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Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today we are privileged once again to have our guest Chaplain, Rabbi Arnold E. Resnicoff, U.S. Navy, to lead us in prayer.

PRAYER

The guest Chaplain, Rabbi Arnold E. Resnicoff, offered the following prayer:

Almighty God, this week we remember nightmares, to reaffirm our dreams. On this Holocaust Remembrance Day—during this week we have set aside—our Nation recalls victims of the Holocaust: a Holocaust brave Americans took up arms to fight and many gave their lives to end. And so, before this session starts, and during a time when our brave men and women still risk their lives for better times, we pray the day will come when the lesson of this horror, the lessons of all nightmares, help make our dreams of peace come true.

From the Holocaust we learn: when human beings deny humanity in others, they destroy humanity within themselves. When they reject the human in a neighbor's soul, then they unleash the beast, and the barbaric, in their own hearts.

And so, remembering, we pray: if the time has not yet dawned when we can proclaim our faith in God, then let us say at least that we admit we are not gods ourselves. If we cannot yet see the face of God in others, then let us see, at least, a face as human as our own.

You taught us through the Bible—taught that life might be a blessing or a curse: the choice is in our hands. So many people, so many peoples, have felt the curse of life too filled with cruelty, violence, and hate. As Americans we pray—we vow—to keep alive the dream of better times; to keep our faith that we can be, will be, a force for good; a force for hope; a force for freedom; a blessing, not a curse—to all our people; to all the world.

And may we say, Amen.

PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today the Senate will resume consideration of the nomination of Jeffrey Sutton to be a circuit judge for the Sixth Circuit. Under the previous consent agreement reached, a vote will occur on the confirmation of that nomination at 12 noon.

The Senate will recess for the weekly party lunches from 12:30 until 2:15 p.m.

Following the confirmation of Jeffrey Sutton, it is my intention to resume consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. It will be my hope that we can reach a time agreement for the vote on this judicial nomination.

In addition, there are a number of other legislative items that will be scheduled for action during the remainder of this week, including the bioshield bill, the digital and wireless technology legislation, State Department authorization, and other legislative or executive items that can be cleared over the coming days.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if the distinguished majority leader will allow me to direct a couple of questions to him. First, we have asked before. Do you think there is any way we can have the vote on the Sutton nomination after the caucus? We have a lot of people who want to be able to discuss it in our caucus. I don't think it would in any way hurt the schedule or hold up getting to the Owen nomination by 20 minutes or half an hour, but there would be a number of Senators—especially Senator HARKIN—who would deeply appreciate it if we could have a vote at 2:15. We would even be willing to shorten our caucus to expedite the time on this and vote at 2 rather than 2:15.

Mr. FRIST. Mr. President, I have been made aware of the request. I talked to our caucus and our leadership and really would much prefer to go ahead with the vote as scheduled. A number of people made plans to come back from out of town specifically for this vote recognizing that we had made it clear the vote would be at 12 noon today. Out of consistency, when I set a time for a vote, people alter their plans very specifically to make sure they are here. Some simply can't be back, and I understand that as well. But we will go ahead and have that vote at noon today.

Mr. REID. Mr. President, we have been advised by the leader's competent floor staff that this afternoon, during the debate of Priscilla Owen, it will not be necessary for somebody to be here all day. I will be happy to be here, as the distinguished leaders know, but we would hope there would not be a vote unless the majority leader gives us some notice.

Mr. FRIST. Mr. President, for today, that is absolutely fine. We will work in good faith. The objective with all of these nominees is to have good discussion as we go forward. We want to make sure that occurs. I expect today that we will not have a vote this afternoon, and we will notify leadership in advance.

Mr. REID. One final note: We have worked during the recess. I think the

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

position of the minority is the same as it was prior to the break. We don't think there will be any time that would be agreeable on the Owen nomination. That being the case, is it the expectation of the majority leader that he would file cloture on the Priscilla Owen nomination sometime today or tomorrow?

Mr. FRIST. Mr. President, let me get back with the leadership on the other side of the aisle. We, of course, would very much like an up-or-down vote on Priscilla Owen. If not and it is necessary for us to file cloture, it will be done either sometime this week or next week. The final decision has not been made. We would like to discuss this with you, and we will let you know once that decision is made.

Mr. REID. Finally, Mr. President, we are willing to work with the majority on judges. We have a number of circuit judges on which we think we can move very quickly. The leadership should know that.

Mr. FRIST. Mr. President, in response, I recognize that. We are making slow but consistent and steady progress. We have the vote today. We have made reasonable progress up until today. I think as judges are put forward, we will continue to consider them in an orderly way in the Senate. That being said, I am very hopeful that we can ultimately have an up-or-down vote on Miguel Estrada, someone whom we believe is the embodiment of the American dream. We will work in that regard. I hope we will be able to have an up-or-down vote on Priscilla Owen as well.

RESERVATION OF LEADERSHIP TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF JEFFREY S. SUTTON, OF OHIO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 32, which the clerk will report.

The assistant legislative clerk read the nomination of Jeffrey S. Sutton, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 12 noon shall be equally divided between the chairman of the Judiciary committee and the Senator from Iowa, Mr. HARKIN.

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that Senator DURBIN be recognized on the Democrats' time first for 20 minutes. Our next speaker would be Senator SCHUMER for 15 minutes. There will be a Republican in between, I am sure, if that is the wish. But I ask unanimous consent that our first two speakers be lined up accordingly.

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

The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I immediately proceed after Senator DURBIN for 15 minutes—that I follow him.

Mr. REID. The Senator from New York understands——

Mr. STEVENS. I reserve the right to object.

Mr. REID. There will be a Republican in between him and Senator DURBIN.

Mr. SCHUMER. Yes.

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

The Senator from Illinois.

Mr. DURBIN. Mr. President, this week appears to be ''Judge Week'' in the Senate. We are going to focus on judicial nominations.

It is interesting, as I traveled across Illinois over the last 2 weeks, not a soul raised a question about Federal judges—the debate here in the Senate. It does not seem to be on the radar screen of average Americans. It is certainly an important issue; it is one that we focus on as political parties, and it is one that I think is timely when we consider the nominees who are before us.

For the average American, it may not mean much, it may not mean much until that day comes that a decision is handed down by a court that has an impact on families across America, and businesses and individuals, because Federal judges have extraordinary power. The men and women we are considering in the Senate are being given lifetime appointments to the Federal bench. If they are good, they will be good for a lifetime; if they are bad, they will be bad for a lifetime. Most of us in the Senate will come and go, and they will still be sitting on the bench with gavel in hand, in their black robes, meting out justice according to their own values. So it is important that we ask questions and make inquiries as to what those values might be.

The judge before us today is Jeffrey Sutton. If you read about Jeffrey Sutton, you find a man of extraordinary intellect. He is a partner in a large Columbus, OH, law firm, and served as State solicitor in Ohio. He is a professor at Ohio State University Law School. He has been a law clerk for Supreme Court Justices Scalia and Powell, and he has done a number of other things which suggest that this is a thoughtful man.

There is no question as to whether he is up to the job intellectually. The question is whether he brings to the job the values that are in the mainstream of America. I would suggest that he does not.

As a result of that, I will oppose his nomination. I would like to spell out exactly why. In the cases he has taken, and the legal arguments he has advanced, Jeffrey Sutton has shown a consistent pattern of insensitivity to civil rights, human rights, and the rights of minorities, women, and the disabled in America.

Time and again, he has asked the Federal courts to remove the authority of Congress to create laws involving individual rights and liberties and to give compensation to those who have been wronged. That is the hallmark of his legal career. That is who Jeffrey Sutton is. That is what he believes.

Given a lifetime appointment to this bench in the Sixth Circuit Court of Appeals, we can predict, with some degree of certainty, he will continue in his quest to try to deny those coming before the court the right for a day in court if they happen to be disabled, victims of age discrimination, victims of civil rights discrimination, and the like.

His hearing was held on January 29, with two other controversial nominees: Deborah Cook, also a nominee for the Sixth Circuit, and John Roberts, for the DC Circuit. It was the first time since 1990 that the Judiciary Committee held a hearing on one day for three circuit court nominees. It is unfortunate. We had some time to ask Professor Sutton questions, but not as much time as we needed. I sent some written questions to him and have those responses.

But if you look at the interest in his nomination, you will find an extraordinary lineup of organizations that oppose Jeffrey Sutton. It is hard to believe, but true, that 70 national and nearly 400 local organizations oppose Jeffrey Sutton for confirmation to the Circuit Court of Appeals. Twenty-three of them are based in Illinois. The disability community is particularly alarmed. And you will understand that as I talk about some of the cases he has taken.

In our history, seldom do people stand and announce publicly they are prejudiced. That is not something you hear very often. There are a lot of things people say. Usually the shield, the explanation, and the rationale for prejudice in America is to say: I am standing up for States rights. Boy, that has been the clarion call from those who oppose universal concepts and principles of human rights and civil rights, I guess dating back to our debates in the Senate and the House about slavery, which led to the Civil War. You remember that, of course.

The States argued that the Federal Government could not impose on them a standard relative to slavery; it would be a matter of States rights. It reached such a high peak of anger and frustration that it led to the secession of States, a civil war, and the bloodiest moment in the history of the United States.

The end of that war did not end the debate. Those who continue to oppose civil rights and human rights—whether

they are for people of color; for those of different ethnic backgrounds, different genders, or sexual orientation; or for those with certain disabilities—never stand up and say: I am really prejudiced against these people; I just don't like these people. They say: No, no, we are for States rights. We don't believe the Federal Government should have a standard across America for all people who are in this category. We think each State should make up a standard.

That is what former Senator Hubert Humphrey referred to as ''the shadow of civil rights''—a shadow cast over America after the Civil War, until Brown v. Board of Education, a case handed down in 1954 across the street at the U.S. Supreme Court. It was finally after that decision that, as Senator Humphrey once said, we came out of the shadow of civil rights into the bright sunshine of human rights.

Jeffrey Sutton has never come out from under that shadow. In fact, he has made a legal career of extending that shadow over more and more Americans so that they would have less likelihood of prevailing when they were discriminated against. While Mr. Sutton's record is devoid of obvious manifestations of prejudice, his vision of a Federal Government with diminished power to enforce civil rights would achieve the goals of those who oppose equality.

Mr. Sutton has been front and center in some of the most important Supreme Court cases of our generation. He personally argued five of the most significant cases in the past decade before the Supreme Court. That attests to his legal skill, but it certainly speaks volumes, as well, as to what is in his heart, what he believes, and where he would stand as a judge if confronted with similar issues. And in every one of these cases, Jeffrey Sutton asked the Supreme Court to restrict the rights of the disabled, women, the elderly, the poor, and racial and ethnic minorities. He is consistent and, from my point of view, consistently wrong.

Consistently he has argued before the Supreme Court to take away the power of individuals to recover for discrimination. One of the most glaring cases is the Board of Trustees of the University of Alabama v. Garrett. I took a look at the published decision in this case because I wanted to read specifically what was at issue.

We can talk a lot about States' rights and discrimination, and the Americans with Disabilities Act, but let me read you what was at issue in this case so you understand where Jeffrey Sutton was in this argument.

This is a case involving a woman, a respondent, Patricia Garrett. She is a registered nurse, and she was employed as the director of nursing, OB–GYN and Neonatal Services, for the University of Alabama in its Birmingham hospital. I might say parenthetically, that this is an extraordinarily well respected medical institution. Patricia Garrett was director of nursing at this hospital, think of that—quite an achievement in her career.

In 1994, Patricia Garrett was diagnosed with breast cancer, subsequently underwent a lumpectomy, radiation treatment, and chemotherapy. Garrett's treatments required her to take substantial leave from work because of this cancer. Upon returning to work in July of 1995, Patricia Garrett's supervisor informed her that she would have to give up her position as director of nursing at the hospital.

Garrett then applied for, and received, a transfer to another, lower paying position as a nurse manager. She brought a case under the Americans with Disabilities Act, and she said: I think the Federal Government passed a law that said you cannot discriminate against a person because of a disability or an illness—exactly the situation that she faced.

I voted for that law. I remember it well. It brought together an extraordinary bipartisan coalition.

In a few moments, the Senate will hear from my colleague, the Senator from Iowa, TOM HARKIN. He was one of the leaders on that bill. Senator Bob Dole was a leader as well. It was bipartisan legislation which, for our generation, said: We will open up opportunities for a group of Americans who have been subject to discrimination because they have a disability or illness.

We passed the bill overwhelmingly with a bipartisan vote. I believed we were establishing a new frontier of civil rights. I was proud to be part of the debate. I contemplated, in voting for it, as many Senators did, people such as Patricia Garrett, a woman who reached a pinnacle of success in her career as director of nursing at an extraordinary hospital in Alabama, learned she had breast cancer, went through the anguish and pain of treatment, successful treatment, only to return to work after her illness and be told that she had been demoted from her position and would suffer a pay cut. She felt she had been wronged. I agreed with her.

When she turned to sue the State of Alabama, which managed the university hospital, she ran into a brick wall named Jeffrey Sutton. Jeffrey Sutton, the nominee before us, stood up and said: Patricia Garrett and people like her, who have been discriminated against by States such as Alabama, have no right to recover under the Americans with Disabilities Act. This was a decision made by Mr. Sutton to take a case which involved more than Patricia Garrett. It involved a basic principle of law. Time and again and this case stands out because the facts are so compelling that has been the story of Jeffrey Sutton's legal career.

In another disability case, Olmstead v. LC, Mr. Sutton argued it was not a violation of the Americans with Disabilities Act to force people with mental disabilities to remain institutionalized even when less restrictive settings were available. Thank God the Supreme Court rejected Jeffrey Sutton's twisted logic in that case 7 to 2. Only Justices Scalia and Thomas, the most—let me be careful of my language—conservative members of the Supreme Court agreed with Jeffrey Sutton's twisted logic.

In Alexander v. Sandoval, Jeffrey Sutton argued that private individuals did not have the power to bring lawsuits under the disparate impact regulations of title VI of the Civil Rights Act of 1964. The Supreme Court agreed with Sutton by the same 5 to 4 majority we saw in the Garrett case. As a result of his advocacy, it is now impossible for individuals to use title VI to challenge the disproportionate impact of many wrongful situations; for example, the dumping of toxic waste in poor minority neighborhoods. Congratulations, Mr. Sutton. You stood up to stop poor families exposed to toxic waste from bringing suit against those responsible for it and who chose their neighborhoods as the dumping grounds. I am sure that is a feather in his cap with some people but not with this Senator.

It is impossible to use title VI—because of Jeffrey Sutton's argument—to challenge educational tests or tracking procedures that disproportionately harm minority students.

Sutton claims that he was just being an advocate in these cases. He says he just wanted to develop a Supreme Court litigation practice. While I accept the principle that it is wrong to ascribe the views of a client to that client's attorney, I believe it is appropriate to consider which clients an attorney chooses to represent. Time and time again, Jeffrey Sutton, who is asking for a lifetime appointment to sit on a bench in a Federal courtroom and decide the fate of people such as Patricia Garrett and victims of discrimination, has chosen to come down on the wrong side of history.

Another indicator of Mr. Sutton's conservative ideology is that he is a member and, indeed, an officer of the famed Federalist Society, an organization with a mission statement claiming:

> Law schools and the legal profession are strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.

