EXECUTIVE SESSION

NOMINATION OF BRETT M. KAVANAUGH TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume the consideration of Calendar No. 632, which the clerk will report.

The legislative clerk read the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDENT pro tempore. The distinguished minority leader is recognized.

Mr. REID. Mr. President, the distinguished ranking member of the Judiciary Committee wishes to speak on the nomination of Brett Kavanaugh. I also wish to do that.

I ask that the Senator from Vermont be recognized.

Mr. LEAHY. Mr. President, we are concluding the debate on the controversial nomination of Brett Kavanaugh to a seat on the Court of Appeals for the District of Columbia Circuit.

I spoke last evening, and I shall not speak longer today except to again express my concern that we are putting a person with no judicial experience on the second most powerful court in the land.

This vote will go forward, unlike the votes for two far more qualified people nominated by President Clinton who were pocket-filibustered by the Republican leadership of the Senate, along with 59 other judges nominated by President Clinton who were pocket-filibustered by the Republican leadership.

What I worry about with this nomination of Mr. Kavanaugh, whose ABA rating has been downgraded—it is almost unprecedented to see that happen—is that he is a man who in all his statements spoke of making rulings that would make President Bush proud. This is an independent branch of Government. He is not supposed to be a rubberstamp for anybody.

I think when you have a Republican-controlled Congress which has refused to be a check on the Bush-Cheney administration, whether it is the war in Iraq, the lack of weapons of mass destruction, the failures of Homeland Security with Katrina, or this latest fiasco in the Veterans' Administration, there is no accountability. We at least should be able to speak to our courts and to expect our courts to be accountable.

This is an administration that has been secretly wiretapping Americans for years without warrants, despite the requirements of the law. This is an administration that refused to allow the Justice Department's own Office of Professional Responsibility to proceed...

This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
with an investigation into whether Justice Department lawyers violated their responsibilities or the law in establishing and justifying programs to spy on Americans. This is an internal government investigation that is being stymied by the administration.

The administration that has operated behind a wall of secrecy and that has issued secret legal opinions justifying the use of torture and rendition of prisoners to other countries, ignoring the dangers such tactics pose to our own soldiers and Americans around the world. This is an administration that is talking about prosecuting reporters and newspapers for their own activities instead of focusing on the job at hand.

Yesterday expressed some regrets over the administration’s use of 750 Presidential signs to reserve the power of the President alone the power to choose whether to enforce laws passed by Congress. As an Associate White House Counsel, Mr. Kavanaugh worked with Karl Rove on the President’s plan to pack the Federal bench with ideologues such as William Pryor, Janice Rogers Brown and others. He helped justify the wall of secrecy that has shrunk so many of the White House’s activities.

At his hearing Mr. Kavanaugh emphasized, as if a qualification, that he had “earned the trust of the President” and his “senior staff.” All that may be useful for advancement within this President’s administration or Republican circles, but those are hardly qualifications for an independent judge of this President and this administration’s actions. Indeed, when pressed at his confirmation hearing to provide answers about his qualifications for this lifetime appointment and his membership responsibilities as a judge, Mr. Kavanaugh sounded like a spokesman and representative for the administration.

Over and over he answered our questions by alluding to what the President would want him to do. We heard from a nominee who parroted the administration’s talking points on subject after subject. Rather than answer our questions, he referred us to the bland explanation offered by a former President’s spokesman to be a judge on the Second Circuit. He has been an untrustworthy advocate of a non-partisan political agenda. As Staff Secretary to the President, Mr. Kavanaugh has been involved in President Bush’s use of 750 Presidential signs to reserve the power for the President alone the power to choose whether to enforce laws passed by Congress.

The Senate Republican leadership is catering to the extreme rightwingers and special interest groups agitating for a fight over judicial appointments. With a number of judicial nominees ready for bipartisan confirmation, the Senate Republican leadership would rather concentrate on this controversial and divisive nominee. That this nomination has not moved forward for 3 years is indicative of the fact that even Republican Senators know what a poor nomination this is. They have made no secret of the reason for rushing this nomination through the Senate now, after it has languished for 3 years under Republican control, and after the nominee admitted to slow-walking his responses to this committee. They want to stir up a fight. They want to score cheap political points at the expense of another lifetime appointment to the courts.

The Senate Republican leadership is apparently heeding the advice of the Wall Street Journal editorial page, which wrote, “[a]t the very least, the [Bush] administration has set the tone for this battle.” Rich Lowery, editor of the conservative National Review, listed a fight over judges as one of the ways President Bush could revitalize his political fortunes, writing that he should, “[p]ush for the confirmation of his circuit judges that are pending. Talk about them by name. The G.O.P. wins judiciary fights.” Republican Senators are relishing this chance for a political fight. Senator THUNE has said, “A good fight on judicial seating helps energize our base. . . . Right now our folks are feeling a little flat.” Senator CORNYN has said, “I think this is excellent timing. From a political standpoint, when we talk about judges, we talk about politics.” On May 8, the New York Times reported: “Republicans are itching for a good election-year fight. Now they are about to get one: a reprise of last year’s Senate showdown.
over judges.’’ The Washington Post reported on May 10: ‘‘Republicans had re-
vived debate on Kavanaugh and another
Bush appointee, nominee, Ter-
rence Boyle, in hopes of changing the pre-
election subject from Iraq, high gasoline prices, and Hurricane
Scary Scary Scary.

