

the help for Louisiana and the help for Flint need to be done the same.

Let me finally say—

The PRESIDING OFFICER. The Senator has used 8 minutes.

Ms. STABENOW. I thank the Chair.

I want to actually turn and give 2 minutes to my colleague who has been my great partner in this, but I want to close by saying this. There is one other provision in this bill that is outrageous and that continues dark money in campaigns from having to be reported. So this continuing resolution is saying yes to dark money and no to children with lead poisoning in Flint, and that is not acceptable.

Now to my partner Senator PETERS.

Mr. PETERS. Mr. President, I thank Senator STABENOW for yielding me her remaining time. I couldn't concur more with what she had to say.

This is another day. It seems like we are down here on the floor all of the time talking about the crisis in Flint, asking for help, and demanding that folks step up to help the people of Flint. We are so close to doing it.

As the Senator mentioned, we came with incredible bipartisan support, 95 votes—a program fully paid for that the Senator authored, a program that I fought for as a Member of the U.S. House. Now we are saying this is so important that we are willing to take this program, use these funds to help the people of Flint. But the people can't wait any longer. In this body, the Senate should not be about picking and choosing specific States to help, specific cities to help, specific neighborhoods. It should be about all of America: No matter who you are, no matter where you live, when you are hurting, we will step up as the American people and help those folks in need. That is all we are asking.

A program that is fully paid for and has strong bipartisan support—this seems to be a very easy thing to do, which is why I am at a loss to understand why it can't be put in a CR when it had such broad support and when it is clear people have been waiting for months. We had families in Washington last week, a woman, a mom, talking about her daughter whose teeth are crumbling when she bites into sandwiches because of the damage related to lead poisoning. She has blood levels going up and down with lead; it is still not under control. She was in tears. She was at a loss. She felt some hope when the WRDA bill passed. But if we don't take action and we leave to go back to our States for the month of October, who knows when we were going to bring this up. This is wrong.

The people of Flint have waited long enough. The people of Flint have suffered enough. This is our opportunity as the Senate to rise up and to say: Every American's life is important. Every American's life is one that we celebrate. Every child should have opportunities.

We can put this in the CR. We can pass it and send a strong signal to the people of Flint that their lives matter.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, if there is a moment left, I wish to underscore that we are not asking to pit communities against each other. We are not asking colleagues to say no to Louisiana. We are asking colleagues to say yes to Flint and Louisiana and understand that your ZIP Code doesn't matter. We have the obligation to step up when there is an emergency and help American families. That is all we are asking for the people of Flint.

The PRESIDING OFFICER. The Senator from Utah.

JUSTICE CLARENCE THOMAS

Mr. HATCH. Mr. President, I rise today to celebrate an event that both represents and helps preserve what is best about this great country. I ask unanimous consent that I be permitted to finish these remarks.

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

Mr. HATCH. Mr. President, 25 years ago next month, the Senate confirmed, and President George H.W. Bush appointed, Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. To paraphrase John F. Kennedy, I would like to note both what this country has done for Justice Thomas and what Justice Thomas is doing for this country.

President Bush made the announcement of then-Judge Thomas's Supreme Court nomination on July 1, 1991, at the Bush home in Maine. In his brief remarks, Judge Thomas said: "Only in America could this have been possible." He was right. It would be difficult to find a more powerful story about how far someone can go in this country.

Clarence Thomas was born on June 23, 1948, in a small wood-frame house in the rural town of Pin Point, GA. Six people lived in that house, which had no indoor plumbing.

Life in the world of Clarence's youth was fully segregated. In 1955, the year after the Supreme Court ruled segregated education unconstitutional, he and his brother moved in with his maternal grandparents, Myers and Christine Anderson. Myers Anderson lacked the outward material signs of success that many prize so highly today. He grew up poor, without a father, and had only a third grade education. Yet it was what he had, rather than what he lacked, that would make him the most profound influence on his grandson, Clarence Thomas. Mr. Anderson's strength of character, his principles and values, and his example shaped the man whose memoir would later be titled, "My Grandfather's Son."

Clarence's grandparents were honest, hardworking, and deeply religious people. They taught decency and respect for others, insisting that Clarence never refuse to do an errand for a neighbor. Mr. Anderson wanted his

grandson to be self-sufficient, able to stand on his own two feet even in a hostile world where the odds seemed heavily stacked against him.

The other powerful influences for young Clarence were the nuns who taught him at St. Benedict's Grammar School. There, and at St. Benedict's Catholic Church, Clarence learned that all people are inherently equal, no matter what the law or society might say at a particular time.