Mr. Sutton, an officer of the organization, came before us as a nominee—no surprise. If you scratch the DNA of most of President Bush's judicial nominees, you will find the Federalist Society chromosome. I think about two-thirds of President Bush's circuit court nominees who have been brought before the committee have to pass the test of being Federalist Society true believers. Jeffrey Sutton goes beyond membership. He is an officer of the organization.

Fewer than 1 percent of attorneys across America belong to the Federalist Society. But if you want to make it big in President Bush's White

House and make it to a high level, you better show credentials with the Federalist Society. That is your ticket to being considered for a nomination. Mr. Sutton had his ticket punched, as did Miguel Estrada, Pricilla Owen, Timothy Tymkovich, Jay Bybee, and Carolyn Kuhl. Jeffrey Sutton is part of a pattern of conservative ideologues that President Bush has nominated to the Federal court.

The Sixth Circuit is evenly balanced now, but the President wants to change it. He has already nominated six staunch conservatives to that court. The President is using ideology as a basis for his nomination, and the Senate should reject it.

Mr. Sutton's legal career has been spent practicing in the shadows of States' rights. He has said repeatedly how much he values federalism. Time and again he has argued important cases on the side of States' rights and not individual rights. We should reject that. We should say that as a matter of principle and practice, the men and women seeking appointments to these circuit courts of appeal, who decide tens of thousands of cases each year and are the gatekeepers for most cases before they come to the Supreme Court, should be people who are moderate, centrist, and reasonable in their views.

Jeffrey Sutton is not one of those nominees. What he brings to this nomination is an extreme viewpoint, one that should be rejected, one that certainly should not be enshrined for a lifetime at the circuit court of appeals.

I was in Alabama several months ago visiting Birmingham, Montgomery, and Selma with JOHN LEWIS, Congressman from Atlanta, GA, who was part of the civil rights movement. He told me, as we visited the shrines of the movement—the street corner where Rosa Parks boarded the bus and refused to sit in the segregated section, and the bridge at Selma where JOHN LEWIS had his head bashed in by an Alabama State trooper trying to protest civil rights discrimination—that none of that could have taken place were it not for one Federal judge with courage, Judge Frank Johnson of Alabama. He stood up to the establishment and other Federal courts and said: We are going to see civil rights in America. He had the courage of his convictions. Because of that courage, people have a chance to succeed in America today that they did not have in the 1960s.

I thought to myself, as I reflected on Frank Johnson, an unheralded hero, how many nominees to the Federal court coming before us today would have the courage and vision of Frank Johnson. Trust me, based on his record, Jeffrey Sutton would not be one of those judges.

Jeffrey Sutton, time and time again in his legal career, has stood in the path of progress toward equality and opportunity. He has denied opportunity to people who are disabled. He has denied people who have been victims of age discrimination, he has denied people of color and poor people who are looking for their day in court, he has denied them that chance.

How can we in good conscience look the other way? How can we say: this is just another political decision, this man may sit on the bench for a lifetime but it is the President's right to pick his nominees?

I don't think we can. In good conscience, we have to say no to this nominee. We have to say to the White House: Send us moderate people. Do not send us people who will preach intolerance from the bench. Do not send us people who will close the courthouse door to Americans who have no other recourse when it comes to protecting their civil rights.

Jeffrey Sutton is just that sort of nominee. For that reason, his nomination should be rejected. I reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition? Who yields time?

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. HARKIN. Will the Chair inform the Senator as to the agreement entered into and what is the time agreement?

The PRESIDING OFFICER. It is the Chair's understanding that the Senator from Illinois is to speak for 20 minutes, followed by a Republican to speak, and then Senator SCHUMER is to speak for 15 minutes.

Mr. HARKIN. Therefore, if time is running, it runs off of the other side.

The PRESIDING OFFICER. That is correct. It is being charged to the Senator speaking, but that would be correct.

Mr. HATCH. I have no objection if the Senator from Iowa wants to speak at this time.

Mr. HARKIN. The order was entered into and Mr. SCHUMER is not here.

Mr. HATCH. It is our understanding if we didn't take the floor, Senator SCHUMER would. He is not here, but I would be happy to yield to the Senator from Iowa. I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, if I may ask the Chair to state the parliamentary situation now on the time. My understanding is that we had a total of 2 hours.

The PRESIDING OFFICER. Under the previous order, the time reserved until 12 noon is to be equally divided between the chairman of the Judiciary Committee and the Senator from Iowa, Mr. HARKIN. The Senator from Illinois was recognized first under the agreement. Now the Republican side has the opportunity to respond, followed by Senator SCHUMER of New York.

Mr. HATCH. Mr. President, I reserve the remainder of our time. Senator SCHUMER is now here and he can go ahead.

Mr. HARKIN. Mr. President, parliamentary inquiry: Since the other side is not speaking, does their time run?

The PRESIDING OFFICER. If someone is claiming time on the Democratic side, it would be charged to the Democrats.

The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, before I begin, was the Senator from Iowa seeking extra time?

Mr. HARKIN. Under the previous order, how much time was the Senator from New York given?

The PRESIDING OFFICER. He is to have 15 minutes.

Mr. SCHUMER. Could my colleague from Iowa proceed following me?

The PRESIDING OFFICER. By consent.

Mr. HATCH. I have no objection if the Senator from Iowa would like to follow the Senator from New York.

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

Mr. HARKIN. Mr. President, I was informed that I may reserve time for the end of the debate also.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Mr. President, I understand the time is divided equally. Whatever is left, they would use.

The PRESIDING OFFICER. That is correct.

Mr. HATCH. As long as it is on their time, it is fine with me.

The PRESIDING OFFICER. The time will be charged to the Senator speaking.

With that understanding, the Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise in opposition to the nomination of Jeffrey Sutton to the Sixth Circuit Court of Appeals. I am going to get into Mr. Sutton in a minute, but I just say that Mr. Sutton is another example of nominees who have been nominated who are not simply mainstream conservatives but are way over to the right side. That is what we have seen in this judicial process. We have seen nominee after nominee after nominee who is not simply a mainstream conservative—we voted for most of those—but a nominee who is a passionate ideologue and whose major view—if you had to underline it all, perhaps with the exception of the issue of choice—is a wish to curtail the power of the Federal Government.

They, in a very real sense, wish to turn the clock back—many not to the 1930s but even to the 1890s. There has been 100 years of history that the Federal Government expanded its power to deal with injustices that occurred with individuals. Keeping in concept with a limited government and a free market society, the general consensus in our society has been to move forward. There have been ebbs and flows. I think there was legitimacy to Ronald Reagan. There had been 50 years of Federal expansion and he said retrench. Since that time I think there is

no groundswell among the American people to turn the clock back to 1930 or 1890. Any attempts by either the President or the Congress to do that are always defeated, or almost always defeated in the long run because those two parts of our Government, the article I part, the Congress, and the article II part, the Executive, are elected.

What has happened here, Mr. President, is that those who wish to turn the clock back—a narrow band of ideologues—have either captured the President's ear or certainly captured the nomination process, and they put forward nominee after nominee after nominee who is beyond the mainstream—not people who disagree on views but people, if they sat in this Chamber, would be more conservative perhaps than any of the 100 Senators. But they are not elected.

The President and his allies thought they could do this without a whimper. Some of us, a year and a half ago, said we were going to question these nominees on their ideological views, on their judicial philosophy. Initially, there was an outcry, but I think basically the argument has been settled.

Certainly, there is a right to ask nominees about their views. Secondly, I believe there is an obligation because the article III section of Government, the judiciary, has huge power. The nominees, if they become members of the bench, are there for life. This is the only chance because the White House doesn't vet their views. In fact, there seems to be a philosophy in the White House to tell the nominees to say as little as possible, and the apotheoses of that was Miguel Estrada, who was like a Cheshire cat and would not say a single thing about his views. But with the problems that Mr. Estrada has had on this floor, I think that philosophy is not going to work.

My guess is if any other nominees to the court of appeals took the strategy of not dare telling us how they think on anything, they would reach the same fate as Mr. Estrada, and they would not be supported by a majority here. They will not be nominated either. Mr. Sutton is one of these nominees. He is not merely a conservative judge. In fact, as I said, conservative judges are nominated—there is a nominee, for instance, in the Fifth Circuit who is pending right now, Judge Prado. Judge Prado is conservative, but he is not out of the mainstream. He is Hispanic. He is nominated to the Fifth Circuit. The majority doesn't bring him forward. Why? Because they know he will be supported by the majority on our side. Instead, we are going to refight the nomination of Priscilla Owen, one of the judges like Judge Sutton who is way over.

The point is that we are not blocking every judge. I don't have the exact number, but of approximately 110 or 120 of the President's nominees, I have supported around 100. And 111 out of 116 of the President's nominees have been confirmed. I voted for all 111 of them.

There are some who are so far over that we have to say no. Mr. Sutton is such a nominee. I just wish our President would understand this, would treat the Senate with some respect, would understand that the checks and balances in this Government make sense, and that he cannot just give the nominating process to a small group of ideologues, led by the Federalist Society, who have a view—a very respectful view, but it is out of the mainstream, way out of the mainstream.

Very few people believe the Federal Government's role should be cut so dramatically that we go to a Federal Government ala 1930 or 1890. So I believe our fight on these issues is gaining support, not losing it. It is a tough fight to make.

Why not give the President his way? No one knows the damage these nominees will do because they have not heard these cases. I will say that when our caucus rallied and coalesced around opposing the nominee Miguel Estrada and not letting him come to a vote until he was doing what the Founding Fathers wanted him to do, discuss the issues, we did not do it in this caucus for political advantage. We did it because we were so appalled by the arrogance of a nominating process that said the advise and consent process could be ignored and the nominee could say, I cannot answer this because I might have to judge it on a future case. No other nominee has done that.

In fact, yesterday, in my State, I was proud to support a nominee of the President named Judge Irizarry, another Hispanic nominee. I called her into my office and talked to her. I said, give me some court cases you do not like. And without flinching, this woman, educated, I believe, at Columbia and Yale, an excellent lawyer, an excellent judge, told me two cases, one she disagreed with from the right, one she disagreed with from the left. I told the White House, let's move her.

So this is not an issue of Hispanics or women. This is not an issue of being obstructionist. This is very simply an issue about the Constitution and about some degree of balance that ideologs—neither ideologs of the far left nor ideologs of the far right should capture the judiciary, because when they do, they do not interpret the law, which is what the Founding Fathers wished them to do but, rather, they make law.

The great irony is the conservative movement in the 1960s and 1970s had a revulsion towards judge-made law. I remember arguing with some of my classmates in college about this. All of a sudden it has flip-flopped and now activism on the rightwing side is okay, turning the clock back, which certainly in an Einsteinian way, and I think in a general way, is as much changing direction as moving it forward, is not activism but fidelity to the Constitution? Judge after judge will reverse precedent—that is what activism is—when they should not.

So I believe, with every bone in my body, with every atom in my body, that we are doing the right thing here—that we are doing more than the right thing; we are doing the Nation a service. If we succeed, no one will ever know because the kinds of cases that would be ruled on will not come to the fore. If we fail, people will know, but it may not be for 5 or 10 years. It is the right thing to do. We know it, and I believe most people over there know it.

These are not nominees who are mainstream. They are not the kinds of nominees Bill Clinton generally nominated, people who were to the liberal side but not out of the mainstream, not a whole lot of legal aid lawyers or ACLU advocates but, rather, partners in law firms and prosecutors. That was the Clinton nominee.

Here, it is nominee after nominee who sort of with a passion wishes to say the minute the Federal Government moves its fingers, chop them off.

Let's talk a little bit about Mr. Sutton, because I think he fits that extreme mold. Now to his credit—and I want to give him credit—he answered questions when we asked him. He was not silent like Miguel Estrada. I do not hear anybody saying he is violating Canon No. 5 of the lawyers' ethics by saying how he felt on certain issues. That was why Mr. Estrada would not tell us things.

In general, some of the cases he has talked about advance an agenda that is antirights, antifairness and, in my judgment, antijustice. Probably the most notorious is Patricia Garrett. There, he sought and obtained—this was not just someone who looked up his name in the phone book, went and looked up an ''S'' and came to Sutton. He went out of his way to find the opportunity to oppose a breast cancer patient's bid to vindicate a right to keep her nurse's job. In other words, she was fired because she had breast cancer.

He went so far as to argue the Congress had no power under the 14th amendment to protect the disabled. Whether you agree or disagree with the view, it is clearly an attempt to say the Federal Government, in the kind of general, gradual, fitful progress we have made to protect the rights of individuals, should be pushed back.

In the case of Westside Mothers, Mr. Sutton again grabbed the opportunity to oppose a group of mothers whose children were being deprived of services under Medicaid. Mr. Sutton apparently believed impoverished children should not have the right to force the State they live in to provide them services that Congress guaranteed to them. Again, cut the Federal Government back.

In another case, Mr. Sutton sought the opportunity to file a brief arguing Congress does not have the power to address violence against women and argued that significant portions of the Violence Against Women Act were unconstitutional.

Do my colleagues think most of America agrees with that? Do they think most of America thinks Congress

has no right to legislate, particularly when there are findings that say this is interfering with commerce and interfering with women's rights to hold jobs and be productive citizens? It is sort of obvious if a woman is beaten at home, that that will interfere. Do my colleagues think most Americans agree with Mr. Sutton to say there should be no Federal power to do it?

The bottom line is, in case after case, Mr. Sutton has sought the opportunity to represent States rights at the expense of individual rights. He has sought the opportunity to seek injustice at the expense of basic fairness, guided by some ideological construct that the Federal Government is bad, it is evil, it grabs too much power, in ways that most Americans, 95 percent—99 percent, maybe of all Americans—would have no problem with.

The PRESIDING OFFICER. The Senator from New York has used 15 minutes.

Mr. SCHUMER. I ask unanimous consent that I be given an additional 5 minutes of our time.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. How much time do we have remaining?

The PRESIDING OFFICER. Nineteen minutes 38 seconds.

Mr. HARKIN. Five more minutes.

Mr. SCHUMER. I thank my colleague for his generosity.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Now, it is no exaggeration to say Jeffrey Sutton is one of the architects of the rightwing revolution that is taking place in our Federal courts. In hearings before the Judiciary Committee, he claimed he was trying to build a Supreme Court practice and he cannot be condemned for the views espoused in his advocacy, because lawyers have to represent their clients. Generally, that is true. If Mr. Sutton were a public interest lawyer taking all cases that come to him, I would agree. If he were a junior associate taking the cases partners assigned to him, I would agree. If he had a diverse array of cases taking different ideological perspectives, I would agree. But the cases Mr. Sutton took reflect a clear agenda. He believed in what he was doing.

In one interview, Mr. Sutton said: I love this Federalism stuff. It was obvious to me, at least, that at the hearing this was a personal agenda for him. He has taken positions far beyond what his clients' interests have demanded. His record, viewed as a whole, makes clear he has an agenda and his career has been devoted to advancing that agenda.

Frankly, I do not believe someone with such strong against-the-grain ideological views will simply set them aside to become a fair and neutral judge. That is a pretty tough thing to do.

So the bottom line is we have another nominee from the extreme, another nominee clearly bright, clearly accomplished—I have no dispute with his intellectual character or his ethics, but he comes from way outside the mainstream. It is a pity this judge divides us, does not unite us. If every judge the President nominated were that way, I would say it is not much of an argument, but it is just some. So I would urge my colleagues to oppose Mr. Sutton.