We should not stand idly by as Re-
publicans choose to use lifetime Fed-
eral judgeships for partisan political
advantage. In a May 11, 2006, editorial
The Tennessean wrote:

The nation should look with complete
dismay at how Republican political
influence on nominations is being advocated by Senate Re-
publicans now. . . . Republicans are girding for a fight on judicial
nominees for no reason other than to be girding for a fight. They
have had as much in public comments. . . . In other words, picking a public fight
over judicial nominees is, in their minds, the right thing to do. . . . Now, Republicans are
advocating a brawl for openly political pur-
poses. The appointment of judges deserves
to be treated as a political right thing to do. . . . Now, Republicans are
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Mr. FEINGOLD. Mr. President, I wish
to first note my concern about the pro-
cedure followed in the Judiciary Com-
mittee to report out this nomination
precipitously to the floor. Our practice
on nominations in the committee has been
first to hold a hearing. . . . Now, Sen-
ators are the opportunity to re-
view the transcript of the hearing and
submit written questions. Normally, we
are given a week to do that, which
is a reasonable length of time. Then,
one nominee answers any written
questions, the nomination can be no-
ticed, and we have the right to hold
that nomination in abeyance. That is
not an extraordinary amount of
time, but it is at least sufficient for the
Senators on the committee to do their
jobs and have confidence that the nom-
ination has been considered with due
diligence.

There is no good reason that we
couldn’t follow that schedule in this
case. Mr. Kavanaugh’s situation is un-
usual because he was first nominated
several years ago, but his first nomina-
tion was essentially abandoned when
he decided not to respond to written
questions for a full 7 months after his
hearing in April 2004. Senators on the
Democratic side requested a new hear-
ing for him over a year ago, after he
was renominated. His nomination lay
dormant until just a few weeks ago.

Then, all of a sudden, there was a full
court press to get this nomination
done. Why is that? The rush to judg-
ment in the committee, as far as I can
tell, seems more than the majority leader’s
desire to have a floor vote on the nomination before our
next recess. There was no reason for the rush except for the majority lead-
er’s political timetable. There is no cri-
is in the District of Columbia Circuit,
which has the lowest caseload of any
circuit in the country. All we were ask-
ing on the Democratic side in the com-
mittee was that we follow the regular
order—a timely hearing and the oppor-
tunity to ask written questions.

I do want to note that I finally re-
ceived answers the day before the com-
mittee vote to some of the questions
that I first asked back in April 2004. I
was not entirely satisfied with those
answers, but they were certainly more
complete than those the nominee pro-
vided when he first answered my ques-
tions in November 2004. The fact that
these questions were finally answered
just completes the record from 2004. I
believe Senators deserved a chance to
have that opportunity when the hearing
was held on May 9, 2006, and ask further
questions if they wanted to. A lot has
happened in this country and in this
administration where Mr. Kavanaugh
works during the interval between his
hearing in May 2004 and the hearing
earlier this month. That is one of the
reasons a second hearing was nec-
 essary. So it was a mistake for the
committee to short-circuit the process by simply
decreeing that written questions would
not be permitted.

Since the leader has decided to press
forward on this nomination, I will vote
no. I do not think Mr. Kavanaugh is the
right choice for this vacancy. He is a
very bright young lawyer and he has
some impressive credentials. He may
well be ready for appointment to a dis-
crout court judgeship. But his record
does not give me confidence that he is
ready to serve on the District of Co-
lumbia Circuit, widely seen as the sec-
ond highest court in the land.

Mr. Kavanaugh has written almost
nothing that we can look to for a sense
can look to for a sense of his judicial phil-
osophy, or the test of his temper-
ament, of his temperament. In addition,
so much of his career after clerking has
ever been spent in partisan political posi-
tions that it is certainly legitimate to
wonder whether he can be fair and im-
partial in a judicial role. Partisan po-
litical work does not necessarily dis-
qualify someone from taking the bench. As has been pointed out, many
good appellate or Supreme Court
judges held political posts. But most
held other positions as well that dem-
 onstrate their ability for independ-
ence. The Senate is entitled to ask for
evidence that the nominee can be non-
partisan and impartial, not just assur-
ances. In Mr. Kavanaugh’s case, there
is simply no record to examine to give
comfort on that score. Furthermore,
we know from the latest ABA evalua-
tion that at least some people who
have come in contact with him in his
work do not think that he is prepared
to be an appellate judge.

We have already sent three judges on
that court, only one—Judge Douglas
Ginsburg—had less legal experience
when he or she was confirmed than Brett Kavanaugh now has. Ginsburg
had 13 years of legal experience, includ-
ing a year as a Senate-confirmed As-
sistant Attorney General and 8 years as
a professor at Harvard Law School. He
had a record that the Senate could
much more easily evaluate. Other
judges on that circuit had much longer
experiences, including 28 years as a
judge, 19 years as a judge, 15 years,
including 10 years of private prac-
tice and 5 years as a judge; Judge Hen-
derson had 18 years, including 4 as a
U.S. district judge; Judge Randolph
had 21 years of legal experience; Judge
Griffith, 13 years; Judge Sentelle, 19
years, including 10 years as a law pro-
fessor at Michigan and Harvard; Judge
Tate, 28 years; Judge Judith Rogers,
30 years, including 11 years as a judge;
Judge Janice Rogers Brown, 28 years,
including 11 years as a judge; Judge
Griffith, 20 years.