Clarence graduated from high school in 1967, the only Black student in his class, and was the first person in his family to attend college. After graduating from Yale Law School, Clarence went to work for Missouri attorney general John Danforth—known as Jack Danforth by us—arguing his first case before the Missouri Supreme Court just 3 days after having been sworn in as a member of the Missouri Bar. He came to Washington in 1979 to join then-Senator Danforth as a legislative assistant.

Clarence Thomas was confirmed by the Senate for the first of five times in 1981 as Assistant Secretary of Education for Civil Rights. I think I was the chairman at that time. He would become the longest serving chairman of the Equal Employment Opportunity Commission in 1982, a judge on the U.S. Court of Appeals for the D.C. Circuit in 1990, and a Supreme Court Justice in 1991 at the age of 43. America gave him opportunities that do not exist anywhere else in the world.

Since this anniversary is about Justice Thomas's service on the Supreme Court, let me turn from what America has done for him to what he is doing for America. I have known Clarence for 35 years and chaired or served on the committees that oversaw each of his appointments. His impact on our Nation comes from his own strength of character fueling his deep conviction about the principles of liberty and other great principles as well.

I have already touched on some of the building blocks of Clarence's character, including his grandfather's example of standing firm in his beliefs. In one interview, Clarence said that his professional career is a vindication of the way he was raised. He described that upbringing in this way in a 1986 article:

But my training by the nuns and my grandparents paid off. I decided then . . . that it was better to be respected than liked.

At the time of Clarence's Supreme Court nomination, reporters noted that he defied categorization and refused to uncritically accept orthodoxy of any stripe. Even liberal columnists acknowledged the nominee's intellectual independence was great. This strength of character has not changed and makes it possible for Justice Thomas to advance his deep conviction about the principles of liberty.

The first principle is the inherent equality of every human being. As the Declaration of Independence states, government exists to secure the inalienable rights of individuals. Justice

Thomas has called the Constitution “a logical extension of [the Declaration’s] principles.”

The second principle of liberty that defines Justice Thomas’s service is the necessity of limits on government, including judges. In 1988, while Chairman of the EEOC, he made an important presentation at the Federalist Society’s annual symposium. The related principles of equality and God-given inalienable rights, he said, are “the best defense of limited government, of the separation of powers, and of the judicial restraint that flows from the commitment to limited government.”

Justice Thomas has said many times that he resists a single label or category for his judicial philosophy or his understanding of the power and role of judges in our system of government. In that 1988 speech, however, he said that liberty and limited government are the foundation for what he called “a judiciary active in defending the Constitution, but judicious in its restraint and moderation.” This judiciary, he explained, “is the only alternative to the willfulness of both run-amok majorities and run-amok judges.”

To put it simply, Justice Thomas draws a direct connection between equality and God-given inalienable rights, limited government, and liberty itself. This means that each branch of government, including the judiciary, should be active but only within its proper bounds. A judiciary consistent with liberty will be active in properly interpreting and applying the Constitution and will be restrained in declining to exercise power to manipulate or change the law.

In 1990, after being appointed to the U.S. court of appeals, Clarence had lunch with a friend and reflected on his new judicial role. He said: Every time I put on the robe, I have to remember that I am only a judge. The only reason that sounds unusual today is that we live in an era of run-amok judges engaging in what the late Justice Antonin Scalia called power-judging.

Justice Thomas’s statement would not, however, have sounded strange to America’s Founders. Alexander Hamilton, after all, wrote that because the judiciary may exercise judgment but may not exercise will, it is the weakest and least dangerous branch.

In 2008, two legal scholars wrote about Justice Thomas in the *Wall Street Journal*. They quoted him describing his basic yet profound judicial philosophy this way: “It’s not my Constitution to play around with,” he said. “I just think that we should interpret the Constitution as it’s drafted, not as we would have drafted it.”

A properly active judiciary will interpret the Constitution as it is already drafted, and a properly restrained judiciary will refuse to interpret the Constitution the way judges would have drafted it. That is what judges are supposed to do in our system of government. They are supposed to interpret the Constitution as it was

drafted. Judges must take the law as they find it and apply it impartially to decide cases. That is their job, their part of the system of government that supports liberty and freedom.

This is the kind of Justice that we knew Clarence Thomas would be: A Justice who knows both the purpose and the limits of the power the Constitution gives him. This is also the reason that many fought so hard against his appointment and continue to criticize his service. The debate over Justice Thomas’s Supreme Court nomination was a debate over what kind of Justice should be appointed in America. His opponents and critics want Justices who will interpret the Constitution as those particular Justices would have drafted it. In other words, they want a judiciary that is inconsistent with liberty, a judiciary that will control the law rather than be controlled by the law. They are concerned more about power than about liberty.