Frankly, I think a large number will. I think because Mr. Sutton answered questions and other reasons that there is not going to be a prevention of his nomination from coming to a vote. He certainly adds weight and burden to future nominees because many Members want to seek balance on the courts. Jeffrey Sutton does not bring a bit of balance to the courts. It continues the push, bringing them far over to the right side to eliminate the powers of the Federal Government or to greatly reduce the powers of the Federal Government at a time when only a small band of ideologues is demanding just that.

I yield the remainder of the time I have not used to my colleague from Iowa, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged equally to both sides. Senator HARKIN from Iowa has 16 minutes and the chairman of the Judiciary has 53 minutes.

The Senator from Iowa.

Mr. HARKIN. Mr. President, it is an odd game that is being played here by the majority party of the Senate. First, we asked a vote be put off until after the caucus this afternoon. The majority leader could not even do that. Why do they want to rush a vote at noon after we have been gone for 2 weeks? Senators have just come back. Some Members wanted the opportunity to talk about Mr. Sutton in our caucuses. The majority leader says no, we will vote at noon; we cannot vote at 2:15. We will not have any other votes today but they want to ram this through and vote at noon. I know our assistant minority leader, Senator REID, asked if we could have the vote later on and the majority leader objected. Why? What are they afraid of?

Again, I point to an incident that happened today and yesterday that again illustrates why people with disabilities have every reason to be out here in the lobby today—and the reception room—opposing Mr. Sutton's nomination. We had a room reserved, the Mansfield Room, for a press conference this morning for disability groups. Somehow yesterday it was taken away from us. We do not know why; it was just taken away. Then we were told we could use the LBJ Room—fine—at 10 o'clock. People with disabilities lined up outside to come in to that press conference at 10 o'clock, but they were not allowed to come in until 9:30. People with wheelchairs, people what seeing eye dogs, people who are hearing impaired, standing in line out there to try to come in here to exercise their legitimate rights; yet they are held up out there because it takes a long time to process them and get them through.

When I heard this was happening, I called Mr. Pickle, the Sergeant at Arms, and he rushed right down there and he made sure they got through. I thank Mr. Pickle.

But why do we have to do that? The people who are down there should have been treated just like a banker, a financier, or K Street lobbyist who come up here when we have votes on the floor. And they were not—until Mr. Pickle went down there and straightened things out.

People with disabilities struggle every day just to get through. We had years, decades, centuries of discrimination against people with disabilities in this country, so we passed the Americans with Disabilities Act in 1990. Mr. Sutton, the nominee before the Senate, says it is not needed. It was not needed? On National Public Radio he said ''disability discrimination in a constitutional sense is difficult to show.''

We did not think it was that difficult: 25 years of study by the Congress, starting in 1965 with the National Commission on Architectural Barriers, through 1989—25 years. And then Congress, recognizing that we had left out of the Civil Rights Act of 1964 people with disabilities.

After all the studies—we had 17 hearings, we had a markup by five separate committees, 63 public forums across the country, held by Justin Dart, who was President Reagan's appointee to head the National Committee on People With Disabilities. Justin Dart collected over 8,000 pages of testimony of individual acts of discrimination against people with disabilities in this country. Attorney General Thornburg testified on behalf of it and said it was needed, along with Governors and State attorneys general. We had over 300 examples of discrimination by State governments in the legislative record—300 examples of discrimination by State governments. Yet when Patricia Garrett of Alabama was fired from her job because of her disability, Mr. Sutton, in representing the State of Alabama, just said that is tough; we do not need the ADA. He said it is not needed. Well, Congress thought it was needed and people with disabilities all over this country knew it was needed also.

I make it clear, I am not accusing Jeffrey Sutton of having any personal animosity toward people with disabilities. I spent an hour and a half with him. I don't believe he does. But what he does have is a very narrow, rigid view of the law which he summed up best when he said that in the contest involving these laws between the Federal Government and States rights, it

is a zero sum game. In other words, if a claimant on civil rights under a Federal civil rights statute, for example, such as the Americans with Disabilities Act, if that person wins against a State that does not protect those civil rights, then somehow the State loses. The Federal Government wins and the State loses. He says it is a zero sum game.

What an odd view to have that somehow if the civil rights of people with color, the civil rights of women, the civil rights of the elderly, the civil rights of people with disabilities, if somehow they are constitutionally upheld by the Federal courts, a State loses—an odd, odd view. But that is Mr. Sutton's view, a narrow, rigid, interpretation of the law that does not recognize what we did, that does not recognize the history of discrimination, only his own ideology about how that law should be interpreted. If civil rights wins, the State loses, according to Mr. Sutton.

This is what the New York Times said yesterday morning in the editorial: ''Another ideologue for the courts.'' Not that he is a bad man. I am not saying he is a bad man at all. I am just saying his views are antithetical to civil rights laws in this country. That is why over 400 civil rights groups in this country have come out in opposition to Mr. Sutton. Never before have all these groups come together to oppose a nominee to the Federal bench. Maybe this group or that group might have opposed this judge or that judge, but never before have all 400 come together in opposing Mr. Sutton. Yet we are told we have to rush the vote. We have to vote. We cannot debate it. We can't talk to our caucuses; we have to vote at noon.

We hear all this talk that Mr. Sutton was just representing his clients. He wasn't just representing his clients. In his writings, in his statements, in his sayings outside the courtroom, he says his ideology, his belief is that it is a zero sum game. He believes in this federalism stuff.

He says any congressional staffer with a laptop can make constitutional law. That is not what we did when we passed the Americans with Disabilities Act. We spent years documenting discrimination against people with disabilities.

People may get up and say, ''I voted for the Americans with Disabilities Act.'' ''I cosponsored the Americans with Disabilities Act.'' Fine, we appreciate it. It passed the Senate 90 to 6. But I don't understand how you can say you voted for it, you supported the Americans with Disabilities Act, but now you want to put a judge on the bench who wants to undermine that law and has so stated and has so written, that he would be willing to undermine it in preference to States rights.

In 1948, the then-mayor of Minneapolis, Hubert Humphrey, stood up in front of the national convention of the Democratic Party when then Strom Thurmond, who later became a Senator, walked out, took the South with him, and formed the Dixiecrat Party because they didn't like the civil rights plank in the Democratic platform in 1948. It was then-Mayor Humphrey who got up before that Democratic convention and said: It is time we get out of the shadow of States rights and into the sunshine of human rights.

He was right. The history of this country since then has been one of ensuring the civil rights and civil liberties of our citizens.

I say to my fellow Senators, when you come over to vote, go through the reception room. You will see dozens of people there: Hearing impaired, some who are blind, people who use wheelchairs—people with all forms of the different types of disabilities. They are there. Walk by them and tell them you are going to vote for Jeffrey Sutton. Tell them you are going to vote for Jeffrey Sutton because you believe their individual States will protect their civil rights; that the individual States will take care, will make sure they are not discriminated against.

Mr. REID. Will the Senator yield for a question?

Mr. HARKIN. I will.

I just hope Senators will go by and, rather than saying they are going to vote for Sutton, will strike another blow for civil rights in this country and tell the assembled people with disabilities out here in this reception room that we are going to say no to Mr. Sutton and we are going to set a higher standard for our Federal judges.

Let's defeat this nominee, not on a personal basis, but let's have judges who will understand that upholding people's civil rights against States rights is not a zero sum game. When we win on our civil rights, we all win.

I am glad to yield to my friend from Nevada.

Mr. REID. I said yesterday evening as we closed how I appreciated the statements of the Senator from Arkansas yesterday and how the statements were based on substance. A lot of times when we come to the Senate floor we talk in the abstract. You have not. I was touched when I heard the Senator from Iowa speak of his brother who was sent to a school for the deaf and dumb—even though he was not dumb; he just couldn't hear.

Mr. HARKIN. That is true.

Mr. REID. I want the Senator to answer this question. The Senator from Iowa remembers Congressman Jim Bilbray, a Congressman from Nevada. When he was living back here, he had a daughter who had graduated from high school and invited one of her friends from Nevada to come back to Washington. They were trying to find accommodations for her friend, who was a paraplegic. He was confined to a wheelchair. They called over 50 hotels and motels before they could find a place to stay for this young man with his wheelchair. That was prior to the Americans with Disabilities Act.

Is the Senator from Iowa describing what my friend Congressman Bilbray's daughter went through, trying to find State-protected rights for people with disabilities?

Mr. HARKIN. I say to my friend from Nevada, when my brother Frank was out of school and in the workforce, I remember I was in the military. I was a Navy pilot. I was down in Florida. I wanted my brother to come down and visit me on one of his vacations. He didn't want to do that. I was wondering why.

He said, You know, I am really concerned. I can get a car; I have a driver's license. But he was afraid of staying in hotels and motels because he was concerned because he had read about a couple of motel fires. He said, What if I am in a motel or hotel and there is a fire? I won't be able to hear anything. So he was afraid to travel.

Today when you go to hotels or motels, they have lights that flash and modest little improvements to make sure people with disabilities can basically enjoy the same things we do.

The Senator from Nevada has accurately described what this country was like before the Americans with Disabilities Act. Architectural barriers? My nephew is an architect. After the act was passed, I remember my nephew said, Now we can start designing buildings the way they ought to be designed, with universal accessibility. That is happening today.

There was a young child turned away from a zoo because the child had cerebral palsy. The child was turned away from the zoo because they were afraid that child would scare the chimpanzees. That is a true story.

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

Mr. HARKIN. I ask unanimous consent for 5 more minutes.

Mr. REID. Mr. President, I had spoken to the majority staff. The majority leader wants the vote at noon. However, the majority, of course, has indicated if we need another 5 minutes on each side, that would be fine. So I ask unanimous consent the time for the vote be scheduled at 12:10, rather than 12, and that each side have an additional 5 minutes.

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

The Senator from Utah.

Mr. HATCH. Mr. President, the distinguished Senator from Iowa is concerned that they have used up their time. I would have yielded him some time from my time if necessary. So there is no desire to mistreat him or to treat him unfairly.

But let's just get the facts here. The nomination of Jeffrey Sutton has been sitting here for 2 solid years and now we hear complaints that we have to have a vote at 12:10 or 12? Come on.

Plus, I get a little tired of hearing from the other side that they seem to be the only people who care about persons with disabilities. I can tell you

that bill would not have passed had it not been for people on this side, and I was one of the leaders. I managed the floor for the Americans with Disabilities Act. I was in all the meetings. I helped to negotiate the compromise with the White House. I helped to resolve the problem. And I feel every bit as deeply about persons with disabilities, and so do all of my Republican colleagues, as do my wonderful friends on the other side, who seem to think they are the only ones who care about persons with disabilities, or civil rights.

The fact is that had it not been for the Republican Party, the Civil Rights Act of 1964 wouldn't have passed. I get a little tired of this holier-than-thou attitude—that they are the only ones who understand and they are the only ones who feel deeply about it.

I managed the floor the day we passed the Americans with Disabilities Act—and I went with the distinguished Senator from Iowa outside to meet with the folks who were suffering from disabilities, and we both broke down and cried because we were so happy to have passed that bill. I remember the day that I carried my brother-in-law through the Los Angeles temple in my arms with a great effort because he contracted both types of polio. He contracted polio and became a paraplegic who went on to finish his undergraduate, and went on to receive his master's in electrical engineering. He worked up to the day he died, although he came home every night and got into an iron lung.

So I hope our colleagues on the other side quit suggesting that we don't seem to understand on this side the problems people have with disabilities. We do understand.

Jeffrey Sutton worked for his father who ran a school for kids with cerebral palsy. To have him maligned here today and yesterday the way he has been, after 2 years of sitting here waiting to get a chance to have a vote up or down, goes a little bit beyond the pale.

I support this nomination of Jeffrey Sutton to be a judge on the Sixth Circuit Court of Appeals precisely because he is a person of capacity, decency, and honor who cares for those with disabilities. He is one of the top appellate lawyers in the country. He has nearly the highest rating from the American Bar Association. They don't give that rating out easily. To have him presented here today as outside of the mainstream—that means outside of the way certain Senators on the other side believe—well, I have to say that isn't the description of the mainstream. Mr. Sutton is one of the top appellate lawyers in the country. He has argued over 45 appeals in this country—appeals for a diversity of citizens in Federal and State courts across the country, including an impressive number—12 cases—before the U.S. Supreme Court. And I hear that he is outside the mainstream because he wins his cases before the Supreme Court? In a couple of cases, he lost. They disagree with that, too.

I happen to believe the Supreme Court decides what mainstream is, in many cases. They are not always right; I admit that. I was disappointed in some of their decisions. But the fact is he has been more in the mainstream than some of his critics. He understands what mainstream is. In 2001, he had the best appellate advocate record of any advocate before the Supreme Court, arguing four cases and winning all four of them. The fact that my colleagues on the other side do not like the results in those cases—a number of which were decided unanimously by the Supreme Court—shows they are outside the mainstream.

On January 2, 2003, the American Lawyer named him one of the best 45 lawyers in the country under the age of 45. That doesn't sound like somebody who is out of the mainstream.

He is an outstanding nominee. I urge all of my colleagues to support him.

I am happy to yield time to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Utah.

After 12 years, in about an hour from now we will finally be voting on the nomination of Jeffrey Sutton, 2 years after his nomination was submitted by President Bush to this body.

I spoke twice yesterday in the Chamber in regard to his nomination, so I will not take much of my colleagues' time today to talk about the nomination. I have listened to my friends' comments—they are my friends—who oppose this nomination. I have a great deal of respect for them. But I believe I had to come back to the floor this morning and respond, however briefly, to their comments.

As I have listened to their comments, it has become clear that the opposition to Jeffrey Sutton really does boil down to this: The fact that the opponents to Jeffrey Sutton, those who in a few moments will vote against his nomination, do not like the positions he has taken in cases he has argued. The Garrett case is a prime example.

Mr. President and Members of the Senate, as I said yesterday, and as I explained in more detail than I will today, I thought Jeffrey Sutton's own argument on behalf of the State of Alabama in the Garrett case was wrong. This Senator from Ohio believed it was wrong. And the U.S. Supreme Court decided that I was wrong. They decided that Jeffrey Sutton and the State of Alabama were right. I happen to still think the Supreme Court got it wrong. I still happen to think Mr. Sutton's arguments on behalf of his client, the State of Alabama, were wrong.

But the fact remains that Jeffrey Sutton was simply acting as a lawyer. He was acting as a lawyer—and in this case a successful lawyer—representing his client. If you analyze the different criticisms and the different cases, what you will find time after time after time is that he was acting in his capacity as a lawyer, and a pretty successful lawyer.

If we would deny Jeffrey Sutton the ability to serve on the Federal bench because we do not like his clients, or we do not like the position of his clients, or we do not like his advocacy for those clients or the position he took as a good lawyer following the canons of judicial ethics, it would set a very dangerous precedent for this Senate. It would have a chilling effect on the practice of law in this country.

Every lawyer in this country who had any thought or any ambition of ever serving on the Federal bench—I will guarantee that there are an awful lot of them out there who someday will have some dream in their mind of serving on the Federal bench, however realistic or not it might be—each one of them would have to think: Gee, is my representation of this client, is my representation of this particular cause going to somehow affect my ability to get on the Federal bench? Will some judiciary committee, will some U.S. Senator, will some White House in the future look at this and say, oh, that was a bad cause, that was something that was just too controversial?

No, my friends in the Senate, we don't want to go down that path. That is a wrong path to go down. We know better. We know better than to do that.

