committee on Finance.

S. 2212. A bill to suspend temporarily the duty on Diresul Brown GN Liquid Crude; to the Committee on Finance.

S. 2213. A bill to extend the suspension of duty on sulfur black 1; to the Committee on Finance.

S. 2214. A bill to extend the suspension of duty on reduced vat blue 43; to the Committee on Finance.

S. 2215. A bill to suspend temporarily the duty on Sulfur Blue 7; to the Committee on Finance.

S. 2216. A bill to extend the suspension of duty on sulfon alizarin; to the Committee on Finance.

S. 2217. A bill to suspend temporarily the duty on 1,4-Benzendicarboxylic Acid, Polymer With N,N-Bis(2-Aminoethyl)-1,2-Ethanediamine, Cyclized, Mo Sulfates; to the Committee on Finance.

S. 2218. A bill to extend the temporary suspension of duty on certain sawing machines; to the Committee on Finance.

S. 2219. A bill to extend the temporary suspension of duty on certain sector mold press machines; to the Committee on Finance.

S. 2220. A bill to extend the temporary suspension of duty on certain manufacturing equipment for molding; to the Committee on Finance.

S. 2221. A bill to extend the temporary suspension of duty on certain extruders used in the production of radial tires; to the Committee on Finance.

S. 2222. A bill to provide for the suspension of duty on certain manufacturing equipment used for working iron or steel; to the Committee on Finance.

S. 2223. A bill to provide for the suspension of duty on certain cutting machine parts; to the Committee on Finance.

S. 2224. A bill to provide for the suspension of duty on certain parts of cutting machines; to the Committee on Finance.

S. 2225. A bill to provide for the suspension of duty on certain cutting machine parts; to the Committee on Finance.

By Mr. DURBIN:
S. 2227. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

S. 2228. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

S. 2229. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

S. 2230. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

S. 2231. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

S. 2232. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. THUNE:
S. Res. 358. A resolution expressing the sense of the Senate that the Secretary of Health and Human Services, acting through the Director of Indian Health Service, should maintain the current operating hours of the Wagner Service Unit until the Secretary submits to Congress a new report that accurately describes the current conditions at the Wagner Service Unit; to the Committee on Indian Affairs.

By Mr. JOHNSON (for himself and Mr. TRUMEN)
S. 2012. At the request of Mr. STEVENS, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 2012, a bill to authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, and for other purposes.

S. 2025. At the request of Mr. BAYH, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Rhode Island (Mr. CHAFFEE) were added as cosponsors of S. 2025, a bill to promote the national security and stability of the United States economy by reducing the dependence of the United States on oil through the use of alternative fuels and new technology, and for other purposes.

S. 2154. At the request of Mr. OBAMA, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. 2172. At the request of Ms. LANDRIEU, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New York (Mr. DYKES) were added as cosponsors of S. 2172, a bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes.
S. 2179

At the request of Mr. Obama, the names of the Senator from Massachusetts (Mr. Kennedy) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2197

At the request of Mr. Alexander, the names of the Senator from New Jersey (Mr. Lautenberg), the Senator from South Dakota (Mr. Johnson), the Senator from Kentucky (Mr. Mcconnell), the Senator from Maine (Ms. Snowe), the Senator from Pennsylvania (Mr. Specter) and the Senator from Rhode Island (Mr. Reed) were added as cosponsors of S. 2197, a bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

At the request of Mr. Frist, his name was added as a cosponsor of S. 2197, supra.

At the request of Mr. Domenci, the names of the Senator from New York (Mr. Schumer), the Senator from North Dakota (Mr. Dorgan), the Senator from Maryland (Mr. Sarbanes) and the Senator from Nevada (Mr. Reid) were added as cosponsors of S. 2198, a bill to ensure the United States successfully competes in the 21st century global economy.

At the request of Mr. Frist, his name was added as a cosponsor of S. 2198, supra.

At the request of Mr. Domenci, the names of the Senator from New York (Mr. Schumer), the Senator from North Dakota (Mr. Dorgan), the Senator from Maryland (Mr. Sarbanes) and the Senator from Nevada (Mr. Reid) were added as cosponsors of S. 2199, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2205

At the request of Mr. Thune, the name of the Senator from South Dakota (Mr. Johnson) was added as a cosponsor of S. 2205, a bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit Project in South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes.