Thankfully, Justice Thomas is the kind of Justice that our liberty requires, and defending liberty is what he is doing for America and for each one of us. We have all passed by the National Archives building, which sits on Constitution Avenue just a few blocks from here. One of the statues in front bears the inscription, “Eternal vigilance is the price of liberty.” Justice Thomas is paying that price of vigilance.

A Justice’s clerks, in a unique and special way, become a family. Justice Thomas’s clerks have become partners in America’s best law firms and professors at her finest law schools, carrying with them the principles and lessons he taught about how to protect liberty. As I did 5 years ago when celebrating Justice Thomas’s 20th anniversary, I asked some of his former clerks to send letters about the Justice.

Mr. President, I ask unanimous consent that these letters be printed in the RECORD following my remarks.

The principles of liberty established by America’s Founders are the same principles to which Clarence Thomas is deeply committed. But it is when those principles are fueled by personal character, integrity, and brilliance that they become a powerful force that defines a nation and helps chart its future.

On July 1, 1991, when President Bush announced that he was nominating Clarence Thomas to the Supreme Court, Clarence said that his grandparents, his mother, and the nuns who taught him “were adamant that I grow up and make something of myself.” To my friend Clarence, I have to say that not only did you exceed all of those expectations, but your service, character, and example are helping to make something good out of the rest of us.

Also, on a more personal note, the unexpected death of Justice Scalia has been a profound loss in many ways, including for his friend and colleague Clarence Thomas. On several different levels—personally, philosophically,

even spiritually—they were close—fellow travelers, if you will. Justice Scalia’s death is a great personal loss, but it also created a void that I am confident Justice Thomas is already filling in continuing to stand for the principles they mutually shared.

A few months ago, Justice Thomas was the commencement speaker at Hillsdale College in Michigan. He cautioned that today there is more emphasis on our rights and what we are owed than on our obligations and what we can give. He asked this question: “If we are not making deposits to replenish our liberties, then who is?”

By his character and convictions, Clarence Thomas continues to make those deposits and maintain the vigilance necessary to replenish and protect our liberty. America gave him much, and he is returning even more.

As a personal friend of most of the Justices, but especially Clarence Thomas, he has far exceeded what many of us thought he would be able to do on the Court. I thought that he would be great and that he would do a great job as a Justice on the Supreme Court, but he has gone even beyond my expectations. He is a great Justice. He is a person of great quality, of great character, and great spirit. You cannot be around him very long without laughing and enjoying life. You can’t be around him very long without knowing that this is one heck of a unique individual—somebody who really deserves to be on the Supreme Court, who has made a process of being a great Justice.

I am proud of him. I am proud of what he has been able to do. I am proud of what he has become. I am proud of the growth that he continually makes in life. I have always been proud of Clarence Thomas, Justice of the U.S. Supreme Court.

I yield the floor.

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

JUDICIAL CRISIS NETWORK,
Washington, DC, September 16, 2016.

Senator ORRIN HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: This year we celebrate the twenty-fifth anniversary of Supreme Court Justice Clarence Thomas’s confirmation. His significance on the Court has often been underappreciated by commentators and politicians alike. Justice Scalia’s outspokenness and Thomas’s silence at oral arguments may have captured the fancy of reporters who favor rhetorical flash over a quarter-century of studious opinions. But as Thomas moves into the most senior position among the Court’s conservatives, his influence will soon become clearly recognizable.

Thomas joined the Court after the 1991 October Term had already begun. He had just spent the summer battling those who would do anything to ensure that Justice Thurgood Marshall could not be replaced by a conservative African-American Justice.

He won those battles, but he had a new challenge waiting for him at the Supreme Court. Whereas his new colleagues had had months to prepare for the Term’s cases, Thomas was thrown, metaphorically speaking, into the deep end. Or, as Thomas himself

would describe it later, he was building his wagon as he was riding in it.

But despite that initial disadvantage, Thomas made clear to his colleagues from his first week on the Court that he would mount a serious challenge to the liberal status quo. In the third case he heard, he shocked his colleagues by emerging as the lone dissenter. After his powerful dissent was circulated to the other justices, his position gained three additional votes. It wasn't enough to change the outcome of that particular case, but it made clear to the other justices that a new wind was blowing from an unexpected direction.

Those outside the Courthouse's marble walls were only rarely aware of Thomas's influence. For example, in one case in which he and Scalia were the only two dissenters, many in the press depicted Thomas as Scalia's puppet. When internal records from the term were released decades later, however, the truth became clear: Thomas started out as the lone dissenter in that case, and it was Scalia who had moved to join him. As he had done before, time and again, Thomas was blazing his own trail.