My colleagues on the other side of the aisle have said: No, that is really not what we are talking about. We are not talking about his representation of someone in court. We are talking about what he said outside of the court. I think we have to look at that.

I submit to Members of the Senate, when you look at that allegation, and when you strip it away and look at the real facts, what you find is, in the cases that we look at, Jeffrey Sutton was still working as a lawyer.

I will give you an example: The famous NPR interview, National Public Radio interview, that has been cited time and time again on the floor by the opponents. There are quotes from Jeffrey Sutton about that, and people say: Oh, look. He was talking on National Public Radio, and he was not serving as a lawyer then, or he was not arguing a case in front of the United States Supreme Court; that must have been his own ideas.

What my colleagues fail to mention is that interview was done in conjunction with an oral argument in front of the United States Supreme Court. If I am not mistaken, I think it was actually the same day he was making the oral argument in front of the United States Supreme Court. He was talking, I believe, about the Garrett case, and he was telling the interviewer from NPR what his oral argument was going to be.

We would obviously expect him not to disagree with what his oral argument was going to be. We would not expect him to say anything inconsistent

with what his oral argument was going to be. And we would expect him to advocate for his clients and say the same thing on National Public Radio that he would say in the courtroom of the United States Supreme Court. So again, Mr. Sutton was acting as a lawyer.

So to put it in a common term, it is a ''bum rap.'' This man has a right to be a lawyer—not only has a right to be a lawyer, he has an obligation to be a lawyer. It is what he has to do once he takes a case.

He is a good lawyer. He is a lawyer who has done his job. He is a lawyer who is well qualified to serve on the Federal bench. I hope my colleagues, when they come to the floor, will consider his life experiences, his life's work, things he has done outside the courtroom as far as community service, as well as how well respected he clearly is by courts, by his colleagues, and by the community. Therefore, I hope my colleagues will vote to confirm Jeffrey Sutton to the Sixth Circuit Court of Appeals.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I also compliment my esteemed colleague from Ohio for his excellent remarks. Nobody knows this man better than the distinguished Senator from Ohio. And, frankly, I know him quite well myself. We ought to pay attention to the people who know him and not make up stories about him, which I think is what is happening.

I have seen more and more of a vindictive approach against President Bush's judgeship nominees than I have ever seen in my 27 years in the Senate. To malign these people who have the highest rating from the American Bar Association, as though they are not in the judicial mainstream, I think is hitting below the belt. And everybody suspects the reason why this hitting below the belt is occurring is because, No. 1, they think he might be pro-life. I do not know what he is as far as that particular issue. The fact is, no single issue should stop somebody who is otherwise qualified from serving in the Federal Government and serving his fellow human beings in this country.

But No. 2 is, they are afraid this fellow has Supreme Court potential, as many of President Bush's nominees have who have such high ratings. So there is a deliberate attempt to damage him on his way up to the Sixth Circuit Court of Appeals so he will never be nominated for the Supreme Court.

Mr. President, I support the nomination of Jeffrey Sutton to be a judge on the Sixth Circuit Court of Appeals because he is worthy of it. Mr. Sutton, like I say, is one of the top appellate lawyers in the country today. There is no question about it. I have mentioned how many cases he has argued, appellate cases, and at least 12 before the Supreme Court, winning most of them. I spoke yesterday at length about Mr. Sutton's extremely accomplished legal record and the numerous letters of support I have received on his behalf.

Let me just take a few minutes today to discuss some additional points my colleagues on the other side have raised.

Specifically, I would like to respond to the points raised on the topic of federalism. It is as though they do not believe in federalism, they only believe the Federal Government should have total control over everything. It is one reason I left the Democratic Party long ago, because I realized there is a principle of federalism that is hallowed in this country, constitutionally hallowed.

Mr. Sutton has argued three very important cases that have resulted in hotly debated U.S. Supreme Court opinions concerning the scope of Congress's power under section 5 of the 14th amendment to regulate State governments. Some of his critics—and a number of them, almost all of them—have suggested his involvement in these cases should somehow disqualify him from the bench.

I think everyone here knows I have worked hard to enact some of the very laws Mr. Sutton argued against on behalf of his clients as an advocate, which is his responsibility as an attorney. Together with my good friend and colleague, the senior Senator from Massachusetts, and others, I worked very long hours on the Religious Freedom Restoration Act, which was struck down in the City of Boerne case. I was one of the principal sponsors of and managed the floor for the Americans with Disabilities Act, a small portion of which was limited by University of Alabama v. Garrett, a case argued by Jeffrey Sutton. I also worked closely with the distinguished Senator from Delaware on another law that the Supreme Court, in the Morrison case, found, in part, to be beyond Federal authority—the Violence Against Women Act.

It is important to understand that, notwithstanding the suggestions of some of my Democratic colleagues yesterday, the arguments Mr. Sutton advanced on behalf of his clients in Garrett and Morrison did not advocate an outright repeal of the ADA or the Violence Against Women Act, nor did those arguments suggest the purposes of those laws were not worthwhile. Ultimately, the Supreme Court's decisions in those cases did limit certain aspects of those pieces of legislation, and I will admit it was disappointing to see that happen after I put so much time and energy into their enactment.

Under these circumstances, it would be relatively easy for me to take cheap shots and criticize Mr. Sutton for the role he played as an advocate in those cases. But I am certainly not going to do so, for the simple reason that ascribing to Mr. Sutton the positions of his clients is wrong, it is unfair, it is not right, it is beneath the dignity of those who are attorneys who understand that advocates are advocates, and they should carry the best argument for their clients they can.

This principle is so fundamental that it hardly merits mention, and yet you hear these arguments like he should not have done that. If we should not do things as attorneys, maybe there will not be any advocates to advocate for various positions.

Moreover, as a substantive matter, none of Mr. Sutton's arguments can fairly be characterized as outside the mainstream—not one.

In the City of Boerne v. Flores, a 6-to-3 decision he won, dealing with the Religious Freedom Restoration Act, none—none—of the Supreme Court Justices disagreed with the position Mr. Sutton advocated in that case—none. All nine agreed with him. So he is outside the mainstream of American jurisprudence? Guess who is outside the mainstream. It isn't Mr. Sutton. It is this desire that everybody think in lockstep, and do in lockstep, what some on the other side think ought to be done. No Justice disagreed with him.

Now, as much as my colleagues do not like the Supreme Court, I have to tell you, they are a coequal branch of Government, and they do help us to know what the law really is. And none of them disagreed with Mr. Sutton.

The same was true in Kimel v. Florida Board of Regents—not one Justice on the Supreme Court disagreed with the interpretation of the 14th amendment Mr. Sutton advanced in that case—not one. Who is outside the mainstream? It certainly isn't Mr. Sutton.

Now, I will concede the Garrett case was a bit narrower, but it was still a 5-to-4 decision. Five of the Justices voted with Mr. Sutton's argument in that case. Nevertheless, almost by definition, I think legal arguments which garner that kind of support in the Supreme Court simply cannot be pegged as outside of the mainstream of American legal thinking as to be somehow unworthy of an advocate—or a judicial nominee.

I agree. My colleagues don't agree with him or didn't agree with his arguments. I didn't in some ways. But that disagreement should not stop us from voting for a person who, as an advocate, had an obligation to make those arguments and who won on his arguments.

I would also like to discuss Mr. Sutton's comments in the media mentioned during the course of this debate. Much ado has been made about his comment reported in the Legal Times that:

> It doesn't get me invited to cocktail parties, but I love these issues. I believe in this Federalism stuff.

Tell me what is wrong with that. Federalism is a hallowed principle of constitutional law. I believe in it, too. I believe deep down some of my colleagues on the other side believe in it, although I have to admit, I think a

number of them don't. They are wrong not to. They are outside of the mainstream of American jurisprudence.

Well, federalism is not a bad word or an unpopular concept. It is a well-established part of our system of government. As the Supreme Court noted in its 1995 decision in U.S. v. Lopez:

> Just as the separation and independence of coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.

The court also noted that:

> This constitutionally mandated division of authority ''was adopted by the framers to ensure protection of our fundamental liberties.''

Who is outside of the mainstream of American jurisprudence? Certainly not Mr. Sutton. Some of these arguments made against him are outside. I admit that.

That is what federalism means. Like Jeffrey Sutton, I believe in it, too. I think anybody who understands constitutional law must believe in it. We could differ as to how it should be applied in all cases, but those are political arguments. Frankly, an advocate has an obligation to represent his client and do the best he can for them, which Sutton did, and he won.

Just as I believe in the separation of powers of the three branches of the Federal Government, believing in federalism does not mean you always believe States should prevail in any given dispute. Mr. Sutton doesn't believe that; neither do I. As I have stated before, I am disappointed any time the Supreme Court holds unconstitutional any legislation for which I fought and bled, that I vigorously worked to enact. However, I do believe in the Federal system that our Founders created and the courts have protected over the years. I cannot derive from Mr. Sutton's quote that he meant anything more than he believed in federalism as a structural component of our American system of government, something I think is certainly true.

I want to make a few points about Mr. Sutton's record which has been attacked, I believe, unfairly. We are getting used to that in the Senate. Some suggest that the few cases in which Mr. Sutton has represented States, in what some consider unpopular causes, demonstrates a bias towards States rights. However, Mr. Sutton has represented a wide range of clients in his legal practice. In those cases where he represented States, he was either acting in his official capacity or was hired by the State and paid a full fee. However, he has represented a significant number of clients with very diverse interests on a pro bono basis. These clients include death row defendants, prisoner rights plaintiffs, the National Coalition for Students with Disabilities, the NAACP, the Center for Handgun Violence—to name a few. I notice some of my colleagues on the Judiciary Committee on the Democrat side have sent out a letter criticizing him, saying he has never done anything for civil rights. What are those cases?

In addition, I recently received a very supportive letter from Mr. Riyaz Kanji, a former law clerk to Supreme Court Justice David Souter and Judge Betty Fletcher of the Ninth Circuit, neither of whom would be considered conservatives by any judicial measure. He said that he contacted Mr. Sutton in advance to ask for assistance on an amicus brief for the National Congress of American Indians and an Indian law case pending before the U.S. Supreme Court. Mr. Kanji wrote:

> Mr. Sutton took the time to call me back from vacation the very next morning to express a strong interest in working on the case. In our ensuing conversations, it became apparent to me that Mr. Sutton did not simply want to work on the matter for the small amount of compensation it would bring him (he readily agreed to charge far below his usual rates for the brief), but that he instead had a genuine interest in understanding why Native American tribes have fared as poorly as they have in front of the Supreme Court in recent years . . . I think it is fair to say that most individuals who are committed to furthering the cause of State's rights without regard to any other values or interests in our society do not evidence that type of concern for tribal interests.

I would also like to share a letter from a good friend, former colleague to all of us in this body, Senator Robert Dole. Senator Dole was also in the meetings when we were able to arrive at a final conclusion on the Americans with Disabilities Act. He was instrumental in passing the Americans with Disabilities Act. Senator Dole is a well-known advocate for the rights of disabled Americans. He wrote a letter to the Judiciary Committee strongly supporting Jeffrey Sutton because of his ''demonstrated commitment to safeguarding the rights of all Americans, especially those of persons with disabilities.''

I ask unanimous consent to print a copy of the Dole letter in the RECORD, along with some of the copies of other letters of support for Jeffrey Sutton's nomination that the committee has received.

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

SENATOR BOB DOLE,
Washington, DC, January 16, 2003.

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

DEAR MR. CHAIRMAN: On May 9 of 2001, President Bush nominated to a vacancy on the U.S. Court of Appeals for the Sixth Circuit one of the most distinguished lawyers in the United States: Jeffrey S. Sutton of Columbus, Ohio. I ask that you join me in backing Jeff's nomination, which I support in part because of his demonstrated commitment to safeguarding the rights of all Americans—especially those of persons with disabilities.

As you know, some in the disability-rights community—for whom I have great respect and with whom I have had the privilege of working in the past, including during our joint efforts to pass the landmark Americans with Disabilities Act in 1990—have raised questions about Jeff's nomination. I believe that these criticisms miss the mark, and do so by a wide margin. For during his career as a lawyer, both as an Ohio government official and in private practice, Jeff Sutton has gone out of his way to defend the interests of the disabled.

In 1996, Jeff tried to convince the Ohio Supreme Court that Case Western Reserve University had unlawfully discriminated against Cheryl Fischer, who is blind, when it refused to admit her to its medical school solely on the basis of her disability. Jeff actively sought out the opportunity to represent Ms. Fischer, and he was passionately dedicated to her cause. But don't take my word for it. Here's what Ms. Fischer has to say:

''Working for the State, Jeff took my case on, firmly convinced I had been wronged. I recall with much pride just how committed Jeff was to my cause. He believed in my position. He cared and listened and wanted badly to win for me. I recall well sitting in the courtroom of the Ohio Supreme Court listening to Jeff present my case. It was then that I realized just how fortunate I was to have a lawyer of Jeff's caliber so devoted to working for me and the countless of others with both similar disabilities and dreams.''

Jeff fell just one vote short of prevailing, but his service to Ms. Fischer leaves no doubt as to his commitment to defending the rights of the disabled.

Cheryl Fischer is not the only person with a disability to be helped by Jeff Sutton. Six years later, Jeff was the lead counsel in a case brought by the National Coalition of Students with Disabilities against the state of Ohio, his former employer. Jeff argued that Ohio universities were failing to provide voter-registration materials to their disabled students, in violation of the federal ''motor voter'' law. As a direct result of Jeff's efforts, the National Coalition of Students with Disabilities prevailed, and the state of Ohio was made to set up voter-assistance stations at state colleges and universities.

Beyond representing them in court, Jeff Sutton has improved the lives of the disabled through his service to a disability-rights group. Since 2000, Jeff has served on the Board of Trustees of the Equal Justice Foundation, which provides free legal services to the disadvantaged, including persons with disabilities. During his service, the Equal Justice Foundation has filed lawsuits against three Ohio cities demanding that they make their sidewalks wheelchair accessible. It has sued an amusement park that flatly prohibited the disabled from riding its rides. And it has represented a woman with a mental illness who lived in subsidized housing, when her landlord tried to evict her on the ground of her disability.

Again, those who know Jeff Sutton best speak with great eloquence about his dedication to the disabled. Kim Skaggs, the Executive Director of the Equal Justice Foundation, testifies that:

''I admired Mr. Sutton's abilities so much that, upon joining the Equal Justice Foundation, I actively recruited him to become a member of the Equal Justice Foundation's Board of Trustees. Much to his credit, Mr. Sutton accepted and has been extremely supportive of the Foundation's work. I believe that Mr. Sutton possesses all the necessary qualities to be an outstanding federal judge. I have no hesitation whatsoever in supporting his nomination.''

These are not the actions of a man who is indifferent to the rights of persons with disabilities. Although he defended the state of Alabama in an Americans with Disabilities Act lawsuit, the complete picture of Jeff Sutton's career reveals a consistent concern

about the special burdens that the disabled face in their everyday lives, and an equally consistent commitment to alleviating those burdens. In all candor, I believe that my friends in the disability-rights community should be actively supporting Jeff Sutton's nomination. For we are not likely to find a more sympathetic ear on the federal bench.