S. CON. RES. 78

At the request of Mr. Isakson, his name was added as a cosponsor of S. Con. Res. 78, a concurrent resolution condemning the Government of Iran for violating its international nuclear nonproliferation obligations and expressing support for efforts to report Iran to the United Nations Security Counsel.

S. RES. 182

At the request of Mr. Coleman, the name of the Senator from Rhode Island (Mr. Chafee) was added as a cosponsor of S. Res. 182, a resolution supporting efforts to increase childhood cancer awareness, treatment, and research.

S. RES. 320

At the request of Mr. ENSIGN, the name of the Senator from North Carolina (Mrs. DoLE) was added as a cosponsor 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.

S. RES. 355

At the request of Mr. Nelson of Nebraska, the names of the Senator from West Virginia (Mr. Rockefeller), the Senator from Michigan (Ms. Stabenow), the Senator from Maine (Ms. Collins), the Senator from Minnesota (Mr. Coleman), the Senator from Nebraska (Mr. Hagel), the Senator from Tennessee (Mr. Alexander), the Senator from Illinois (Mr. Obama), the Senator from Delaware (Mr. Carper), the Senator from Tennessee (Mr. Frist), the Senator from Nevada (Mr. Reid) and the Senator from West Virginia (Mr. Byrd) were added as cosponsors of S. Res. 355, a resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure.

S. RES. 357

At the request of Mr. McCain, the name of the Senator from Nevada (Mr. Ensign) was added as a cosponsor of S. Res. 357, a resolution designating January 2006 as ‘‘National Mentoring Month’’.

SUBMITTED RESOLUTIONS


Mr. JohnSon (for himself and Mr. Thune) submitted the following resolution; which was referred to the Committee on Indian Affairs:

S. Res. 358

Whereas the Senate reaffirms the policy that, as provided in section 3(a) of the Indian Health Care Improvement Act (25 U.S.C. 1602(a)), ‘‘it is the policy of this Nation, in furtherance of its special trust and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.’’;

Whereas the Senate reaffirms the finding that, as provided in section 2(a) of the Indian Health Care Improvement Act (25 U.S.C. 1601(a)), ‘‘Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government’s unique legal relationship with, and resulting responsibility to, the American Indian people.’’;

Whereas the Senate reaffirms the finding that, as provided in section 2(c) of the Indian Health Care Improvement Act (25 U.S.C. 1601(c)), ‘‘Federal health services to Indians have resulted in a reduction in the prevalence and incidence of preventable illnesses among, and unnecessary and premature deaths of, Indians.’’;

Whereas the Senate reaffirms the finding that, as provided in section 2(d) of the Indian Health Care Improvement Act (25 U.S.C. 1601(d)), ‘‘Despite such services, the unmet health needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States.’’;
Whereas the Senate reaffirms the policy, as provided in section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), that—

"(1) Notwithstanding any provision of law other than this subsection, no service hospital or outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

"(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

"(B) the cost effectiveness of such closure;

"(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

"(D) the availability of contract health care funds to maintain existing levels of service;

"(E) the views of the Indian tribes served by such hospital or facility concerning such closure;

"(F) the level of utilization of such hospital or facility by all eligible Indians; and

"(G) the distance between such hospital or facility and the nearest operating Service hospital.;"

Whereas the Secretary of Health and Human Services, acting through the Director of Indian Health Service, has proposed that the operating hours of the Wagner Service Unit, which serves the Yankton Sioux Tribe and others, should be reduced from 24 hours per day to the hours between 7:30 a.m. and 11:00 p.m.;

Whereas the 1997 proposed closure report, submitted by the Secretary pursuant to section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), is currently out of date and no longer accurately represents the impact of such closure upon eligible Indians at the Wagner Service Unit; and

Whereas, during the previous year, the Santee Sioux Tribe of Nebraska requested health care services formerly provided by the Indian Health Service under the Indian Self-Determination Act (25 U.S.C. 450 et seq.) from another provider, thereby removing “shares” from the Wagner Service Unit and creating a budgetary crisis that forced the facility to announce reductions in the operating hours of the emergency room: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) pursuant to section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), the Secretary of Health and Human Services, acting through the Director of Indian Health Services, should submit to Congress a new report that evaluates the impact of reduction in emergency room services at the Wagner Service Unit of Indian Health Service; and

(2) the Secretary should maintain the current operating hours of the Wagner Service Unit until the Secretary submits to Congress a report described in paragraph (1).