Thomas's life experiences—a childhood lived under state-mandated racial segregation and a society that punished federal judges who tried to enforce constitutional requirements of race neutrality—undergird his commitment to principled constitutionalism. He shares the Founders' skepticism of untrammelled governmental power, as well as their belief that the Constitution keeps government from encroaching on our foundational liberties. And he recognizes that making the right decisions in the face of harsh criticism takes courage.

So last Term Justice Thomas penned several opinions advancing a serious critique of the administrative state, the growing army of unelected bureaucrats who increasingly write laws that, at least under the Constitution, are the sole responsibility of our elected representatives in Congress. Even staunch originalists like Justice Scalia hadn't taken on that behemoth.

He makes decisions based on legal principles, not politics. That means that Thomas is just as willing to uphold laws he may consider wrong and strike down those he may like, voting to strike down even "conservative" federal laws such as those regulating locally-grown and distributed marijuana. He may like the policies behind those laws, but he doesn't think the federal government has the constitutional power to pass them in the first place.

He also refuses to invent new law to reach "hard cases." As he sees it, judges shouldn't do damage control for lawmakers who don't do a good job writing laws.

Nor is it his job to edit the Constitution to fit his own views. He makes numerous "liberal" pro-defendant decisions that are dictated by the constitutional right to a jury trial or to confront one's accusers. It's not because he thinks those criminals are innocent; it's because he takes seriously his oath to uphold the Constitution.

I was privileged to clerk for Justice Thomas nine years ago. While his judicial integrity and commitment to the Constitution are truly remarkable, his clerks most admire his personal integrity. His high standards helped us reach our own potential and his continued mentorship and guidance have truly made him a father figure to a growing clerk "family". Through him we learned how to wear the mantle of authority lightly, how to maintain humility and perspective in the face of adulation, and even how to stay the course with fortitude when faced with criticism and personal attack.

As the Court prepares to change with Scalia's successor, I predict that the impor-

tance of Thomas's calls for a courageous and principled constitutionalism will soon be recognized much more widely. Many who overlooked or downplayed the importance of his steady hand will soon begin to realize how significant he has been all along.

Sincerely,

CARRIE SEVERINO,
Chief Counsel and Policy Director,
Judicial Crisis Network.

WASHINGTON, DC,
September 16, 2016.

Hon. ORRIN HATCH,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATCH: Twenty-five years ago, Justice Clarence Thomas took his seat as an Associate Justice of the Supreme Court of the United States. I had the privilege of serving as one of Justice Thomas's first law clerks, during the Court's October Term 1991.

By now, Justice Thomas's jurisprudence is apparent. He favors text over policy, original meaning over evolving standards, history over legislative history, rules over standards, and getting it right over following precedent. He understands that the Constitution limits the government in order to secure individual liberty. He further understands that maintaining our constitutional structure—including the separation of powers and federalism—is critical to preserving that liberty. He broadly enforces the Constitution, but recognizes that it leaves ample room for citizens to govern themselves through democratic processes. In areas related to race, he worries about the laws of unintended consequences, and his views are informed by his own remarkable experiences growing up in the segregated South.

Even as early as 1991, much of this was already becoming apparent. During his very first sitting, he was the sole dissenter in three different cases during the justices' initial voting. (I can tell this story because all of the pertinent information has already been disclosed.) Despite being a brand-new, 43-year-old justice, he never flinched at going it alone, and it never occurred to him to do anything other than call the balls and strikes exactly as he saw them. His positions in these three cases were eminently sensible: (1) if a capital defendant puts on mitigating evidence of good character, the prosecutor may respond with countervailing evidence that the defendant belonged to a white supremacist prison gang; (2) state tort law, rather than the constitutional prohibition on cruel and unusual punishment, governs the routine mistreatment of prisoners; and (3) if a criminal defendant secures an acquittal on the ground of insanity, he may be civilly confined for as long as he remains dangerous. The first of these cases was ultimately decided by an 8-1 margin, the second by 7-2, and the third by 5-4. In the second and third cases, Justice Scalia switched his original vote from the majority to the dissent. So, while outside observers were speculating that Justice Thomas seemed to be reflexively following Justice Scalia, in significant part it was Justice Scalia who was following Justice Thomas.