I do not write these words lightly. As you know, I spent many years in the United States Senate fighting for the rights of the disabled. I co-sponsored and worked hard for passage of the 1990 Americans with Disabilities Act. I have no doubt that, if he is confirmed, Jeff Sutton will faithfully enforce that law, just as he will enforce all acts of Congress. And I have no doubt that he will scrupulously respect the rights of the disabled, just as he will respect the rights of all Americans.

Sincerely,

BOB DOLE.

ARENT FOX KINTNER PLOTKIN & KAHN, PLLC,
Washington, DC, January 7, 2003.

Re nomination of Jeffrey S. Sutton to the Sixth Circuit.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee, U.S. Senate, Russell Senate Office Building, Washington, DC.
Hon. ORRIN G. HATCH,
Ranking Member, Senate Judiciary Committee, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR HATCH: I am writing to urge the prompt confirmation of Jeffrey S. Sutton to the United States Court of Appeals for the Sixth Circuit. I believe that Mr. Sutton is eminently qualified and would be a great asset to the federal judiciary.

Mr. Sutton is one of the top appellate advocates in the country, having argued twelve cases in the United States Supreme Court, with a 9–2 record (and one case pending). In the 2000–2001 Term, he argued more cases than any other private attorney in the country, and won all four of them. And in *Hohn* v. *United States*, 524 U.S. 236 (1998), the Court sua sponte appointed Mr. Sutton to argue the case as a friend of the Court. When he served as the State Solicitor of Ohio, the National Association of Attorneys General presented Mr. Sutton with a Best Brief Award for practice in the United States Supreme Court an unprecedented four years in a row. And this month, the American Lawyer included Mr. Sutton in its list of the top forty-five lawyers in the country under the age of forty-five.

I understand that some legal arguments Mr. Sutton has made in the course of representing clients have aroused some controversy in connection with his nomination. Having recent experience myself with the judicial confirmation process, I strongly urge the Senate to reject any unfair inference that Mr. Sutton's personal views must coincide with positions he has advocated on behalf of clients. It is, of course, the role of the advocate to raise the strongest available arguments on behalf of a client's litigation position regardless of the lawyer's personal convictions on the proper legal, let alone policy, outcome of the case. I am confident that Mr. Sutton has the ability, temperament, and objectivity to be an excellent judge.

Sincerely,

BONNIE J. CAMPBELL.

CLEVELAND, OH,
May 21, 2001.

Hon. Senator MIKE DEWINE,
Member of the Senate Judiciary Committee, Russell Senate Building, Washington, DC.

DEAR SENATOR DEWINE: A few weeks ago my sister called to tell me that President Bush nominated Jeff Sutton to serve on the Sixth Circuit Court of Appeals. I was thrilled to hear the news.

While working as Solicitor General for the State of Ohio, Jeff represented me in a lawsuit the Ohio Civil Rights Commission brought against Case Western Reserve University on my behalf. I sought but was denied admission to the Case Western medical school. I alleged then, as I continue to believe now, that the school denied my application for one impermissible reason: I'm blind. The Ohio Civil Rights Commission agreed with me. After a thorough investigation, the Commission determined that I was otherwise qualified for admission and that the school could make reasonable accommodations to enable me to pursue training to become a psychiatrist.

The case worked its way through the Ohio courts and ultimately landed on the Ohio Supreme Court. It was at this point that I first met Jeff Sutton. Working for the State, Jeff took my case on, firmly convinced I had been wronged. I recall with much pride just how committed Jeff was to my cause. He believed in my position. He cared and listened and wanted badly to win for me. I recall well sitting in the courtroom of the Ohio Supreme Court listening to Jeff present my case. It was then that I realized just how fortunate I was to have a lawyer of Jeff's caliber so devoted to working for me and the countless of other with both similar disabilities and dreams.

Although I ultimately fell short in the courts, Jeff Sutton stood firm by my side. My experience confirmed what President Bush understands: Our nation would be greatly served with Jeff Sutton on the federal bench.

Sincerely yours,

CHERYL A. FISCHER.

STATE OF ARIZONA,
OFFICE OF THE ATTORNEY GENERAL,
Phoenix, AZ, July 24, 2001.

Re nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit.

Senator PATRICK LEAHY,
Chairman, Senate Judiciary Committee.
Senator ORRIN HATCH,
Ranking Member, Senate Judiciary Committee.

DEAR SENATORS LEAHY AND HATCH: As the Attorney General for Arizona, and a former U.S. Attorney, I write to urge that Mr. Sutton's nomination be considered based on his own merits as a prospective judge rather than positions he may have taken as an advocate for particular clients. Lawyers have a professional obligation to be zealous advocates on behalf of their clients, and the ethical rules governing lawyers generally recognize that such representation does not constitute a personal endorsement of a client's position. See ABA Model Rules of Professional Conduct, ER 1.2(b). This principle is particularly important for lawyers representing State governments and other public entities. Often such lawyers have a professional obligation to defend or advocate positions taken by legislatures, elected officials, or public agencies that may differ from the lawyer's personal views on public policy or moral issues. Penalizing a lawyer for vigorously advocating on behalf of such clients would be wrong—it would not only blur the important distinction between the positions a lawyer may take on behalf of a client and the lawyer's own views, it would also undermine effective representation for public entities.

Mr. Sutton served with great distinction as the Solicitor General of Ohio and has otherwise had a distinguished legal career. I respectfully urge that his nomination be scheduled for a hearing and considered based on his individual qualifications rather than positions he may have advanced for particular clients.

Very truly yours,

JANET NAPOLITANO,
Attorney General.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, DC, July 31, 2001.

Re Nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit.

Hon. THOMAS DASCHLE,
Majority Leader, U.S. Senate, The Capitol, Washington, DC.
Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. TRENT LOTT,
Senate Minority Leader, U.S. Senate, The Capitol, Washington, DC.
Hon. ORRIN HATCH,
Ranking Member, Committee on the Judiciary, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS: We, the undersigned individual state Attorneys General, are writing to urge your prompt and affirmative vote on confirmation of the nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit.

Mr. Sutton is an award-winning, highly-qualified attorney. Jeff Sutton's intelligence and qualifications are unquestioned, with a great deal of experience in commercial, constitutional and appellate litigation. He has argued nine cases in the United States Supreme Court, including HOHN v. *United States*, in which the Court invited Mr. Sutton's participation, and *Becker* v. *Montgomery*, in which he represented a prisoner's interests pro bono. He has argued twelve cases in the Ohio Supreme Court and seven cases in the federal courts of appeal. And, as the former Ohio State Solicitor, he has also handled countless cases in the state and federal courts. His career has been distinguished, and he has displayed a rare sense of principled fairness throughout it.

Jeff Sutton graduated first in his law school class, and clerked for two United States Supreme Court justices. It deserves note that Mr. Sutton has represented a wide range of clients. For example, he represented Cheryl Fischer, a blind woman, who claimed that Case Western University Medical School discriminated against her on basis of disability in denying her admission to medical school. He also is a board member of the Equal Justice Foundation, which provides legal representation to the indigent and has filed several class actions on behalf of the disabled. Beyond this, he has filed pro bono amicus briefs on behalf of the NAACP, the AntiDefamation League and the Center for the Prevention of Handgun Violence.

Unfortunately, Mr. Sutton's exemplary record is being distorted by some critics, and as state Attorneys General, we are particularly concerned when we see a lawyer being attacked not for positions he advocated as a private individual, but for positions he argued as a legal advocate for State government. For example, some critics have claimed that Mr. Sutton is against the Americans with Disabilities Act because he argued that one provision of the law overstepped States' rights (in the case of *Univ of*

Alabama v. *Garrett*). We do not wish here to debate the merits of that position; although we note that the Supreme Court agreed with that position. The important point here at issue is that Mr. Sutton argued that case as a lawyer representing his client. He was not advocating his personal views; rather, he was working to represent a public-sector client.

This distinction, between personal policy preferences and legal advocacy, is a crucial one, and we Attorneys General have a unique perspective on the importance of that distinction. We are legal advocates, sworn to uphold the interests of our clients, and while we also serve as policy advocates for our States, we often must adopt legal positions that do not match our personal beliefs.

As you know, all attorneys have an ethical duty to zealously represent their clients' interests within the bounds of the law, even where the lawyer may not personally share the client's views. This is especially true for public sector lawyers, because we are bound not only by the same ethical rules as all lawyers, but we are also bound by law to represent our legislatures, governors, and agencies. As Attorney General, each of us has worked to advocate legal positions that may not reflect our personal beliefs. Doing so may be difficult, but that is our job and our duty as lawyers and as public servants.

Just as we do this, so do the attorneys who work for us. They have often been faced with the challenge of espousing a position which might not match their own personal beliefs. While their abilities in representing their clients will surely be evaluated by the Senate whenever those government lawyers are nominated for federal judgeships, we urge you not to unnecessarily mistake their advocacy for personal belief. We all believe that everyone in America deserves legal representation no matter how unpopular his or her cause may seem. Lawyers will not be willing to take on such causes if they fear that their advocacy may later be used against them. The potential chilling effect could be enormous.

Indeed, as legislators, you have a great interest in seeing that government lawyers advocate the government's position and not their own. When Congress passes legislation, you have the right to expect that the United States Solicitor General and the entire Department of Justice will defend Congress's work. Individual federal lawyers cannot pick and choose whether to represent only the federal acts that they like. We expect the same of lawyers for the States.

We respectfully suggest that Mr. Sutton should not be criticized because he has been a vigorous and effective advocate. That has been his duty, and it is to his credit that he has discharged that duty well.

When you review Mr. Sutton's nomination, please look at his qualifications and his ability to understand and apply the law. Please do not assume that his past legal positions reflect his personal views. No lawyer would wish to be personally held to every position which, as an advocate, he or she was required to advance.

Sincerely,

Betty D. Montgomery, Ohio Attorney General; Bill Pryor, Attorney General of Alabama; Robert A. Butterworth, Attorney General of Florida; Alan Lance, Attorney General of Idaho; M. Jane Brady, Attorney General of Delaware; Earl Anzai, Attorney General of Hawaii; Steve Carter, Attorney General of Indiana; Carla J. Stovall, Attorney General of Kansas; J. Joseph Curran Jr., Attorney General of Maryland; Don Stenberg, Attorney General of Nebraska.

Philip T. McLaughlin Attorney General of New Hampshire; Herbert Soll, Attorney General of N. Mariana Islands; Hardy Myers, Attorney General of Oregon; Richard P. Ieyoub, Attorney General of Louisiana; Mike Moore, Attorney General of Mississippi; Frankie Sue Del Papa, Attorney General of Nevada; Wayne Stenehjem, Attorney General of North Dakota; W.A. Drew Edmondson, Attorney General of Oklahoma; Mike Fisher, Attorney General of Pennsylvania.

Sheldon Whitehouse, Attorney General of Rhode Island; Mark Barnett, Attorney General of South Dakota; John Cornyn, Attorney General of Texas; Randolph A. Beales, Attorney General of Virginia; Charlie Condon, Attorney General of South Carolina; Paul Summers, Attorney General of Tennessee; Mark Shurtleff, Attorney General of Utah; Iver A. Stridiron, Attorney General of the Virgin Islands.

Mr. HATCH. Mr. President, I also point out a letter from Bonnie Campbell from Arent Fox, who herself was not approved to go on the court. I feel badly that we were unable to get to her. But she writes:

. . . to urge prompt confirmation of Jeffrey S. Sutton to the United States Court of Appeals for the Sixth Circuit. I believe that Mr. Sutton is eminently qualified and would be a great asset to the federal judiciary.

By the way, Ms. Campbell headed the Violence Against Women efforts on behalf of the Clinton administration; some on the other side have criticized Mr. Sutton and his arguments on the violence against women cases before the Supreme Court.

She goes on to say:

Mr. Sutton is one of the top appellate advocates in the country, having argued twelve cases in the United States Supreme Court, with a 9–2 record (and one case pending). In the 2002 and 2001 Term, he argued more cases than any other private attorney in the country, and won all four of them. And in Hohn v. United States . . . the Court sua sponte appointed Mr. Sutton to argue the case as a friend of the Court.

That in and of itself, I might add, shows the high esteem with which the Supreme Court holds this man, certainly a man not outside the mainstream. She said:

When he served as State Solicitor of Ohio, the National Association of Attorneys General presented Mr. Sutton with the Best Brief Award for practice in the United States Supreme Court, an unprecedented four times in a row.

Does that sound like somebody outside the mainstream? Continuing from the letter:

And this month the American Lawyer included Mr. Sutton in its list of the top 45 lawyers in the country under the age of forty-five.

I understand that some legal arguments Mr. Sutton has made in the course of representing clients have aroused some controversy in connection with his nomination. Having recent experience myself with the judicial confirmation process, I strongly urge the Senate to reject any unfair inference that Mr. Sutton's personal views must coincide with positions he has advocated on behalf of clients.

This is exactly the argument made by a number on the other side, an argument she rejects. She continues:

It is, of course, the role of the advocate to raise the strongest available arguments on behalf of a client's litigation position regardless of the lawyer's personal convictions on the proper legal, let alone policy, outcome of the case. I am confident that Mr. Sutton has the ability, temperament, and objectivity to be an excellent judge.

I respect her for writing that letter. I have to say I admire her for doing so.

I might add that in Senator Dole's letter, he went on to list Mr. Sutton's work on behalf of Cheryl Fischer and the nonprofit Equal Justice Foundation, which often represents disabled clients in the Ohio community. Senator Dole continued:

I do not write these words lightly. As you know, I spent many years in the United States Senate fighting for the rights of the disabled.

I have no doubt that, if he is confirmed, Jeff Sutton will faithfully enforce that law, just as he will enforce all laws of Congress. And I have no doubt that he will scrupulously respect the rights of the disabled, just as he will respect the rights of all Americans.

I hope my colleagues will take note of Senator Dole's endorsement, which I believe speaks volumes on the integrity and fairness of Jeffrey Sutton. His record indicates he will be a brilliant jurist of whom we can all be proud.

I am going to cast my vote in favor of this confirmation to the Sixth Circuit, and I strongly urge all of my colleagues to do the same. I urge my colleagues to get beyond these fallacious arguments that he is outside of the mainstream of American jurisprudence, these arguments that he is unworthy of being in this position—although they admit he is a highly qualified, good person. Think about it.

The fact is, their gold standard rated him—the American Bar Association—nearly the highest possible rating available. Now, that speaks volumes.

I reserve the remainder of my time.

Mr. BUNNING. Mr. President, today I come to the floor of the Senate to offer my support for Jeffrey Sutton and urge my colleagues to support his confirmation. The Sixth Circuit, which includes my State of Kentucky, is experiencing a true judicial emergency. Six of the sixteen seats on that court currently sit vacant, leading to justice delayed—and thus justice denied—for the citizens of Kentucky, Ohio, Tennessee, and Michigan. We need Jeffrey Sutton and we need five others like him on the Sixth Circuit.

Jeffrey Sutton was first nominated by President Bush on May 9, 2001. It has taken him almost 2 years to be confirmed and assume his seat on the bench. That is a long time to wait—but he is one of the lucky nominees, since he is actually getting a vote.

Jeffrey Sutton is an example of the fine nominees President Bush has submitted to the Senate. He was rated ''Qualified'' by the American Bar Association. He has argued 12 cases before the United States Supreme Court, with a strong record of success. He has served as State Solicitor of Ohio and

was highly respected by his peers in that position. He clerked for two Supreme Court justices as well as for the Second Circuit Court of Appeals. Currently, Mr. Sutton is a partner at the well respected Jones Day law firm and he teaches law school classes at Ohio State University. His experience in appellate law practice has earned him acclaim from one legal publication as one of the 45 best lawyers under the age of 45 in the whole country.