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, January 30, 2006, at 2 p.m., for a hearing titled, “Hurricane Katrina: Urban Search and Rescue in a Catastrophe.”

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

PRIVILEGES OF THE FLOOR

Mr. INHOFE. Mr. President, I request that my fellow, Scott Fisher, be granted floor privileges during the debate tonight and for tomorrow.

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

ORDERS FOR TUESDAY, JANUARY 31, 2006

Mr. INHOFE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Tuesday, January 31. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved, the two leaders be reserved, and the Senate proceed to executive session to resume consideration of the nomination of Samuel Alito to the United States Supreme Court as under the provisions of the previous order.

I ask further that the time until 10:20 a.m. be equally divided, with the time from 10:20 to 10:30 under the control of Senator LEAHY and the time from 10:30 to 10:40 under the control of Senator SPECTER, the time from 10:40 to 10:50 under the control of the Democratic leader, and the time from 10:50 to 11 be reserved for the majority leader. I further ask unanimous consent that following the vote on confirmation, the Senate proceed to the consideration of the nomination of Ben Bernanke to be Chairman of the Federal Reserve, as under the previous order.

I further ask unanimous consent that the Senate stand in recess from 12:30 to 2:15 p.m. to accommodate the weekly party luncheons, and that Senator Bunning be recognized at 2:15 for his 30 minutes of debate on the Bernanke nomination.

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

PROGRAM

Mr. INHOFE. Tomorrow morning at 11 o’clock we will vote on the confirmation of Judge Alito to be an Associate Justice on the Supreme Court. Senators should be seated at their desks for this historic vote. Following that vote, we will consider the nomination of Ben Bernanke to be Chairman of the Federal Reserve under a time agreement reached last week. Tomorrow evening we will proceed as a body to the House Chamber to hear the President’s State of the Union Message, which is due to be delivered at 9 o’clock eastern standard time.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. INHOFE. 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 7:44 p.m., adjourned until Tuesday, January 31, 2006, at 9:45 a.m.
EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS
Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, January 31, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 1
9:30 a.m.
Indian Affairs
To hold oversight hearings to examine off-reservation gaming issues, focusing on the process for considering gaming applications.
SD-106

10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine promotion and advancement of women in sports.
SD-226

Homeland Security and Governmental Affairs
To continue hearings to examine Hurricane Katrina response issues, focusing on managing the crisis and evacuating New Orleans.
SD-342

2 p.m.
Judiciary
Constitution, Civil Rights and Property Rights Subcommittee
To hold hearings to examine the death penalty in the United States.
SD-226

Intelligence
To receive a closed briefing regarding intelligence matters.
SH-219

FEBRUARY 2
9:30 a.m.
Foreign Relations
SD-419

10 a.m.
Banking, Housing, and Urban Affairs
To resume hearings to examine proposals to reform the National Flood Insurance Program.
SD-538

Budget
To hold hearings to examine the CBO budget and economic outlook.
SD-608

Homeland Security and Governmental Affairs
To continue hearings to examine Hurricane Katrina response issues, focusing on the role of the Governors in managing the catastrophe.
SD-342

Intelligence
To hold hearings to examine the world threat.
SD-106

Aging
To hold hearings to examine meeting the challenges of Medicare Drug Benefit Implementation.
SH-216

10:30 a.m.
Veterans’ Affairs
To hold hearings to examine “The Jobs for Veterans Act Three Years Later: Are VETS’ Employment Programs Working for Veterans?”.
SR-418

2 p.m.
Judiciary
To hold hearings to examine pending nominations.
SD-226

FEBRUARY 3
9:30 a.m.
Joint Economic Committee
To hold hearings to examine the employment-unemployment situation for January 2006.
2212 RHOB