Another striking opinion from that year was *Wright v. West*. On a superficial level, the case involved an unusually narrow question about whether there was enough evidence to support a particular criminal conviction. The lower court had said no, and the Justices unanimously said yes. Rather than simply reinstate the conviction, Justice Thomas wrote a long, scholarly opinion explaining why it was wrong for a federal court to review the conviction at all without giving respect to the views of the state court in which the defendant had been originally con-

victed. His ambitious opinion fractured the Court into a 3-3-1-1 split. But, four years later, Congress codified his view in the Antiterrorism and Effective Death Penalty Act of 1996, thereby fundamentally changing the law and practice of federal habeas corpus.

Then there was *United States v. Fordice*, which involved the desegregation of public universities. The majority opinion, which Justice Thomas joined, contained much lofty rhetoric about the urgent need for desegregation. At the same time, Justice Thomas worried about harming historically black colleges, and he wrote separately to urge their preservation: "It would be ironic, to say the least, if the institutions that sustained blacks during segregation were themselves destroyed in an effort to combat its vestiges."

Since that year, Justice Thomas has staked out strikingly original positions in a wide range of areas including the Commerce Clause, the non-delegation doctrine, federal war powers, deference to federal agencies, the Establishment Clause, retroactivity, implied preemption, race neutrality, and cross burning, to name only a few examples. With the loss of Justice Scalia, he is the Court's only remaining originalist. While his views have not always garnered a majority, he has done more than any other Justice in the last half-century to lay out what the words of the Constitution meant to those who ratified it—and to show how far the current Court has strayed from that original understanding. The Court has been, and will be, greatly enriched by his service.

Sincerely,

GREGORY G. KATSAS.
MCLEAN, VIRGINIA,
September 16, 2016.

Re Celebrating Justice Thomas's 25 Years of Service on the Supreme Court

Hon. ORRIN G. HATCH,
U.S. Senate Committee on the Judiciary,
Washington, DC.

DEAR SENATOR HATCH: As a lawyer who had the great fortune to serve as a law clerk to Justice Clarence Thomas during October Term 1992 on the Supreme Court, and as an American who cares deeply about the constitutional foundations of our Republic, I write with pleasure and gratitude to commemorate the first 25 years of Justice Thomas's tenure as an Associate Justice. Through his dedicated and principled work on the Court, through his humble jurisprudence and worldview as a judge, and through his amazing personal story and lifetime of experience and relationships, Justice Thomas has made a singularly historic and positive contribution to the life of our Nation and to the legacy of the Court.

Before offering my perspective on the lasting impact of Justice Thomas's first 25 years of service, let me say a word of tribute to the President who nominated him to the Court. The selection of Clarence Thomas to serve as Associate Justice on the Supreme Court of the United States was one of the most consequential, world-improving decisions made by President George H.W. Bush during his term of office. I believe all Americans, of all backgrounds and all political persuasions, have benefited (probably far more than they realize) from the fact that Justice Thomas has occupied one of the nine seats on the Court's bench since 1991.

I also want to express my deep personal thanks to you, Senator Hatch, for the pivotal role you played in securing the confirmation of Justice Thomas in 1991. As a leader on the Judiciary Committee, you were the essential, stalwart champion in support of the nomination. I trust you take enormous pride in the legacy of Justice Thomas's

service on the Court and the gift to our country that you helped to bring about.

THE MOST PERSONABLE AND AUTHENTIC JUSTICE

After emerging from the searing cauldron of his confirmation hearings, Justice Thomas was often portrayed in the press as a wounded and brooding figure, quietly stewing in anger in the inner chambers of the Supreme Court Building. Certainly anger would have been a natural and justifiable emotion for someone who suffered through a nationally televised inquisition and whose home had been picketed by activists who called him many things, including (astoundingly) “inauthentic.” The truth, however, is that this portrayal of the smoldering, angry, reclusive Justice is the absolute opposite of reality.

I would venture to say that few Justices in history have been more personable, accessible, and, yes, authentic. He is a good man, a warm and caring man, a Justice who takes the time and personal attention to become a real friend to everyone who works with him in the Supreme Court family. He is utterly open and candid with his life experiences.

And what experiences they have been! From the abject poverty and racial suppression of Pin Point, Georgia; to the up-by-the-bootstraps discipline of life with his self-sufficient grandfather, Myers Anderson; to the unwavering kindness and motivating strictness of the nuns of St. Benedict the Moor Grammar School; to the challenge of forging his own career path at Holy Cross, at Yale Law School, in the private sector, and with John Danforth; and finally to the Education Department and EEOC of the Reagan Administration before his appointment as a judge on the court of appeals. Few of us can imagine what it took for him to navigate that extraordinary upward journey. But the meaning and value of those life experiences shine through in his smile, his warm hugs for friends in need, and his deep and generous laugh. And, of course, they animate his loving marriage with Ginni.