I am proud that President Bush nominated Jeffrey Sutton and I am proud to vote for him. He is well qualified to serve on an appellate court and will do a fine job for all states in the circuit. I am glad he will soon be confirmed to the Sixth Circuit, and I urge my colleagues to support him as well.

Mr. FEINGOLD. Mr. President, I will vote no on the nomination of Jeffrey Sutton to be a judge on the U.S. Court of Appeals for the Sixth Circuit. I'd like to take a moment to explain my decision.

I have concluded that I cannot support the nomination of Mr. Sutton because I am not convinced that he will give all those who appear before him a fair and impartial hearing. I am greatly troubled by Mr. Sutton's record of handling cases that have resulted in the curtailment of important civil rights, environmental, and other protections. Mr. Sutton has filed amicus briefs that argued for limiting Congress' authority to enact laws to protect the rights of the disabled, women, the elderly, the poor, and racial or ethnic minorities, as well as laws critical to protecting the environment.

These cases resulted in some of the most notable Supreme Court decisions of the last decade that have restricted the ability of Congress to protect the rights of Americans and the environment.

Now, at his confirmation hearing, Mr. Sutton repeatedly defended his involvement in these cases by stating that he was simply doing his job of zealously representing his client. I appreciate this argument to some extent, especially during his tenure as State Solicitor of Ohio. But my concerns remain because I know that once he went into private practice, he certainly had the ability to choose whether to accept clients and inject himself into cases. Moreover, the purpose of amicus briefs, which Mr. Sutton filed while in both the Solicitor's office and private practice, is not to defend a client against litigation or to seek redress on behalf of that client. It is, as we know, an opportunity for a third party to inject an opinion into a case for which the third party has no immediate interest. In significant states' rights case after case, Mr. Sutton consistently sought out cases in which he could argue for limiting the role of Congress in ensuring constitutional protections for Americans.

Furthermore, it seems as though this is a personal crusade for Mr. Sutton. Outside of his role as a lawyer representing clients, he took time to articulate his personal view that Congress should be restrained in its effort to protect civil rights and the environment. Through his involvement with the Federalist Society, including serving as an officer of its Separation of Powers and Federalism practice group, and his writings and statements, Mr. Sutton has said that he ''believes in this stuff'' and is ''on the lookout'' for cases where he can raise federalism issues.

I am concerned about this pattern of arguments, writings, and statements that challenge laws Congress has worked so hard to advance those that would safeguard our precious wetlands and natural habitats and fight discrimination of any and every kind. We cannot reasonably expect to one day eliminate discrimination in this country if we confirm nominees like Mr. Sutton, who seem to be ready to turn back the clock on civil rights through the application of a dry but extremely consequential federalism doctrine, to one of the most important courts in the nation.

Finally, I want to add that I was troubled by Mr. Sutton's response to one of my questions. In answering to a question about congressional authority for enacting a Federal environmental law, he said that the case involved statutory interpretation and that he simply argued that the Court need not reach the constitutional question. I later reviewed the brief and confirmed that six out of ten pages of his brief, in fact, focused on the constitutionality of the Federal environmental regulation. I confronted him with this fact in a followup question, and he continued to insist that the argument he made was not unusual. I do not believe that is the case. Mr. Sutton himself filed an amicus brief in another case urging ''constitutional avoidance'' without making such an extensive argument against the constitutionality of the statute.

I don't like voting against judicial nominees. This was a difficult decision for me because I do think that Mr. Sutton made an effort to address the Committee's concerns, in contrast to some other nominees who have come before us. I understand that President Bush has the right to nominate whomever he wants to the federal bench. But the Senate is not obligated to let the President's nominees sail through, as if there were no checks and balances, no constitutional requirement of advise and consent. As much as it is our duty to fill vacancies in the Federal judiciary, it is also our duty to give great and searching scrutiny to those nominees who have a record that calls into question their ability to give all those litigants who would appear before the nominees a fair and impartial hearing.

I am more than pleased to vote to confirm judicial nominees that are fair-minded and supported by a consensus of members, and, once again, I urge the President to speed up the nominations process by sending such nominees to the Senate. I do not believe that Mr. Sutton is such nominee. He is a bright and accomplished attorney, but he is not the right person for this seat on the Sixth Circuit Court of Appeals.

Mr. JEFFORDS. Mr. President, I would like to take this opportunity to express my strong opposition to the nomination of Jeffrey Sutton to the Sixth Circuit Court of Appeals.

During my time in Congress, I have worked hard to ensure equal rights for all Americans. Over the last three decades we have made great strides in ensuring equal rights for disabled Americans, older Americans, and other individuals. The confirmation of Jeffrey Sutton to the Sixth Circuit Court of Appeals will set back our progress if he is allowed to continue his work of eroding the coverage of civil rights laws passed by Congress, not just as an attorney, but as a Federal judge.

Let me provide my colleagues a quick review of Mr. Sutton's record and its impact on equal rights for all Americans. In University of Alabama v. Garrett, State workers lost their right to bring damage suits under the Americans with Disabilities Act. In Kimel v. Florida, State workers lost the right to bring damage suits under the Age Discrimination in Employment Act. In Alexander v. Sandoval, all Americans lost the ability to file a private right of action to enforce the disparate impact regulations of title VI of the Civil Rights Act. In fact, the Sandoval rationale has been applied to say that individuals who are fired or demoted because they complain about gender inequities in a school's sports or education program cannot bring a challenge under title IX.

Unfortunately, for all Americans interested in equal rights, the examples above have already occurred. Other arguments Mr. Sutton has made will provide my colleagues and all Americans a look ahead to the further erosion of equal rights if Mr. Sutton is confirmed to the Sixth Circuit Court of Appeals.

Mr. Sutton has argued that advocates for low-income children should not be allowed to effectively enforce a State's failure to provide them essential health services required by the Medicaid Act, Westside Mothers v. Haveman. Families would not be able to challenge a State's failure to provide notices or hearings when their Medicaid HMOs deny or delay needed treatment if Sutton's theories from Westside Mothers had been accepted. Additionally, parents would not be able to bring a challenge to a State's systemic failure to provide occupational therapy, speech therapy, and other services that help ensure that disabled children receive a free and appropriate public education as required by the Individuals with Disabilities Education Act if Sutton's theories in Westside

Mothers had been accepted. Deaf students at State universities would not be able to require schools to provide them with interpreters, captioning, and other assistance as required by title II of the Americans with Disabilities Act. if Sutton's additional far-reaching arguments in Garrett had prevailed.

Mr. Sutton's history shows more than just a desire to represent his clients zealously; it shows a belief in a philosophy. This is a philosophy that says the right of the State trumps all, even in the face of extensive Congressional findings. This is a philosophy that says the right of the State overrules the most basic of equal rights laws that the Federal Government may pass. This is a philosophy that the State can discriminate against its employees and citizens even in the face of Federal antidiscrimination laws. This is not a philosophy I can support, and I urge my colleagues to join me in opposing this nomination.

Mr. LEAHY. Mr. President, this morning we are going to vote on the nomination of Jeffrey Sutton to the U.S. Court of Appeals for the Sixth Circuit. Yesterday, I spoke about some of my concerns, but I want to again discuss my serious concerns with this nominee.

Mr. Sutton has a legal philosophy focused on limiting Congress' historic role in protecting the civil and constitutional rights of all Americans. He has led an aggressive campaign to dismantle longstanding Federal laws, enacted with bipartisan support, that have made this country more inclusive over the last half-century, and to close access to the Federal courts for people challenging illegal acts by their State governments.

As a lawyer in private practice, he has aggressively sought out cases to limit the power of Congress to enact laws protecting individual rights, and has been dismissive of congressional findings and hearings supporting important Federal laws. He has sought to weaken, among other laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Violence Against Women Act, and the Religious Freedom Restoration Act. He has also sought to limit the ability of Medicaid recipients to enforce their rights and the ability of individuals to enforce disparate impact regulations under title VI of the Civil Rights Act. In essence, he has argued for the Supreme Court to repudiate more than 25 years of legal precedents that permitted individuals to sue States when they violate Federal civil rights regulations. His extreme judicial philosophy would undermine the rights of State workers, disabled individuals, women, children, racial and ethnic minorities, and senior citizens.

Mr. Sutton and his supporters have claimed that he was merely acting on behalf of his clients in all these cases, but this claim is unconvincing. Mr. Sutton had no obligation to participate in any of the cases taken after he left the Ohio State Solicitor's office in 1998. In fact, he has admitted that he sought out cases curtailing congressional power as a private lawyer and that he is on the ''lookout'' for these cases. He has aggressively pursued a national role as the leading advocate of States' rights and, as my colleagues have noted, he has stated that his advocacy on the principles of federalism is something that he believes in.

He has made statements praising many of the Supreme Court's decisions undermining Congress' authority to protect and assist citizens, and in his personal writings and speeches he has advocated an even narrower view of Congress' role. Perhaps most significantly, Mr. Sutton has taken not a single case that supports congressional power to enact laws protecting civil and individual rights. In each case he has argued before the Supreme Court he has always been on the same side of this issue—arguing that individuals have no right to enforce the civil rights protections that Congress has given them. This must be more than a coincidence.

His personal writings and speeches promote his theory that State laws adequately protect civil liberties, and display a lack of respect and understanding for Congress' long-standing role in protecting individual rights.

Mr. Sutton has stated in several articles that States should be the principal bulwark in protecting civil liberties, a claim that has serious implications given a history of State discrimination against individuals. In numerous papers for the Federalist Society, he has repeatedly stated his belief that federalism is a ''zero-sum situation, in which either a State or a Federal lawmaking prerogative must fall.'' In his articles, he has stated that the federalism cases are a battle between the States and the Federal Government, and ''the national government's gain in these types of cases invariably becomes the State's loss, and vice versa.''

He also states that federalism is ''a neutral principle'' that merely determines the allocation of power. This view of federalism is not only inaccurate but troubling. These cases are not battles in which one law-making power must fall, but in which both the State and the Federal government—and the American people—may all win. Civil rights laws set Federal floors or minimum standards but States remain free to enact their own more protective laws. Moreover, federalism is not a neutral principle as Mr. Sutton suggests, but has been used by those critical of the civil rights progress of the last several decades to limit the reach of Federal laws.

Mr. Sutton tried to disassociate himself from these views, by saying that he was constrained to argue the positions that he argued on behalf of his clients. As far as I know, no one forced Mr. Sutton to write any article, and most lawyers are certainly more careful than to attribute their name to any paper that professes a view with which they strongly disagree. In my view, Mr. Sutton's suggestions that he does not personally believe what he has written are intellectually dishonest and insincere.

I would also like to respond to the claim by those of the other side of the aisle. Those opposed to Mr. Sutton's confirmation believe he has a personal antipathy to people with disabilities. I know of no Senator who is claiming that Mr. Sutton has a personal antipathy to the disabled. I have heard from hundreds of people and organizations who express concern that millions of disabled individuals have been harmed by his broad advocacy to limit the rights of the disabled as a class. The fact is that Mr. Sutton has chosen to argue against the rights of people with disabilities in three major cases to the Supreme Court; that he has argued that the ADA is ''not needed''; and that he has devoted his career to making States less accountable.

I have been stunned by the Republican Senators who have come to this floor to argue that Senators should not consider a lawyer's representation of clients in considering a judicial nomination. I am stunned because so many of them voted against so many nominees of President Clinton on that very basis, but they now condemn the approach they themselves took—without, of course, acknowledging the contradiction. I am reminded that a key member of this President's judicial nomination selection team, his former White House Deputy Counsel testified before the Senate in 1997 that:

> Although the Senate Judiciary Committee has long recognized—correctly, in my view—that positions taken as an advocate for a client do not necessarily reflect a nominees own judicial philosophy, a long history of cases in which a nominee has repeatedly urge courts to engage in judicial activism may well be probative of the nominee's own philosophy.

With this nomination, we have Mr. Sutton's admissions in statements and interviews and articles outside the courtroom that he believes strongly in this ''federalism stuff.''

Mr. Sutton is opposed by more than 400 disability and civil rights organizations. They have concluded that his ideological views and extremely narrow reading of the Constitution make it doubtful that he would be a fair and balanced judge. The burden is on Mr. Sutton to show that he will protect individual rights and civil rights as a lifetime appointee to the Sixth Circuit Court of Appeals. This he has not done.

The oath taken by Federal judges affirms their commitment to ''administer justice without respect to persons, and of equal right to the poor and to the rich.'' No one who enters a Federal courtroom should have to wonder whether he or she will be fairly heard by the judge. Jeffrey Sutton's record does not show that he will put aside his years of passionate advocacy in favor of States' rights and against civil

rights and his extreme positions limiting Congress' authority to protect all Americans. Accordingly, I will not vote to confirm Mr. Sutton for appointment to one of the highest courts in the land.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I will use my time as leader to make a few comments regarding this nominee.

Mr. President, I first want to commend the distinguished Senator from Iowa for his extraordinary work on this nomination. I watched him prior to the time we recessed a couple of weeks ago. His passion, his eloquence, and the power of his words were ones that I wish the rest of the country could have heard. I have no doubt he would have persuaded many had they heard him, as I did. He was back in the Chamber yesterday and again this morning. I thank him for that commitment and his extraordinary efforts to make sure that people understand the consequences of this decision and the great difficulty many of us have with this nomination.

Let me also thank our distinguished ranking member for all his work, both in the committee and on the Senate floor, again, in opposition to this nomination.

I have not seen the letter of Senator Dole, and I don't know that many of us have had the opportunity to talk to Senator Dole about it, but I will say this: Senator HARKIN and Senator Dole were both very directly and successfully involved with the passage of the ADA some years ago. That legislation has been monumental in terms of the change it has meant for the rights of the disabled.

The Americans with Disabilities Act passed in 1990. George Bush said at the time that ''as a result of its passage, every man, woman, and child with a disability can now pass through once closed doors into a bright new era of equality, independence, and freedom.'' Those were the words of President Bush when he signed this extraordinary legislation.

But that legislation depends, of course, on interpretation, and interpretation depends upon the courts. What happens at the district and circuit court levels, not to mention the Supreme Court level, profoundly affects the words and, obviously, more important, the effect of the act as it is viewed today, 13 years later.

I must say that we are considering a nominee today, to a lifetime position as a Federal judge, who has worked his entire career to roll back the progress of the ADA. Over the past several years, the courts have consistently acted to weaken and limit the important protections provided by the Americans with Disabilities Act, as well, I might add, as the Age Discrimination and Employment Act, the Civil Rights Act, and the Violence Against Women Act.

Those doors to a bright new era, as President Bush once called them, are slowly being closed. Jeffrey Sutton is one of the most significant reasons why. He has spent years fighting aggressively to limit the legal protections of individuals who experience discrimination and restrict the authority of Congress to protect those who are most vulnerable to discrimination.

Mr. Sutton was the lead attorney in the case of the University of Alabama v. Garrett. It has been discussed and noted on several occasions, of course, in the debate, but it bears repeating. In that case, he fought to limit, incredibly, the rights of a breast cancer survivor who was told by her employer, after she finished chemotherapy treatment, that she would have to quit, accept a limited demotion, or be fired solely because of her illness. He was the lead attorney in Kimel v. Florida Board of Regents. In that case, he argued aggressively to limit the rights of Americans who experienced age discrimination.