The District of Columbia Circuit is
not a place to learn the judicial ropes,
nor is it a place to reward a loyal employee. It is a court that makes decisions every day that have a huge effect on the lives and livelihoods of American citizens and American businesses. It has a caseload that demands not only a good legal mind but judgment, wisdom, and an openmindedness and whose reasoning is straightforward and clearly expressed, and worthy of respect.

Brett Kavanaugh is, unfortunately, not such a nominee. Because Mr. Kavanaugh does not have a judicial record to review, evaluating his fitness for the bench is not easy. We do not have written opinions from him that would reveal whether he looks objectively at both sides of an issue before making a decision. Therefore, we must examine how he has conducted himself in interviews before the American Bar Association Standing Committee on the Federal Judiciary and how he answered questions posed by the Senate Judiciary Committee. Our committee now has the confidence necessary to vote to confirm Mr. Kavanaugh to the DC Circuit.

In its 2003 assessment of Mr. Kavanaugh, the ABA record noted concerns with the breadth of Mr. Kavanaugh’s professional experience. It was noted that he had never tried a case to verdict or judgment; that his litigation experience over the years was always in the company of senior counsel; and that he had very little experience with criminal cases. Specifically, the committee said: “Indeed, it is the circumstance of courtroom experience that fills the transcripts that make the record before the Court of Appeals, and concerns were expressed about the nominee’s insight into that process.”

In its report on its recent reassessment of Mr. Kavanaugh, the ABA’s Standing Committee on the Judiciary downgraded its rating of his qualifications. The report states that one judge who saw Kavanaugh’s oral presentation in court said that Kavanaugh was “less than adequate,” and that he had been “sanctimonious,” and had demonstrated “experience on the level of an associate.” A lawyer in a different proceeding said: “Mr. Kavanaugh did not handle the case well as an advocate and dissembled.”

According to the report, the 2006 interview raised a new concern involving his potential for judicial temperament. Interviewees characterized Mr. Kavanaugh as, “insulated,” which one person commented was due to his current position as Staff Secretary to the President. Another interviewee questioned Mr. Kavanaugh’s ability “to be balanced and fair should he assume a federal judgeship.” And another said that Kavanaugh is “immovable and very stubborn and frustrating to deal with on some issues.”

A judge needs to be able to balance competing viewpoints and objectively determine a fair and equitable outcome. Mr. Kavanaugh’s lack of judicial or courtroom or scholarly experience added to my doubts about his impartiality and lead me to vote no.

Mr. DODD. Mr. President, I rise to briefly state my reasons for opposing the nomination of Brett Kavanaugh to serve as a judge on the Court of Appeals for the District of Columbia Circuit.

I must say at the outset that I regret having to cast this vote. Throughout my tenue here in the Senate, I have supported the vast majority of presidential nominees—regardless of the party to which a president has belonged. With regard to the current administration, I have joined with my colleagues in voting to confirm the overwhelming majority of its judicial nominees—including those with whom I differed on matters of legal and public policy. I had assumed that, when nominated, Mr. Kavanaugh would likely be among this large group of judicial nominees to receive broad bipartisan support. After all, he has a commendable academic background, and served as a law clerk to two Circuit Court judges and one Supreme Court Justice. However, it appears—that after emerging from a confirmation process where his conduct can be described as disappointing at best, and dismissive at worst—Mr. Kavanaugh has practically invited opposition to his nomination. In my view, there are few duties more important to the Senate than the consideration of the nomination of article III jurists. Other than considering a declaration of war pursuant to the Constitution, nothing is more important than deciding on a judicial nominee. The reasons for that view are practically self-evident: article III judges are appointed for life, and they are appointed to lead and populate an entirely separate branch of government. Our entire constitutional framework rests on an act of faith, first taken by our Founders, that is in some respects as audacious as anything: that the President will nominate, and the Senate will confirm, only those judicial nominees who demonstrate the temperament, intellect, experience, and character to stand independent of the executive and legislative branches of government and hold those branches accountable to the law. If a nominee does not demonstrate those qualities during the nomination process, if he or she does not show a capacity to render independent judgments and uphold the principle of equal justice under law, then the outcome of a vote on that nomination is, in this Senator’s view, a foregone conclusion: the nomination must be opposed.

During Mr. Kavanaugh’s two confirmation hearings, he failed to demonstrate the requisite qualifications for the high position to which he has been nominated. He failed to provide meaningful responses to many of the questions put to him at his first hearing, he delayed providing any answers at all to written questions for seven months. It was not until after the 2004 elections that he finally decided to provide those answers. When he appeared before us, he offered only a feeble rationale, saying he took responsibility for what he termed a “misunderstanding.” I found this explanation to be implausible, to say the least. As Associate White House Counsel and one of Mr. Kavanaugh’s responsibilities was to prepare judicial nominees to successfully navigate the confirmation process. So for him to say he
had a “misunderstanding” about the need to promptly answer questions put to him by Senators straining credulity.

Mr. Kavanaugh also failed to provide full and candid answers to important questions about his role and views in helping to shape some of the administration’s most controversial policies. He refused to answer questions about the development of legal rationales for torture to the drafting of Executive orders to reduce the public’s access to presidential records. He also refused to tell the committee on that types of matters, if any, he would recuse himself if such matters came before him as a judge.