Justice Thomas's life experiences also shine through in the way he opens his Chambers and his heart to all manner of school groups and other visitors eager to meet him and share in his life story. He may have set a record for the number of visitors to the Court, and these guests come to meet with him from all walks of life and from every corner of the United States.

More than that, his life and personality come through in the way he approaches the drafting of Supreme Court opinions. From his first Term on the Court, and consistently today as a veteran Justice, he takes care to ensure that his opinions are written for the everyday American, so that the average person can understand the issues at play and the force and track of his reasoning. That has always been a top priority and objective in every case he handles.

For me as his former law clerk, his example was and remains a true lesson in humility—a lesson in how all of us who appear in the federal courts, whether as advocate or judge, should approach our roles humbly. Justice Thomas's humility comes from the recognition that to participate in the law is to uphold a sacred trust, because our legal system is an essential part of the American experiment in self-government. And the Supreme Court, as the paramount court in the United States, is the most important guardian of that trust.

DEFENDER OF FREEDOM AND EQUAL JUSTICE UNDER LAW

True to this sacred trust, Justice Thomas brings an unwavering vigilance to the work of the Court. For him, every time the Court resolves a case, including in the way the Justices reason through the issues, the Court af-

fects the freedom and individual liberty of all Americans. In approaching his role on the Court, even in cases involving technical questions of statutory interpretation, just as in the most momentous decisions of constitutional law, Justice Thomas maintains a constant mindfulness that the Court can and should contribute to the preservation of freedom and to the promotion of equal justice for all Americans.

He is steadfastly attentive to the proper limits of the Court's role as an interpreter of the law, rather than a creator of new legal norms, and to the opportunities the Court has to decide cases in ways that will preserve and vindicate the Founders' original understanding of our constitutional system and the true nature of the rights protected by the Constitution. He knows that remaining true to the originating vision of the Founders is the surest guarantee of liberty.

I am not revealing some secret or non-public information. This vigilance is manifest in the words and structure of each opinion he authors, whether speaking for a majority of the Court or in a separate concurrence or dissent.

Many of his influential opinions are directed at the judicial function itself. Federal judges are not elected, and once they are confirmed to lifetime appointments, they are not accountable to the people. That means that the most basic freedom of a self-governing people to make policy choices through their elected representatives and to redirect the agenda of government at all levels according to the changing priorities of the popular will depends critically upon the discipline and consistency with which the judiciary honors its institutional limits.

Thus, Justice Thomas has defended the political freedom of the people by urging the courts to stick to clear, simple, and consistent principles of decision and to avoid using malleable balancing tests and multifactor standards that allow judges to supersede the will of the legislators with their own preferred policy outcomes. His concurring opinion in *Holder v. Hall* (1994), construing section 2 of the Voting Rights Act, is a model of such defense: “I can no longer adhere to a reading of the Act that does not comport with the terms of the statute and that has produced such a disastrous misadventure in judicial policymaking.”

Knowing that the Constitution, not the niceties of *stare decisis*, is the true bastion of the people's liberty, Justice Thomas has often been the lone voice urging the Court to return to the foundational understanding of the Constitution's great clauses and to cast aside decades of misguided judicial gloss. He is the only Justice on the current Court calling for a complete course correction back to the original meaning of the Commerce Clause, which has become, as reinterpreted by the Court, the prime springboard for the runaway growth of the federal government. In voting with the Court to protect an individual's right to keep and bear arms against abridgment by a municipal government in *McDonald v. City of Chicago* (2010), he was also the only Justice who actively urged the restoration of the Privileges or Immunities Clause of the Fourteenth Amendment to its rightful place as the surest bulwark against the suppression of fundamental liberties by the States.

Justice Thomas's allegiance to the text and original meaning of the Constitution has often led him to assert broader, bolder, and less compromising protection for the guarantees enshrined in the Bill of Rights. He has been among the staunchest upholders of the First Amendment on the Court and has consistently urged full protection for commercial speech, free from judge-made balancing tests. And he has joined Justice Scalia and

others to reestablish the force and imperative of the Confrontation Clause as a fundamental protection for criminal defendants.

With similar boldness, Justice Thomas has refused to compromise in pursuing the goal of equal treatment under the law for all Americans. He knows well that despite the best of intentions, government only exacerbates prejudice and inequality when it persists in granting preferences or imposing disadvantages on the basis of race. And he believes that such programs are inconsistent with the colorblind commands of the Fourteenth Amendment.