In both of these cases, Mr. Sutton acted as a private attorney, which means he chose to represent his clients. He didn't have to take those clients. No one forced him, saying, you have to go into court, regardless of your position, and you have to go make your defense, your arguments, as he did before the Court. In both cases, he argued aggressively that, despite clearly discriminatory actions, national legal protections were not only unnecessary; they were unconstitutional.

In other cases, Mr. Sutton has fought to limit the protections under the Violence Against Women Act and to enable States to restrict access to health care for low-income children. He has made a career of fighting to weaken protections for some of America's most vulnerable citizens—the sick, the elderly, the disabled, battered women, and poor children. I don't know what ''compassionate conservatism'' is exactly, but I surely know this is not it.

I must say, Mr. President, we will be casting a number of challenging and difficult votes as we consider the judiciary. Already we have confirmed 18 judges in this Congress. In the last Congress, we confirmed 100.

I am dismayed that this nominee is before us today, given his record, given the implications of that record for his future decisions as a judge on such an important court. I am dismayed and concerned by its implications for all of the vulnerable people of this country, all of those who have already sacrificed, all of those who have hoped and dreamed that there could be a new day of freedom and independence for themselves as a result of the passage of this critical and monumental legislation just 13 years ago. I am dismayed that one person can be so effective in rolling back those protections and eliminating their access in dealing with their independence in such a crass and unfortunate way. Closing the door to those people, after waiting decades for them to reach this point of freedom and independence in our country today, is all the reason one needs to vote against this nomination.

We will have many more nominees, many conservative nominees. Most, if not all, of the nominees who will come before us today will be conservative, and many will have the same Federalist mentality and philosophical approach that Mr. Sutton represents; but they will not be the opponents of those who seek independence, freedom, and equality as disabled people, as Mr. Sutton has done throughout his public career.

I urge my colleagues, let us not retreat from the progress this country has achieved. Let us reject this nomination and protect the hard-won legal protections of America's most vulnerable citizens.

Our only hope in doing so would be to reject this nomination, to speak out as loudly and clearly as we can that ADA is as important today, if not more important, than it was in 1990 when it passed, thanks to the leadership of Senator HARKIN, the leadership of Senator Dole, the leadership of those who understood the importance of equality for everyone, especially those disabled, those who sought that same freedom we take for granted today.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise today in strong support of the nomination of Jeffrey Sutton to the Sixth Circuit Court of Appeals. I have been sitting in my office today listening to the debate on this nomination, and I am really a little bit taken aback, as I was in the Judiciary Committee hearing when I heard the discussion about Mr. Sutton and the opposition to Mr. Sutton.

It is not as though Mr. Sutton is not qualified to be a nominee to the Sixth Circuit. He is a gentleman who graduated first in his class from the Ohio State University Law School. He is a gentleman who has argued 12 cases before the United States Supreme Court, winning nine of them and only losing three. No Sixth Circuit judge currently serving has ever had as much Supreme Court experience before taking the bench.

During the Supreme Court's 2000–2001 term, Mr. Sutton argued four cases and won four cases, the best win-loss record of any private lawyer in the country that year.

On January 2, 2003, the American Lawyer named Mr. Sutton one of the 45 best lawyers in America under the age of 45. They did not say one of the best 45 conservative lawyers or federalist lawyers, but one of the best 45 lawyers in America under the age of 45. He is an eminently qualified man, and I am really appalled by the objections I am hearing.

The critics who are trying to put various labels on Mr. Sutton, such as anti-Americans with Disabilities Act and anti-environment, based on positions that he has taken as an attorney advocate, really miss the whole point about the American adversarial and judicial system. Lawyers routinely adopt positions on behalf of their client as an advocate, positions to which they personally might not subscribe, but that is what makes our judicial system so great. It is the core of our legal system that people are entitled to have attorneys argue their cases for them.

If we start to walk down the road where lawyers are accountable for any of the positions they take on behalf of their clients, then we might as well write off any criminal defense lawyer for judicial appointments because they routinely have to argue for some pretty unsavory characters. Our legal system would not be as great as it is without these attorney advocates fighting for and advancing the rights of their clients.

As an example of this mislabeling, it is wrong to try to paint Jeffrey Sutton as someone who works against the interests of the disabled. In truth, he has actually worked as an advocate in cases where he represented disabled clients in advancing their rights. This man's father ran a home for disabled children where Jeffrey Sutton worked as a young man. Beverly Benson Long, who is the immediate past president of the World Federation for Mental Health, which is among one of many posts she has held, has said:

No doubt that Mr. Sutton would rule fairly in all cases, including those involving persons with disabilities.

Mrs. Long described the lobbying against Mr. Sutton by advocates of the disabled as unfortunate and misguided:

In my own opinion, it is not only unfortunate and misguided, it is just plain wrong.

There was also a quote in the Cleveland Plain Dealer, which is really somewhat of an independent-thinking newspaper in our great country. An editorial which ran on June 17, 2001, compared Sutton to John Adams, who represented the British troops accused of perpetrating the Boston Massacre. The Plain Dealer said:

It is the duty of a lawyer to represent to the best of his ability the interests of his clients. That, the record shows, Sutton has done throughout his career.

A good judge, doing his job, will have but one abiding friend—the law he has sworn to uphold. Sutton's ability to honor that friendship should be the criterion of his consideration.

In summary, one cannot deny Mr. Sutton has the intellectual abilities we need in our appellate judges. Moreover, he has tremendous experience, arguing before the State and Federal Courts of Appeal as well as before the United States Supreme Court.

Finally, he has another quality we need in our appellate judges. The Attorney General of my home State, who is a dear friend of mine, is a man who is an elected Democrat, and he is a man for whom I have the utmost respect and a man who has had an occasion to work with Jeffrey Sutton. He said it best when he told me Mr. Sutton would have a great judicial temperament. So we have a nominee with intellect, with experience, and with temperament. We cannot ask for more than that in a judicial nominee, and yet his confirmation has been delayed because of partisan bickering.

It is no wonder we are in a judicial crisis with so many open judicial seats unfilled. It is no wonder we are stalled in moving forward on other judicial nominees. Jeffrey Sutton is a highly qualified nominee for the appellate bench. Let us move forward. I strongly urge a vote to confirm Jeffrey Sutton to the Sixth Circuit Court of Appeals.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. How much time remains on both sides?

The PRESIDING OFFICER. Twenty minutes on the Senator's side and 5 minutes on the other side.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Iowa.

Mr. HARKIN. Mr. President, a lot of times these debates, especially when they involve a court nominee such as Mr. Sutton, tend to get personal, and they should not. I hope no one here interprets anything I have said as being any kind of personal thing against Mr. Sutton.

I said at the beginning I found him to be a pleasant, intellectual individual with whom I spent an hour and a half. I do not know him personally, of course. That is not the point. It is just like my good friend from Utah, Senator HATCH. Senator HATCH was very helpful when we passed the Americans with Disabilities Act. I have told him that many times. He happens to be a good friend of mine on a whole host of issues on which we have worked together. I have no doubt that perhaps Mr. Sutton has compassion toward people with disabilities, but that also raises a problem with me.

It has been said many times Mr. Sutton's father had a school for kids with cerebral palsy. When Mr. Sutton was in my office, I asked him if that was a segregated school and he said, no, it was not. But he thought I meant male and female. What it was, was kids with cerebral palsy only went to this school. Well, I commend Mr. Sutton's father for his compassion, for having a school for kids with cerebral palsy, but that is what we are trying to get over with the Americans with Disabilities Act. That is what we are trying to get beyond. We are trying to get beyond segregation.

I spoke about my brother Frank when he was sent half way across the State to the school for the deaf—segregation because he was disabled. So, again, to have that mindset that somehow people have to be put in an institution, like the Olmstead case—fortunately, Mr. Sutton did not win that one, but if his view had prevailed, the two women in that case would still be in an institution. Now they are living by themselves, out free to shop, free to make their own meals, free to travel, not being stuck in an institution.

This vote we are about to have has nothing to do with Jeffrey Sutton as a person, but it has a lot to do with him as a potential judge and how he views his role and how he views Congress's role. He said that the Americans with Disabilities Act was not needed. On National Public Radio he said that, ''disability discrimination in a constitutional sense is really very difficult to show.''

Then, later on, Mr. Sutton said that in this context it is a zero sum game; that if civil rights wins, the States lose.

It is not a zero sum game at all. Yes, like my friend from Utah, I believe in federalism. I believe in the Federal/State system on which our country is set up, on which our constitutional framework is established. I think it is the best system ever devised on the face of the Earth. But I do not believe in the kind of federalism that Mr. Sutton espouses, that it is a zero sum game; that if we expand civil rights somehow a State loses, or that somehow Congress does not have the authority, constitutionally, to address the kinds of social ills and social wrongs perpetrated so long in our country on minorities and on people with disabilities. That is why 400 civil rights groups have come out opposed to Mr. Sutton.

We here in the Congress did our job. We worked long and hard over many, many years, Republicans and Democrats, to pass the Americans with Disabilities Act. Mr. Sutton says that discrimination against people with disabilities is very difficult to show. Is that the mindset we want on the Federal bench? I ask my fellow Senators, send a strong message that we are going to stand behind the Americans with Disabilities Act, that we are not going to let it be chiseled away by a Federal judge such as Mr. Sutton. I ask for a ''no'' vote to send that message.

Mr. President, I ask unanimous consent to have printed the RECORD a list of letters the Committee has received in opposition to the confirmation of Jeffrey Sutton to the Sixth Circuit Court of Appeals, and three of these letters which come from large coalitions of civil rights, women's rights and disability rights organizations.

First, a letter from the Leadership Conference on Civil Rights and the Alliance for Justice, dated April 28, 2003.

Second, a letter from 25 women's groups, dated April 28, 2003.

Third, a letter from ADA WATCH, a coalition of disability rights organizations, dated May 14, 2003.

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

OPPOSITION TO JEFFREY SUTTON, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PUBLIC INTEREST GROUPS

Ability Center of Defiance also signed by: Courage Incorporated, Independent Living Center of North Central Ohio, Ability Center of Greater Toledo, Access II Independent Living Center, Access to Independence of Courtland County, Inc., Access Living, Advocates for Ohioans with Disabilities, ADA WATCH, AIDS Action, Alliance for Disabled in Action, American Association of People with Disabilities, American Association of University Women, American Council of the Blind, American Council of the Blind of Maryland, American Council of the Blind of South Carolina, AFL–CIO, American Federation of State, County and Municipal Employees (AFSCME), Americans for Democratic Action, Arizona Bridge to Independent Living, Brain Injury Association of Tennessee, Capitol District Center for Independence, Inc., Center for Civil Justice, Center for Independent Living Options, Center for Independence of the Disabled in New York, Inc., Cerebral Palsy Association of Ohio, Cerebral Palsy Association of New Jersey.

Civil Rights coalition letter signed by: ADA Watch/National Coalition for Disability Rights, AFL–CIO, Alliance for Justice, American Association of University Women, Feminist Majority, Leadership Conference on Civil Rights, MoveOn.org, NAACP, NAACP Legal Defense and Education Fund, National Council of Jewish Women, National Fair Housing Alliance, National Partnership for Women and Families, National Women's Law Center, People for the American Way, United Auto Workers, Coalition for Independent Living Options, Inc., Council for Disability Rights, Deaf and Hard of Hearing Consumer Advocacy Network, Eastern Paralyzed Veterans Association.

Environmental coalition letter signed by: Clean Water Action, Community Rights Counsel, Defenders of Wildlife, Earthjustice, Endangered Species Coalition, Friends of the Earth, Natural Resources Defense Council, Oceana, Physicians for Social Responsibility, Sierra Club, The Wilderness Society, Everybody Counts Center for Independent Living, Freedom Center, Inc., Gender Justice Action Group, Harrison County Sheltered Workshop, Inc., Heightened Independence & Progress, Human Rights Campaign, Independent Living Center of the Hudson Valley.

Justice for All Project signed by: California Abortion and Reproductive Rights Action League, California Employment Lawyers Association, Committee for Judicial Independence, Democrats.com, Environmental Law Foundation, National Center for Lesbian Rights, California National Organization for Women, Planned Parenthood Los Angeles County, Progressive Jewish Alliance, Stonewall Democratic Club, Unitarian Universalists Project Freedom of Religion, Western Law Center for Disability Rights, Women's Reproductive Rights Assistance Project, Leadership Conference on Civil Rights, Liberty Resources Inc. (the Center for Independent Living in Philadelphia County), Linking Employment, Abilities & Potential, Mental Health Association in Monongalia County, Michigan Centers for Independent Living, Michigan Developmental Disabilities Council, Mid Atlantic Chapter of TASH, National Association for the Advancement of Colored People (NAACP), National Association for Rights Protection and Advocacy, National Association of the Deaf, National Council of Jewish Women, National Disabled Students Union, National Employment Lawyers' Association, National Organization for Women, New York State Independent Living Council, Inc., New York Society for the Deaf, Northern Regional Center for Independent Living, Ocean State Center for Independent Living, Options for Independence, Inc., Oregon Disabilities Commission, Pennsylvania Council of the Blind, Progress Center for Independent Living, Queens Independent Living Center, Inc., Regional Access & Mobilization Project, Inc., River Falls Access Ability Center, Ruben Center for Independent Living, Service Employees International Union, Sierra Club, Southern Maryland Council of the Blind, Statewide Parent Advocacy Network, Inc., United Auto Workers, United Food and Commercial Workers International Union, Utah Statewide Independent Living Council, Vermont Statewide Independent Living Council, Western Law Center for Disability Rights.

Women's Rights Organizations letter signed by: American Association of University Women, Business and Professional Women/USA, Center for Women Policy Studies, Choice USA, Coalition of Labor Union Women, Equity in Education and Employment, Feminist Majority, GenderWatchers, Ms. Foundation for Women, National Council of Jewish Women, National Network to End Domestic Violence, National Partnership for Women & Families, National Women's Law Center, National Organization for Women, NOW Legal Defense and Education Fund, National Partnership for Women & Families, National Women's Conference, National Women's Law Center, Northwest Women's Law Center, Religious Coalition for Reproductive Choice, Wisconsin Coalition Against Sexual Assault, Women Against Abuse, Inc., Women's Caucus for Political Science, Women Employed, Women Empowered Against Violence, Inc., Women's Institute for Freedom of the Press, Women's Sports Foundation, Young Democrats of America Disability Issues Caucus.

ATTORNEYS

Susan Barnhill, Sacramento, CA; Margarette Berg Cashin, Staten Island, NY; Richard Chudner, Cleveland, OH; Kathryn Engdahl, Minneapolis, MN; Frederick Ford, West Palm Beach, FL; Nancy Grim, Kent, OH; Caryn Groedel, Cleveland, OH; Harriet McBryde Johnson, Charleston, SC; Theodore Meckler, city and state unknown; Dahlia Rudasky, Boston, MA.

Also signed by: Ellen Messing; James Weliky; Jeremy Cattani; Shawn Scharf, Youngstown, OH; Judity Schermer, Minneapolis, MN; David Steiner, Cleveland, OH; Richard Treanor, Washington, DC; Brian Williams, Akron, OH; Jeffrey Neil Young, Topsham, ME.

PROFESSORS

Douglas Laycock, University of Texas at Austin School of Law, Austin, TX; American Law Teachers, signed by Michael Rooke-Ley, Emeritus Professor of Law and Paula Johnson, Professor of Law; Rebecca Zietlow, University of Toledo College of Law.