This refusal to be forthcoming with the Judiciary Committee—and by implication, with the Senate as a whole—bespeaks a dismissive attitude toward the confirmation process that he finds highly troubling. We have seen in recent years a growing tendency of candidates to treat the confirmation process more as a game of hide-and-seek than as a serious public-vetting signed by the Senate to provide Senators with the information that they need to make careful, reasoned decisions about nominees. If candidates do not provide vital information about their views and their views, it makes it impossible for Senators to adequately discharge their constitutional duty to advise and consent with respect to article III nominees.

I would be remiss if I did not also mention this nomination that make it highly unusual. One is that the American Bar Association, ABA, downgraded its rating of the nominee, from “highly qualified” to “qualified.” Six of the eight members of the ABA committee who voted previously on this nomination voted to downgrade his nomination based on new information about his ability to act independently and his sparse record as a judge and legal practitioner. It also bears mentioning that this nominee, if confirmed, would be one of the least experienced judges to have served on this particular court. Only former Judge Kenneth Starr had less experience.

For these reasons, I must oppose this nomination. I hope that, if confirmed, this nominee will prove me wrong by growing into a wise, independent, and fair-minded jurist. But regrettably, at this time, he has given the Senate patry and insufficient facts on which to believe that he is qualified for the high office to which he has been nominated.

Mr. KENNEDY. Mr. President, the Court of Appeals for the DC Circuit is the second-highest court in the Nation. As such, its judges bear a unique responsibility to both other facts about this nomination that other appellate courts cannot deal with. Only the judges of the DC Circuit can hear appeals under many critical laws that affect our economy, our environment, and our election system. Because the Supreme Court only hears a limited number of cases, the judges of the DC Circuit often have the final word on laws that affect the lives of millions of Americans, at home and in the workplace.

Unlike most of the members of the DC Circuit, Brett Kavanaugh is not a judge, an experienced litigator, or a seasoned lawyer. Mr. Kavanaugh is a political operative, a man whose ambition has placed him at the center of some of the most politically divisive events in recent memory. He is not qualified for this position. If his nomination is approved I can say with confidence that Mr. Kavanaugh would be the youngest, least experienced and most partisan appointee to the court in decades.

Mr. Kavanaugh blatantly lacks the broad legal experience that is the hallmark of Federal judges—particularly those at the highest levels. He has never tried a case to verdict or to judgment. In fact, Mr. Kavanaugh has only practiced law for 10 years. Even counting the time he clerked, he took only half of the average legal experience of nominees to the DC Circuit. To put this in context, Mr. Kavanaugh would be the least experienced member of the DC Circuit in almost a quarter century.

His lack of experience is underscored by his responses to questions from Judiciary Committee members. When he was asked to name his 10 most significant cases, Mr. Kavanaugh could only cite two cases, each of which actually appeared in court, and only two cases in which he was lead counsel. He even cited two cases for which he merely wrote a friend-of-the-circuit brief for someone who was not a party to the lawsuit.

I am not alone in my judgment that Mr. Kavanaugh is not qualified for this position. Aside from my seven colleagues on the Judiciary Committee who voted against his appointment, organizational labor practice findings against them by the National Labor Relations Board on unfair labor practices. Usually, these cases are filed by employers across the country attempting to overturn unfair labor practices. We are, for example, one of the few appellate decisions by the Board. Recently, almost one in three such appeals have been heard by the DC Circuit.

During our hearings, I asked Mr. Kavanaugh whether he had any experience as a labor lawyer. He could not provide a single example of work in this area—not one. Instead, he made vague reference to his work as a law clerk and his brief time in the Justice Department.

The DC Circuit is also important to anyone who breathes our air or drinks our water. It is the only Federal appellate court that can hear appeals on rules to protect the environment under the Clean Air Act and the Safe Drinking Water Act. It is the only Federal court that can grant a remedy when the executive branch fails to follow congressional mandates to protect the environment under these laws.

Nothing in Mr. Kavanaugh’s record suggests that he would be able to keep the executive branch in compliance with the law on these matters. More generally, nothing in his record suggests that he would be able to avoid partisan politics and politics that have marked his brief career.

In fact, partisan politics is the only area in which Mr. Kavanaugh’s qualifications cannot be questioned. He has been deeply involved in some of the most bitterly divisive political events in the last decade—and always on the same side. At the Office of the Independent Counsel, Mr. Kavanaugh authored the infamous Starr Report, wrote the articles of impeachment against President Clinton, and investigated the tragic suicide of Vince Foster.

As an Associate White House Counsel, Mr. Kavanaugh worked to support the nomination and confirmation of Jay Bybee, the author of the notorious Torture Report, and the still-controversial Judge Hugo Black. He also was personally responsible for drafting the executive order that made presidential records less accessible to the public and the press.
This was order was so restrictive that one observer said it would “make Nixon jealous in his grave.”

We gave Mr. Kavanaugh an opportunity to prove that he was independent and impartial in spite of his partisan past. I personally noted that this was his concern with his nomination, and I know that my colleagues did the same. Mr. Kavanaugh refused to specify the issues and policies on which he would recuse himself—in spite of the fact that he was at the center of a number of executive policy directives in recent years.

His answers to our questions resembled political talking points more than they did the answers we would expect from a nominee to such a prominent lifetime position in the Nation’s Judiciary. He has shown nothing to suggest that he will stand up to the President when his duties require it.