2 p.m.
Homeland Security and Governmental Affairs
To resume hearings to examine Hurricane Katrina response issues, focusing on managing law enforcement and communications in a catastrophe.
SD-342

FEBRUARY 4
9:30 a.m.
Armed Services
To hold hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.
SD-106

FEBRUARY 5
10 a.m.
Finance
To hold hearings to examine implementation of the new Medicare drug benefit.
SD-215

Commerce, Science, and Transportation
National Ocean Policy Study Subcommittee
To hold hearings to examine S. 1215, to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.
SD-562

2:30 p.m.
Commerce, Science, and Transportation
Consumer Affairs, Product Safety, and Insurance Subcommittee
To hold hearings to examine protecting consumers’ phone records.
SD-562

FEBRUARY 6
9:30 a.m.
Judiciary
To hold hearings to examine wartime executive power and the NSA’s surveillance authority.
Room to be announced

2 p.m.
Homeland Security and Governmental Affairs
SD-419

Intelligence
To hold closed hearings to examine intelligence matters.
SH-219

FEBRUARY 7
9:30 a.m.
Armed Services
To hold hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.
SD-106

FEBRUARY 8
10 a.m.
Finance
To hold hearings to examine implementation of the new Medicare drug benefit.
SD-215

Commerce, Science, and Transportation
National Ocean Policy Study Subcommittee
To hold hearings to examine S. 1215, to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.
SD-562

2:30 p.m.
Commerce, Science, and Transportation
Consumer Affairs, Product Safety, and Insurance Subcommittee
To hold hearings to examine protecting consumers’ phone records.
SD-562

FEBRUARY 9
10 a.m.
Commerce, Science, and Transportation
To hold an oversight hearing to examine commercial aviation security, focusing on Transportation Security Administration’s aviation passenger screening programs, Secure Flight and Registered Traveler, to discuss issues that have prevented these programs from being launched, and to determine their future.
SD-562

Notes:
• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Energy.
SD-366

Finance
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Health and Human Services.
SD-215

2:30 p.m.
Energy and Natural Resources
To hold hearings to examine the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States' energy market.
SD-366

FEBRUARY 14
10 a.m.
Veterans' Affairs
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Veterans Affairs.
SR-418

11 a.m.
Energy and Natural Resources
Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.
SD-366

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine developments in nanotechnology.
SD-562

Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.

FEBRUARY 16
9:30 a.m.
Armed Services
To hold hearings to examine priorities and plans for the atomic energy defense activities of the Department of Energy and to review the President's proposed budget request for fiscal year 2007 for atomic energy defense activities of the Department of Energy and the National Nuclear Security Administration.
SD-106

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine NOAA budget.
SD-562

FEBRUARY 28
2 p.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the Disabled American Veterans.
SD-106

FEBRUARY 16
10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine impacts on aviation regarding volcanic hazards.
SD-562

MARCH 1
2:30 p.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine winter storms.
SD-562

MARCH 9
10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine aviation security and the Transportation Security Administration.
SD-562

MARCH 16
10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To continue oversight hearings to examine commercial aviation security, focusing on physical screening of airline passengers, including issues pertaining to Transportation Security Administration's Federal passenger screener force, TSA procurement policy, air cargo screening, and the deployment of explosive detection technology.
SD-562
Monday, January 30, 2006

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S259–S331

Measures Introduced: Twenty bills and one resolution were introduced, as follows: S. 2207–2226; and S. Res. 358.

Supreme Court Nomination: Senate resumed consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States. Pages S260–S323

A unanimous-consent-time agreement was reached providing for further consideration of the nomination at 9:45 a.m., on Tuesday, January 31, 2006; that the time until 11 a.m. be under the control of certain Members; further, that at 11 a.m. Senate vote on confirmation of the nomination.