As he wrote in his concurrence in *Adarand Constructors v. Peña* (1995), “Purchased at the price of immeasurable human suffering, the equal protection principle reflects our Nation's understanding that such classifications ultimately have a destructive impact on the individual and our society.” In his understanding of the Constitution, “there can be no doubt that racial paternalism and its unintended consequences can be as poisonous and pernicious as any other form of discrimination,” since it “teaches many that because of chronic and apparently immutable handicaps, minorities cannot compete with them without their patronizing indulgence. Inevitably, such programs engender attitudes of superiority or, alternatively, provoke resentment among those who believe that they have been wronged by the government's use of race.”

THE MOST COURAGEOUS JUSTICE

Justice Thomas's plea for a colorblind Constitution is just one example of what may be his most distinguishing quality as a judge: the courage of his conviction.

He showed that courage from his first days on the Court when he wrote fearless opinions as the lone dissenter on hot-button issues, like the application of the Eighth Amendment to the treatment of prisoners in state institutions in *Hudson v. McMillian* (1992). When, in reaction, the *New York Times* reflexively labeled him the “cruellest Justice,” many of us knew that he was actually the most courageous.

This flame of courage has continued to burn steadily over the past 25 years.

It was burning bright in *Graham v. Collins* in 1993 when he concluded that the “mitigating circumstances” prong of the Court's death penalty jurisprudence invited capital juries to engage in the same unbounded and potentially irrational and discriminatory sentencing judgments that the Court first condemned in *Furman v. Georgia* (1972):

“Any determination that death is or is not the fitting punishment for a particular crime will necessarily be a moral one, whether made by a jury, a judge, or a legislature. But beware the word ‘moral’ when used in an opinion of this Court. This word is a vessel of nearly infinite capacity—just as it may allow the sentencer to express benevolence, it may allow him to cloak latent animus. A judgment that some will consider a ‘moral response’ may secretly be based on caprice or even outright prejudice. When our review of death penalty procedures turns on whether jurors can give ‘full mitigating effect’ to the defendant's background and character, and on whether juries are free to disregard the State's chosen sentencing criteria and return a verdict that a majority of this Court will label ‘moral,’ we have thrown open the back door to arbitrary and irrational sentencing.”

His courage was also on display in *Elk Grove Unified School District v. Newdow* in 2004, where Justice Thomas had the temerity to suggest that the Establishment Clause may not protect an individual right and may not be incorporated fully against the States through the Fourteenth Amendment—a proposition often raised by respected law

professors but shunned as anathema by the modern Court.

And this courage flamed again in 2009 in Northwest Austin Municipal Utility District Number One v. Holder when Justice Thomas was the first Member of the Court to reach the conclusion that section 5 of the Voting Rights Act is no longer constitutionally sustainable as a countermeasure for a historical pattern of voter discrimination and disenfranchisement in the covered States.

Many of us (including me) will not agree with every position Justice Thomas has espoused in his opinions. But all of us, I believe, should recognize and respect the conviction with which he approaches his duties on the Court and the boldness and courage he has consistently exhibited in voicing his convictions.

We live in times today when the courage of conviction is in short supply among our leaders but is most needed by our Nation. We are therefore blessed, indeed, that courage and conviction have full expression on the Supreme Court of the United States through the voice of Justice Thomas.

Thank you, Senator Hatch, for giving me the opportunity to share my thoughts on the important contributions of Justice Thomas to our Nation and to the Supreme Court on the historic 25th anniversary of his appointment as Associate Justice.

Respectfully submitted,

STEVEN GILL BRADBURY.

The PRESIDING OFFICER. The Senator from Louisiana.

LOUISIANA FLOODS

Mr. CASSIDY. Mr. President, I rise again today to bring attention to the devastating floods in my State of Louisiana, which are now being called the Great Flood of 2016. In a matter of a few days, 7.1 million gallons of rain fell on Louisiana—more than fell during Hurricane Katrina. The flooding that resulted caused \$3.7 billion in damages to homes and businesses.

A flood event of this magnitude is such a low probability that it is called a thousand-year flood. To put this in perspective—just statistically—the last time a flood of this magnitude would have occurred in this area would have been 500 years before Christopher Columbus discovered the Americas.

It is hard to comprehend, but this chart may help. We all know of the devastation caused by Hurricane Sandy and of Katrina, Rita, and Wilma in 2005. This is from the 1871 Chicago fire. This is the fifth largest disaster after the 1906 San Francisco earthquake. In the last 100 years, the 2016 Louisiana flood is the third largest disaster in American history.

The National Hurricane Center was not able to warn us for this. They said that rain is going to start. It started to rain, and the next day there was flooding. Most folks who were flooded had never been flooded before. They were living in areas that they were told were not at risk for flooding.