Mr. Kavanaugh is not qualified for this job. Even worse, his nomination is a threat to the separation of the partisan and ideological pressures that have marked many recent judicial nominations. His nomination seems little more than a crass administration attempt to politicize the courts and provide a solid vote in favor of the most extreme political tactics of the administration. The Federal courts need experienced, independent judges who can rise above their partisan beliefs and enforce the rights and guarantees of our Constitution and the rule of law. Mr. Kavanaugh is not such a nominee, and I urge my colleagues to oppose his nomination.

Mr. SESSIONS. Mr. President, I rise today to urge my colleagues to confirm President Bush’s nomination of Brett Kavanaugh to be a U.S. circuit judge on the U.S. Court of Appeals for the District of Columbia Circuit.

President Bush first nominated Brett Kavanaugh to the DC Circuit on July 25, 2003. He received a hearing before the Senate Judiciary Committee on April 25, 2003. He previously served as Associate Counsel and Staff Secretary. He has had a broad range of experience that makes him an ideal candidate for the DC Circuit.

Judge Abner Mikvah spent most of his career prior to the bench as a Democratic legislator in Illinois and later as a U.S. Congressman. In fact, he was a sitting Congressman when he was nominated to the DC Circuit. He, too, was confirmed by a substantial majority.

The Senate has not considered service as a Democratic staff member or as a Democratic Congressman a bar to service as a U.S. Circuit Judge, nor should it consider Mr. Kavanaugh’s service in President Bush’s White House as a disqualifier for judicial office. This has never been the case, nor should it be. Justice Stephen Breyer was once the chief counsel to the Senate Judiciary Committee before being nominated and confirmed to the First Circuit by a substantial majority. I hope that none of us believe that his service on Senator Kennedy’s staff should have disqualified him.

Age should not be the sole measure of a person’s experience. Many Senators began their service at a young age. Senators Biden and Kennedy were elected to the Senate at the age of 30, and Senator Leahy was elected at age 34.

Some of Mr. Kavanaugh’s critics have suggested that we should hold his service in the White House for President Bush against him. They seem to believe that Mr. Kavanaugh’s public service to his Nation is somehow a disqualifier for later serving on the bench. I disagree.

Public service in the executive or legislative branches of Government should not be a disqualifier for judicial office. Besides, at age 41, Mr. Kavanaugh is considerably younger than many of our Nation’s most distinguished judges were at the time of their nomination. In fact, all three of the judges for whom Mr. Kavanaugh clerked were appointed to the bench before they were 41. All have been recognized as distinguished jurists. Justice Kennedy was appointed to the Ninth Circuit when he was 38 years old. Judge Kozinski was appointed to the Ninth Circuit when he was 35 years old. Judge Stapleton was appointed to the district court at 35 and later elevated to the Third Circuit. There are many other examples of judges who were appointed to the bench at a young age and have had illustrious careers:

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<tr>
<th>Name</th>
<th>Circuit</th>
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<tr>
<td>Judge Harry Edwards</td>
<td>DC Circuit</td>
<td>39</td>
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<td>Judge Douglas Ginsburg</td>
<td>DC Circuit</td>
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<td>Judge Kenneth Starr</td>
<td>DC Circuit</td>
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<td>Judge Jane B. smokers</td>
<td>Third Circuit</td>
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<td>Judge Michael Luttig</td>
<td>Ninth Circuit</td>
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<td>Judge Karen Williams</td>
<td>Fourth Circuit</td>
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<td>Judge Albert Murtha</td>
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<td>Judge Edward Jones</td>
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<td>Judge Kenneth Gramm</td>
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<tr>
<td>Judge Donald Lay</td>
<td>Eighth Circuit</td>
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<td>Judge Robert Cotler</td>
<td>Ninth Circuit</td>
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<td>Judge Mary Schmoker</td>
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<td>Judge Daniel Tacha</td>
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<td>Judge Stephen Semler</td>
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Consequently, I urge my colleagues to oppose his nomination. Presi-
found that Mr. Kavanaugh has the integrity, professional competence, and judicial temperament to serve on the DC Circuit. Each year Mr. Kavanaugh’s name has been in nomination the committee has rated Mr. Kavanaugh, and each year every member of the committee has rated him “qualified” or “well qualified.”

According to the ABA:

To merit a rating of “well qualified,” the nominee must be at the top of the legal profession in his local community; has outstanding legal ability, breadth of experience and the highest reputation for integrity; and either demonstrate or exhibit the capacity to temperament. The rating of “qualified” means that the nominee meets the Committee’s very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.

In 2004 and 2005 a majority of the committee thought Mr. Kavanaugh had earned its highest rating, “well qualified”; the rest thought he had earned a “qualified” rating. This year the balance changed, with more members of the committee believing he deserved a “well qualified” rating and the rest thinking he deserved a “well qualified” rating.

Despite the fact that the ABA committee has included many committed Democrats in its membership, the committee remains unanimous that Mr. Kavanaugh is indisputably competent, intelligent, and qualified to serve on the DC Circuit. In response to what some of my Democratic colleagues have said about Kavanaugh’s ABA rating, let me quote what ABA committee chairman, Stephen Tober, had to say:

Let me underscore . . . that we didn’t find him not qualified. There’s not a breath of that in this report or any earlier report. We found him qualified/minority well qualified. What I said at the end is what, in fact, many people said, that he has a solid reputation for individual capacity—a lot of people refer to him as brilliant—and an excellent writing and analytical ability. Those are great skills to bring to the court of appeals. Those are the skills that will serve him well, certainly, on a Federal court.