During consideration of this measure today, Senate also took the following action:

By 72 yeas to 25 nays (Vote No. 1), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the nomination. Page S308

Bernanke Nomination—Agreement: A unanimous-consent agreement was reached providing that following the vote on the nomination of Samuel A. Alito (listed above), on Tuesday, January 31, 2006, Senate begin consideration of the nominations of Ben S. Bernanke, of New Jersey, to be a Member and to be Chairman, of the Board of Governors of the Federal Reserve System; that at 2:15 p.m., Senator Bunning be recognized for 30 minutes, and 60 minutes equally divided between the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs; and that following the use, or yielding back, of time, the Senate vote on confirmation of the nominations. Page S331

Executive Communications: Pages S326–29

Additional Cosponsors: Pages S329–30

Statements on Introduced Bills/Resolutions: Pages S330–31

Additional Statements: Pages S324–26

Authorities for Committees to Meet: Page S331

Privileges of the Floor: Page S331

Record Votes: One record vote was taken today. (Total—1) Page S308

Adjournment: Senate convened at 10 a.m., and adjourned at 7:44 p.m., until 9:45 a.m., on Tuesday, January 31, 2006. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S331.)

Committee Meetings

(Committees not listed did not meet)

HURRICANE KATRINA

Committee on Homeland Security and Governmental Affairs: Committee continued hearings to examine Hurricane Katrina response issues, focusing on urban search and rescue during a catastrophe, receiving testimony from William M. Lokey, Operations Branch Chief, Response Division, Federal Emergency Management Agency, Department of Homeland Security; Brigadier General Brod Veillon, Louisiana National Guard, Jackson; Lieutenant Colonel Keith LaCaze, Louisiana Department of Wildlife, Baton Rouge; and Timothy P. Bayard, New Orleans Police Department, New Orleans, Louisiana.

Committee will meet again on Tuesday, January 31, 2006.
House of Representatives

Chamber Action
The House was not in session today. The House is scheduled to meet at 12 noon on Tuesday, January 31, 2006.

Committee Meetings
No committee meetings were held.

COMMITEE MEETINGS FOR TUESDAY, JANUARY 31, 2006
(Committee meetings are open unless otherwise indicated)

Senate
Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, to hold hearings to examine pandemic influenza preparedness at Federal, State and Local levels, 8:30 a.m., SH–216.
Committee on Commerce, Science, and Transportation: to continue hearings to examine video content, 2:30 p.m., SD–562.
Committee on Foreign Relations: to hold hearings to examine the nominations of Kristie A. Kenney, of Virginia, to be Ambassador to the Republic of the Philippines, and Michael W. Michalak, of Michigan, for the rank of Ambassador during his tenure of service as United States Senior Official to the Asia-Pacific Economic Cooperation Forum, 2:30 p.m., SD–419.
Committee on Health, Education, Labor, and Pensions: to hold hearings to examine the nominations of Edwin G. Foulke, Jr., of South Carolina, to be an Assistant Secretary of Labor, and Richard Stickler, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health, 2 p.m., SD–106.
Committee on Homeland Security and Governmental Affairs: to continue hearings to examine Hurricane Katrina response issues, focusing on the challenges during a catastrophe, including the evacuation of New Orleans in advance of Hurricane Katrina, 10 a.m., SD–342.

House
Committee on Rules, to consider the following: a resolution agreeing to the Senate Amendment for S. 1932, Deficit Reduction Act of 2005; a measure to amend the USA PATRIOT Act to extend the sunset of certain provisions of such Act; and a resolution to eliminate floor privileges and access to Member exercise facilities for registered lobbyists who are Former Members or Officers of the House, 1 p.m., H–313 Capitol.
Next Meeting of the SENATE
9:45 a.m., Tuesday, January 31

Senate Chamber

Program for Tuesday: Senate will continue consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States, with a vote to occur on confirmation of the nomination at 11 a.m.; following which, Senate will begin consideration of the nominations of Ben S. Bernanke, of New Jersey, to be a Member and to be Chairman, of the Board of Governors of the Federal Reserve System.

(Senate will recess from 12:30 p.m. until 2:15 p.m. for their respective party conferences.)

(At approximately 8:40 p.m., Senate will proceed as a body to the House Chamber for a joint session to receive the State of the Union Address by the President of the United States.)

Next Meeting of the HOUSE OF REPRESENTATIVES
12 noon, Tuesday, January 31

House Chamber

Program for Tuesday: To be announced.