The first parishes did not have time to evacuate or to prepare. Here you can see a family being helped out by volunteers. In the back, you see what is called a high-water vehicle. It doesn't flood out, but it is a single vehicle.

There were as many as 30,000 folks evacuated from their homes by what was called the "Cajun Navy"—Americans helping Americans get out.

By the way, this is a residential street. This is a neighborhood in which you can see the street itself flooded. This family's belongings are now piled up on the side of a road. They escaped with the bags they hold. This is one family. So far, 144,000 people have applied for individual assistance through FEMA.

I suggest that these people need to know their fellow Americans care about them. Just as important for communities, small businesses were hit too. According to the local newspaper, 12,000 small businesses in the area flooded have been out of commission because of the flood. This is from Denham Springs. It is a town right across the Amite River from East Baton Rouge Parish. You see everything they are selling piled up on the side of the road. Of course, this is tragic for the business, but think about the community. The National Flood Insurance Program estimates that 40 percent of small businesses that flood never recover and never go back into business.

This is tragic not just for the business owner but also for the people whom she employees because you have just destroyed the job and the opportunity for everyone whom she does employ.

It is one thing to look at statistics and to look at the huge scope of this disaster, but I return to the fact that it is a disaster affecting individuals and affecting families—people who have lost everything. When I say "everything"—they still have their life, but the floodwaters have now receded. You would say: Wait, how can floodwaters have receded if we still have a home under which there is obviously a lot of water?

This flood was so devastating. There is a community called Cypress Point in the French Settlement. The homes were built far above the base flood elevation. They were told they were not at risk of flooding. The floodwaters rose, though, to 46 feet above flood level, and they ripped out the ground beneath the homes. What you are looking at used to be ground beneath the home. Now the river has taken away the bank, and these homes are sitting in a river.

Ten of these homes are being condemned, and there is a certain kind of bitterness these folks must feel. First, they didn't think they were going to flood. If they want to come back and put supports under their home, they will have to get an Army Corps of Engineers permit to do that. If their home falls into the river—and it looks like that could happen—they have to pay to remove their home from that river. They are going to be caught coming and going. Again, these homes are built above the base flood elevation.

This is Dorothy Brooks. Dorothy is 78. She is being rescued. She is wheel-

chair-bound. Here is Sergeant Thomas Wheeler of the Tangipahoa Parish Sheriff's Office carrying her out. Dorothy did not have time to get out on her own. You can still see rain falling, even though water is up to about 3 or 4 feet. Many seniors like Dorothy were able to return to their home, but due to their age, they could not rip it out. If your home is flooded to 4 feet, you have to go around and physically take the sheetrock and the insulation out that is behind the carpet and the wood floors. If not, mold comes in.

Here is a tragic example of it. Roy and Vera Rodney are both in their eighties. They had 4 inches of water in their home. The FEMA inspector told them that it was habitable. So they were denied repairs and rental assistance, but they didn't have any family nearby. They couldn't gut their house. They couldn't repair it. So the water-damaged carpet, furniture, and belongings stayed, and, predictably, mold appeared. They could no longer live there. They evacuated. They weren't there to let volunteers in to rip it out. Now they have mold throughout their home, and it is uninhabitable. Because they couldn't get the aid they needed, cost of recovery grew with time.

If there is a metaphor here, it is this. If you are unable to get the aid when needed, the cost of recovery grows with time. Roy and Vera were not required to purchase flood insurance. They lived in zone X. Zone X is thought to be at such low risk of flooding that flood insurance is not required.

By the way, that is a huge factor in flooding. About 80 percent of the homes that were flooded did not have flood insurance—not because they didn't purchase it on purpose when they were told to but because they were told they lived in low-risk areas for flooding where flood insurance was not required.

I will say that is why Federal aid is so critical. We have thousands of families completely caught off guard, unprepared—through no fault of their own—by a freak of nature, a thousand-year flood. They are now struggling to pick up the pieces. They are trying to make the decision: Do I stay and rebuild, or do I just move on? Families, businesses, Louisiana need help. I ask that we pass this funding bill quickly. People are hurting; people need help.

Some look at this picture and just see debris. This may be Youngsville, a community I visited, but it could be any community. I would say that is not debris. That is a wedding dress that was saved for 20 years. It is picture albums, children's toys, clothes to go to work, textbooks, and memorabilia. It is their life, piled up the road.

I am thankful that Senate leadership has put what they are calling a down payment on the continuing resolution. This reassures families that their fellow Americans care and that they can rebuild and prosper, but we are not through yet. Helping each other is a fundamental American value.