Finally, Mr. Tober acknowledged that “there is not a single not qualified vote.”

Brett Kavanaugh is a highly qualified attorney who has experience as an appellate litigator presenting arguments in court, and experience as a judicial law clerk on the other side of the bench evaluating appellate arguments. He has spent his entire career as a public servant. I am confident that he will perform his duties as a judge in a fair and even-handed manner.

Today’s vote on this nominee is long past due. I urge my colleagues to confirm Brett Kavanaugh to be a U.S. circuit judge.

Mr. REID. I intend to vote against the confirmation of Brett Kavanaugh to the DC Circuit Court of Appeals. This youthful, relatively inexperienced nominee lacks the credentials to be approved for a lifetime appointment to the second most important Federal court in the country.

At the outset, let me contrast this nomination with a circuit court nomination we recently approved: the nomination of Milan Smith to the Ninth Circuit Court of Appeals. Mr. Smith is a pillar of the California legal community, a distinguished practicing lawyer with 27 years of experience in complex legal transactions. His nomination was the product of extensive consultation with Democratic Senators. The Judiciary Committee approved his nomination 18 to 0, and the full Senate gave its consent unanimously.

The Smith nomination is an example of the way the process is supposed to work. The Constitution gives the President and the Senate a shared role in filling vacancies on Federal courts. Working together, we can move highly qualified nonpartisan nominees through the process without rancor or delay.

But when the President uses judicial appointments as a reward to the extreme end of his political party, he invites controversy and conflict. Regrettably, that may be just the result that the White House wants.

Cesar Conda, a former domestic policy adviser to Vice President Cheney, recently wrote in the Roll Call newspaper: “For Bush, a renewed fight over conservative judges . . . just might be the cure to the Republican Party’s current political doldrums.”

One of my Republican colleagues is quoted there saying earlier this month as saying: “A good fight on judges does nothing but energize our base. Right now our folks are feeling a little flat. They need a reason to get engaged, and fights over judges will do that.”

At the same time, a lengthy debate over judges serves to distract attention from the pressing problems facing the Nation: an intractable war in Iraq, soaring gas prices, millions of Americans. Instead of addressing these vital issues, this Senate has been forced to spend days and weeks and months talking about divisive judicial nominees.

The nomination of Brett Kavanaugh is nothing if not divisive. All eight Democrats on the Committee opposed his confirmation. Every leading civil rights, environmental, and labor organization in the country has urged that he be rejected.

This nomination is not the product of consensus and consultation—it is a poke in the eye to the Senate. It is a wedge that disrupts the wonderful bipartisanship which has characterized the immigration debate over the past 2 weeks.

I recently met with Brett Kavanaugh. He seems like a bright young man. But he is a 41-year-old lawyer who has spent his short legal career in service to partisan Republican causes.

His two principal accomplishments as a lawyer are his work as an aide to Special Counsel Kenneth Starr during the misguided crusade to impeach President Clinton, and his current position as a political lawyer in the Bush White House. Those positions do not disqualify Mr. Kavanaugh from future service, but they do not constitute the kind of broad experience in the law that we should expect from a nominee to the District of Columbia Circuit.

The DC Circuit is a uniquely powerful court. It has jurisdiction over challenges to Federal activities affecting the environment, consumer protections, workers and civil rights. This has come as appeals against Environmental Protection Agency, the National Labor Relations Board, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration and other agencies.

As a result, DC Circuit judges sit in a unique position to judge Government actions that affect our lives in fundamental ways. Mr. Kavanaugh’s slim, partisan record gives me no confidence that he is the right person to assume this awesome responsibility.

In the 113 years since the Court of Appeals for the DC Circuit was established in 1893, 54 judges have sat on the court. Only three of those judges came to the court with less experience than Kavanaugh. DC Circuit judges have averaged over 26 years of legal experience at the time of their appointment to the DC Circuit. Mr. Kavanaugh, in contrast, graduated from law school a mere 16 years ago.

It is not just Mr. Kavanaugh’s youth but his lack of practical experience that renders him unfit for this post. In his 16 years as a lawyer he has never tried a case to verdict or judgment. When questioned about this deficiency at his committee hearing, the nominee presumed to compare himself to Chief Justice John Roberts. But at the time of his appointment to the DC Circuit, Roberts had argued dozens of cases before the Supreme Court. Kavanaugh has said he is just “one guy” on behalf of the Starr investigation.

There are other kinds of experience one might bring to an appellate court. Some nominees are respected scholars. Some are sitting judges. Kavanaugh is neither. His high-ranking position in the Bush White House might constitute relevant experience, but we have little idea what he has accomplished in that role. He largely refused to answer questions from the committee about the issues he has handled or the positions he has advocated.

We know he helped to select many of the controversial judicial nominees.
who have tied the Senate in knots in recent years. We know he was the author of a far-reaching government secrecy policy, despite his own role in stripping President Clinton of every vestige of privacy and privilege during the Starr investigation. Of course that, in a way, is the point that Mr. Kavanaugh has had a fancy west wing title.

Most nominees gain more stature over the course of their legal careers, but Mr. Kavanaugh is headed in the opposite direction. The American Bar Association recently lowered the rating of this nominee. Lawyers and judges interviewed by the nonpartisan ABA Committee described Mr. Kavanaugh as “sanctimonious,” “immovable” and “very stubborn and frustrating to deal with on some issues.” A judge before whom Mr. Kavanaugh appeared considered him “less than adequate” and said he demonstrated “experience on the level of an assistant lawyer” who observed him during a different court proceeding stated: “Mr. Kavanaugh did not handle the case well as an advocate and dissembled.”

Needless to say, these are not qualities that make a good judge.

Still others described Mr. Kavanaugh as “insulated.” That is the last quality we want in a 41-year-old man who will soon begin the cloistered life of an appellate judge. Mr. Kavanaugh lacks the wide experience that breeds wisdom and judgment, and he is unlikely to acquire those qualities on the bench.

Mr. Kavanaugh’s thin legal resume contrasts with the resumes of the two Clinton nominees who were blocked by the Republican-controlled Senate when they were nominated to the same court. Elena Kagan, now the Dean of Harvard Law School, had been both a practicing lawyer and a leading administrator at the time of her nomination. Allen Snyder, a former clerk to Justices Harlan and Rehnquist had been a litigation partner at the law firm of Hogan and Hartson for 26 years.

Under what definition of fairness do my Republican colleagues insist that Brett Kavanaugh is entitled to a Senate vote while Elena Kagan and Allen Snyder were denied a vote? By what standard do they consider Kavanaugh qualified to sit on the DC Circuit when these two other distinguished lawyers were denied that honor?

Unlike Kagan and Snyder, Mr. Kavanaugh will be considered by the Senate. But I will cast my vote against confirmation. This nominee’s record is too sparse and the court to which he is nominated is too small to play a significant role in the litigation and decisions that the Senate will consider during his lifetime

Mr. President, even in this Bush Presidency, I continue to believe that a judge should have experience in a courtroom. I know that is somewhat heretical in the environment we have, but I really believe that if you are going to be a judge, you should have some practical experience, at least picking a jury, arguing to a jury, appearing before a court, making your views known to the judge. That is largely lacking with this young man. I note that the White House and the Judiciary Committee from two judges for whom he worked. It is unusual that people clerk for two separate judges. These clerkships are usually a year long, and you sit back there and you shuffle the paper and you draft opinions for the judge on the cases that come before the judge—but that is very different than courtroom experience as a practicing lawyer. You may go watch a few arguments, but clerking for two judges doesn’t do the trick. That doesn’t give you the experience to be a judge, especially a judge on the District of Columbia Circuit Court of Appeals, the second highest court in the land.

I understand that Mr. Kavanaugh has argued several appeals. But not very many, and in any event that’s not the same as trying cases in my view.

I am going to vote against confirmation of Brett Kavanaugh. I want to make four brief points about this nomination.

First, Brett Kavanaugh is a youthful partisan who lacks the credentials to be appointed for a lifetime appointment to the second most important Federal court in our country. He is 41 years old.

He has spent his short legal career in service to Republican causes.

He worked as an aide to Special Counsel Kenneth Starr. I think the work of Kenneth Starr will go down in history as a blight on this country. This partisan investigation disrupted this country and it was aided by the nominee who is before the Senate at this time.

He has been a lawyer in the White House for President Bush. The fact that he worked for Starr and now works in the White House doesn’t disqualify him. Most people do not add up to the kind of experience we should have from a nominee to the District Circuit Court. It doesn’t add up.

Second, Mr. Kavanaugh’s lack of practical experience renders him unfit for the post. In his years as a lawyer, he has never tried a case to a verdict or to judgment.

There are other kinds of experience one might bring to an appellate court. Some nominees are respected scholars and some are sitting judges. Mr. Kavanaugh is neither.

His high-ranking position in the White House might constitute relevant experience, but we have little idea about what he accomplished in that role. He repeatedly refused to answer questions from the committee about the issues he has handled or the positions he has advocated.

The big push for this man comes from partisans who want to push the majority in the Senate toward the nuclear option. They think it would be a great thing to disrupt the Senate in this way.

Third, the American Bar Association recently lowered its rating of this nominee. Most nominees gain more stature over the course of their legal careers, but Mr. Kavanaugh is headed in the opposite direction, and rightfully so. Lawyers and judges of the nonpartisan ABA Committee described Mr. Kavanaugh as being “sanctimonious” and “frustrating to deal with.” That says it all.

A judge before whom Mr. Kavanaugh appeared described him as “less than adequate” and said he described experience “at the level of an associate.”

A lawyer who observed him during a different court proceeding stated that: Mr. Kavanaugh did not handle the case well as an advocate and dissembled.

Needless to say, these are not qualities which make a good judge. But the right wing wants him, and he is going to become a judge.

Finally, let me say this: The nomination of Mr. Kavanaugh is divisive. All eight Democrats on the Judiciary Committee oppose his confirmation. Every leading civil rights, environmental, and labor organization in the country urged that he be rejected.

The Constitution gives the President and the Senate a shared role in filling vacancies on the Federal court. Working together, we can move highly qualified, nonpartisan nominees through the process without rancor or delay. But when the President uses judicial appointments to the extreme rightwing of the Republican Party, it invites controversy and conflict. And that is what we have. In sum, this nominee’s record is too sparse. The court to which he is nominated is too important. I hope we get a lot of votes against this nomination. I understand that everyone on the other side of the aisle will walk over here and vote for this unqualified candidate, but that is not how it should be.

If there is no one else wishing to speak, I will cast my vote against this nomination. I understand that if he is confirmed:

I will interpret the law as written and not impose personal policy preferences;

I will follow precedent in all cases fully and fairly, and above all, I will at all times maintain the absolute independence of the judiciary, which, in my judgment, is the crown jewel of our constitutional democracy.

Listen to the words that Brett Kavanaugh used: Fair, independent, good person who knows the rules of law. The law says he is not the qualities America wants in our federal judges.

We need more qualified nominees on the bench who practice judicial restraint and respect the rule of law, and Brett Kavanaugh fits that description.

President Bush nominated Mr. Kavanaugh on July 25 of 2003. And since this time, he’s endured not one—
Mr. McCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted "yea."

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 159 Ex.]

YEAS—57

Alexander  Crapo  Martinez
Allard  DeFint  McConnell
Allen  DeWine  Mcdonnell
Bennett  Domenici  Murkowski
Bond  Enzi  Nelsen (ND)
Brownback  Enzi  Roberts
Bunning  Frist  Santorum
Burns  Graham  Sessions
Burr  Grassley  Shelby
Byrd  Gregg  Smith
Carper  Hagel  Snowe
Chafee  Hatch  Specter
Chambliss  Hutchinson  Stevens
Coburn  Inhofe  Sununu
Coats  Isakson  Talent
Coley  Johnson  Thomas
Collins  Lieberman  Vitter
Cornyn  Lott  Voynich
Craig  Lugar  Warner

NAYS—36

Akaka  Feinstein  Menendez
Baucus  Bayh  Mikulski
Biden  Binkema  Murray
Byrd  Brown  Nelson (FL)
Cantwell  Enzi  Pizzo
Chambliss  Enzi  Pryor
Cornyn  Enzi  Reid
Dole  Dorgan  Reid
Durbin  Duckworth  Sarbanes
Feingold  Feingold  Schakowsky
INTELLIGENCE AGENCY

TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Mr. ISAKSON. Is there a sufficient second?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted "yea."

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 159 Ex.]

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Allard  DeFint  McConnell
Allen  DeWine  Mcdonnell
Bennett  Domenici  Murkowski
Bond  Enzi  Nelsen (ND)
Brownback  Enzi  Roberts
Bunning  Frist  Santorum
Burns  Graham  Sessions
Burr  Grassley  Shelby
Byrd  Gregg  Smith
Carper  Hagel  Snowe
Chafee  Hatch  Specter
Chambliss  Hutchinson  Stevens
Coburn  Inhofe  Sununu
Coats  Isakson  Talent
Coley  Johnson  Thomas
Collins  Lieberman  Vitter
Cornyn  Lott  Voynich
Craig  Lugar  Warner

NAYS—36

Akaka  Feinstein  Menendez
Baucus  Bayh  Mikulski
Biden  Binkema  Murray
Byrd  Brown  Nelson (FL)
Cantwell  Enzi  Pizzo
Chambliss  Enzi  Pryor
Cornyn  Enzi  Reid
Dole  Dorgan  Reid
Durbin  Duckworth  Sarbanes
Feingold  Feingold  Schakowsky

INTELLIGENCE AGENCY

TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Mr. ISAKSON. Is there a sufficient second?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCOnnell. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted "yea."

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 159 Ex.]

YEAS—57

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Allard  DeFint  McConnell
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Bunning  Frist  Santorum
Burns  Graham  Sessions
Burr  Grassley  Shelby
Byrd  Gregg  Smith
Carper  Hagel  Snowe
Chafee  Hatch  Specter
Chambliss  Hutchinson  Stevens
Coburn  Inhofe  Sununu
Coats  Isakson  Talent
Coley  Johnson  Thomas
Collins  Lieberman  Vitter
Cornyn  Lott  Voynich
Craig  Lugar  Warner

NAYS—36

Akaka  Feinstein  Menendez
Baucus  Bayh  Mikulski
Biden  Binkema  Murray
Byrd  Brown  Nelson (FL)
Cantwell  Enzi  Pizzo
Chambliss  Enzi  Pryor
Cornyn  Enzi  Reid
Dole  Dorgan  Reid
Durbin  Duckworth  Sarbanes
Feingold  Feingold  Schakowsky

INTELLIGENCE AGENCY

TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Mr. ISAKSON. Is there a sufficient second?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted "yea."

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 159 Ex.]

YEAS—57

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Coats  Isakson  Talent
Coley  Johnson  Thomas
Collins  Lieberman  Vitter
Cornyn  Lott  Voynich
Craig  Lugar  Warner

NAYS—36

Akaka  Feinstein  Menendez
Baucus  Bayh  Mikulski
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Byrd  Brown  Nelson (FL)
Cantwell  Enzi  Pizzo
Chambliss  Enzi  Pryor
Cornyn  Enzi  Reid
Dole  Dorgan  Reid
Durbin  Duckworth  Sarbanes
Feingold  Feingold  Schakowsky

INTELLIGENCE AGENCY

TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Mr. ISAKSON. Is there a sufficient second?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. ISAKSON). Is there a sufficient second?

There is a sufficient second.

The question is. Will the Senate advise and consent to the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit?

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.