CITIZEN GROUPS

Concerned Citizens of Ohio letter signed by: Tim Harrington, Director and Sue Hetrick, Ability Center for Greater Toledo; Roy Poston, Director, Access Center for Independent Living (Dayton); Patrick Shepherd, President, Cleveland Stonewall Democrats; Bev Rackett, Director, Mid-Ohio Board for an Independent Living Environment; Joan Kazan, Immediate Past President, National Council of Jewish Women, Cincinnati Section; Susan Levine, President, National Council of Jewish Women, Cleveland Section; Cathy Stone, President, National Council of Jewish Women, Columbus Section; William Burga, President, Ohio AFL–CIO; Ronald Malone, Director, Ohio AFSCME United; Sandy Buchanan, Ohio Citizen Action; Fred Gittes, Ohio Employment Lawyers Association; Diane Doge, Ohio National Organization for Women; William Olubodun, Ohio Statewide Independent Living Council; Jonathan Varner, President, Ohio Young Democrats; Belinda Spinosi, Director, Southeastern Ohio Center for Independent Living; NARAL Ohio letter signed by 279 individuals.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS, ALLIANCE FOR JUSTICE,
Washington, DC, April 28, 2003.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: We, the undersigned civil rights, women's rights, labor, and human rights organizations, together representing millions of Americans across the United States, write to express our opposition to the confirmation of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit. Mr. Sutton's record as a lawyer and advocate reveals him to be an extremely ideological and conservative activist with a particularly troubling record in many areas important to our communities.

We have serious concerns about Mr. Sutton's legal philosophy in a number of areas, particularly his views on Congress' authority to enact laws protecting civil and other individual rights. Mr. Sutton has become, over the last several years, a leading activist in the so-called ''states' rights'' movement. In fact, he has personally argued key Supreme Court cases that, by narrow 5–4 majorities, have undermined Congress' ability to protect Americans against discrimination based on race, age, gender, disability, and religion. Mr. Sutton's arguments in several of these cases sought to restrict civil rights and environmental protections even more severely than has the Supreme Court. Also, Mr. Sutton was not just making a strong case on behalf of his client; he actively sought out these cases in order to expand states' rights doctrines. As he told the Legal Times, ''I love these issues. I really believe in this federalism stuff.''

Mr. Sutton's work on behalf of limiting Congress' power to enact protective legislation has had a devastating impact on the rights of individuals with disabilities. Over the past several years, Mr. Sutton has been involved in an effort to challenge and weaken the Americans with Disabilities Act (ADA), a popular and important bill enacted by a bipartisan Congress and signed into law by President George H.W. Bush. Mr. Sutton represented the University of Alabama in the case of University of Alabama v. Garrett, 531 U.S. 456 (2001), in which the Court ruled 5–4 that it was unconstitutional for the ADA to permit state employees to bring lawsuits for damages to protect their rights against discrimination. In fact, Mr. Sutton's arguments went even further than the Court's decision. During oral argument, Mr. Sutton told the Court that the ADA was ''not needed.'' In another case, Olmstead v. L.C., 527 U.S. 581 (1999), Mr. Sutton argued that it should not be a violation of the ADA to force persons with mental disabilities to remain institutionalized without proper justification, despite clear congressional findings to the contrary. In a third case, Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206

(1998), Mr. Sutton filed an amicus brief arguing that the ADA does not apply at all to state prison systems. The Supreme Court rejected Mr. Sutton's arguments in Olmstead and Yeskey, which would have further weakened the ADA had they been accepted.

Mr. Sutton has also argued for a narrow view of Congress' ability to protect the environment or to provide a means for individuals to vindicate their rights. In Alexander v. Sandoval, 532 U.S. 275 (2001), he argued against allowing private individuals to sue to enforce the disparate impact regulations of Title VI of the 1964 Civil rights Act, which prohibits discrimination based on race, color, or national origin, by recipients of federal financial assistance. He has also argued for severe limits on the ability of state employees who are victims of age discrimination to recover damages, against increased protection for religious freedom from encroachment by states, and against a federal remedy for victims of sexual assault and violence, positions adopted by the 5–4 Supreme Court majority. He also argued that Congress did not have the Constitutional authority to enact legislation protecting environmentally sensitive wetlands from harmful dumping.

In addition, Mr. Sutton has advocated for other specific steps by the courts to limit federal civil rights protections. In an article for the Federalist Society, Mr. Sutton praised a concurring opinion by Justices Thomas and Scalia in Holder v. Hall, 512 U.S. 874 (1994), which would have severely restricted the application of Section 2 of the Voting Rights Act (prohibiting state and local conduct that has a racially discriminatory purpose or effect), and would have required overturning or reconsidering at least twenty-eight previous Supreme Court voting rights decisions. Mr. Sutton has even suggested that the Thomas-Scalia concurrence provided a blueprint for broadly reconsidering and overturning court decisions that right-wing advocates do not like in civil rights and other areas.

In sum, based on his record as a lawyer and legal advocate, it is clear that Mr. Sutton's legal philosophy is focused on limiting Congress' historic role in protecting the civil and constitutional rights of all Americans. Jeffrey Sutton's advocacy on many issues important to our communities, such as the reach of federal civil rights and environmental statutes, federalism, the right to vote, and the ability of individuals to vindicate their rights, reflect views that are outside the mainstream of judicial thought.

Therefore, given Mr. Sutton's record of hostility to important civil rights and equal opportunity principles, we urge the Senate to reject his nomination to the U.S. Court of Appeals for the Sixth Circuit.

Sincerely,

WADE HENDERSON,
Leadership Conference on Civil Rights.
NAN ARON,
Alliance for Justice.

APRIL 28, 2003.

Hon. WILLIAM H. FRIST,
U.S. Senate,
Russell Senate Office Building,
Washington, DC.
Hon. THOMAS DASCHLE,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: We, the undersigned women's rights organizations, write to express our strong opposition to the nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit. Jeffrey Sutton is an experienced Supreme Court litigator who has gained prominence because of his staunch advocacy in favor of states' rights and elevating state sovereignty over Congress' power to protect civil rights. As organizations dedicated to the advancement of women, we are extremely concerned about the growing resurgence of states' rights, particularly as a tool to undermine rights essential to women's progress. Jeffrey Sutton is not merely a proponent of state's rights—he has been the principal architect of an effort to curtail Congress' efforts to protect against discrimination and ensure equal opportunity. Indeed, his persistent, single-minded advocacy is reflected not only in his case participation, but also in his speeches and writings. His confirmation to a lifetime position on the federal bench threatens to dismantle the important gains that have been critical to women's success and we urge you to reject his nomination.

Jeffrey Sutton has argued before the Supreme Court in a number of seminal civil rights cases that have weakened the ability of Congress to protect women's rights. For example:

Mr. Sutton represented Alabama as amicus curiae in United States v. Morrison, 529 U.S. 598 (2000), and argued successfully that the civil rights remedy of the Violence Against Women Act (VAWA) was unconstitutional. Congress passed VAWA after hearing wide-ranging testimony that states were not adequately protecting women from violence motivated by gender. Despite substantial evidence gathered by Congress and the views of attorneys general from 36 states, Sutton argue that ''there has been no tenable showing that the [s]tates have violated the Fourteenth Amendment through their regulation of gender-based violence.'' He not only volunteered to write this brief, but also wrote two subsequent articles for the Federalist Society which supported the Court's decision and its rationale.

Mr. Sutton played a significant role in weakening the Civil Rights Act of 1964, arguing in Alexander v. Sandoval, 532 U.S. 275 (2001), that citizens could not sue under Title VI to challenge federally funded programs that had the effect of discriminating on the basis of race, color, or national origin. This case has had a serious impact not only on Title VI cases, but also on the implementation of Title IX, which prohibits gender discrimination in federally funded education programs or activities. Because Title IX was modeled on Title VI, many courts have applied principles established under Title VI to Title IX cases. Already, at least four courts have found that Title IX retaliation claims were not actionable in the wake of the Sandoval decision. While further action in these cases is possible, these decisions illustrate the potential harm posed by Sandoval in cases challenging gender discrimination in education.

Mr. Sutton represented the state of Alabama in Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001), advancing a state's rights argument that ultimately led the Supreme Court to dismiss the claim of a woman who was fired because she had breast cancer and to further undermine the Americans with Disabilities Act. Despite evidence that Congress had mounted to show that states had a history of discrimination in their treatment of citizens with disabilities, Sutton argued to the contrary, and urged the Court to find that Congress had exceeded its power under the Fourteenth Amendment. These same legal arguments are now being used to challenge the Family and Medical Leave Act, another law that is critical to the ability of women and men to balance their work and family responsibilities.

Mr. Sutton's unyielding and extreme views on federalism and civil rights would restrict Congress' power to pass civil rights laws and the abilities of individuals to seek redress for violations of those rights, as well as inhibit access to courts for people challenging illegal acts by their state governments. These views are contrary to the balanced approach we believe is necessary for a federal appeals court judge.

Because we believe Mr. Sutton's confirmation would accelerate the rollback of essential civil rights laws and undermine important gains for women, we urge you to oppose his nomination.

Sincerely,

American Association of University Women.
Business and Professional Women/USA.
Center for Women Policy Studies.
Choice USA.
Coalition of Labor Union Women.
Equity in Education and Employment.
Feminist Majority.
Gender Watchers.
Ms. Foundation for Women.
National Council of Jewish Women.
National Network to End Domestic Violence.
National Organization for Women.
NOW Legal Defense and Education Fund.
National Partnership for Women & Families.
National Women's Conference.
National Women's Law Center.
Northwest Women's Law Center.
Religious Coalition for Reproductive Choice.
Wisconsin Coalition Against Sexual Assault.
Women Against Abuse, Inc.
Women's Caucus for Political Science.
Women Employed.
Women Empowered Against Violence, Inc.
Women's Institute for Freedom of the Press.
Women's Sports Foundation.

ADA WATCH,
Washington, DC, May 14, 2001.

Hon. PATRICK LEAHY,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: President Bush's nomination of Jeffrey Sutton for federal judgeship is of great concern to members of the disability community and it is our hope that you will be willing to meet with representatives of the ADA WATCH to discuss our opposition.

The ADA WATCH is a campaign to protect the civil rights of people with disabilities. This includes an informational network designed to alert and activate the grassroots to respond to threats to the ADA from Congress, the Administration, and the courts. Our 100+ member organizations include: ADAPT, National Council on Independent Living, American Association of People with Disabilities, Consortium for Citizens with Disabilities, Paralyzed Veterans of America, and the National Association of Protection and Advocacy Systems. While the ADA WATCH does not speak for any of these individual organizations, we are currently making the judicial nomination of Jeffrey Sutton a top priority and a great majority of our partners are united in opposing this nomination in light of Mr. Sutton's outspoken disregard for the civil rights of people with disabilities. The nomination of a lawyer who has enthusiastically argued against the constitutionality of the ADA is hardly consistent with the Bush Administration's stated support of the ADA and the legacy of the man who signed the ADA into law, President George H.W. Bush.

Mr. Sutton has made it clear that he is not supportive of the rights granted to people with disabilities by Congress through the passage of the ADA. Despite extensive documentation of state government discrimination against people with disabilities, Mr.

Sutton enthusiastically supported the position that Congress did not have the authority to create the important civil rights protections afforded by the ADA. Mr. Sutton told the Supreme Court last fall when he argued the Garrett case for Alabama that the ADA ''exaggerated discrimination problems by states.'' He told the court that the ADA was ''not needed'' and used similar arguments to weaken civil rights laws in the Kimel and Sandoval cases. His belief that laws of the various states provide adequate protections ignores the hundreds of pages of testimony before Congress that detailed the discrimination faced by people with disabilities across the country at the hands of state government agencies.

Please understand the ADA WATCH's respectful opposition to this nomination and our concern that the nomination of Mr. Sutton represents a serious threat to the civil rights of people with disabilities.

Sincerely,

JIM WARD.

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

Who yields time? The Senator from Utah.

Mr. HATCH. Mr. President, I will only take a few minutes and then I intend to yield back the remainder of our time, as long as no one else wants to speak.

I appreciate the distinguished Senator from Iowa. I would have yielded time to him, had he needed time, without the extra 10 minutes that were asked for.

It seems to me the arguments on the other side come down to this. Mr. Sutton is outside the mainstream of American jurisprudence, that he advocated cases that literally the Supreme Court agreed with, that they disagree with, maybe I disagree with, but the Supreme Court did decide in at least two of those cases, nine to zip, in favor of Mr. Sutton's position. That is basically what it seems to come down to.

The fact is, Mr. Sutton, as an advocate, has an obligation to argue the best he can for his clients. He did that, winning 9 of the 12 cases that he had before the Supreme Court, and a number of them unanimously—that they have been complaining about. In the Garrett case, he got five Justices on the Supreme Court, a clear majority, to go along with his particular position.

I have read the letter from some of my colleagues on the Judiciary Committee that indicated he has never advocated for a civil rights position. That is pure bunk, and I have made that case here today.

What is behind this type of treatment of an excellent nominee such as Jeffrey Sutton? I can understand the distinguished Senator from Iowa who is a very strong advocate for persons with disabilities, as am I, who may not have read the full judicial record and who may not, as a nonlawyer, fully appreciate the role of an advocate. But it is very difficult for me to understand how members of the Judiciary Committee who are advocates themselves, who hold their attorney's licenses in good esteem, can make some of the arguments they have made, and especially in the letter they distributed to all Senators.

The record flies in the face of those allegations. The fact is, I believe Jeffrey Sutton will be one of the most sensitive people towards persons with disabilities because he comes from that mindset. His father ran a school for persons with disabilities, kids who suffered from cerebral palsy. He worked for his father. He has argued for persons with disabilities and he has argued in cases where the Court decided against the Americans with Disabilities Act. But the Court made that decision.

Is the Court outside the mainstream of American juris prudence? I am sure each of us in this body can find a case or two in which we disagree with the Supreme Court. I can find a lot of cases with which I disagree. But their pronouncements happen to be the law and that has been the law ever since Marbury v. Madison.

All I can say is that here is a person who is respected by his peers, who receives the highest rating from the American Bar Association—not a conservative organization, something that has been called the gold standard by my colleagues on the other side—who has eminent experience before the U.S. Supreme Court and other appellate bodies in this country, one of the premier appellate lawyers in the country, even though he is only 45 years of age, who has had extensive experience as an advocate for a wide variety of diverse people, who appeared before the committee and everybody on the committee, even those who are against him here today, admit he is a fine person with great ability.

But they try to smear the Federalist Society by saying these are Federalist Society nominees. That is a joke. The Federalist Society puts on the best seminars of any legal society in America today, and those seminars are always balanced with the left and the right. They give the left every chance to explain their position and give the right every chance to explain their position. That is precisely what a good legal society should do. They do not take advocacy positions but they do try to get people to think about the law.

I get a little tired of having the Federalist Society run down when some of the most eminent people in society are members of the Federalist Society, which is basically a debating society considering the various aspects of the law and making sure both sides are heard. That is pretty hard to beat.

I hope I am wrong, that the real reasons against Mr. Sutton is, No. 1, he is so good; No. 2, he has a chance of being on the Supreme Court someday and why not damage him now so he can't be there; No. 3, he might be pro-life, although I personally don't know what he is with regard to that issue. Those seem to be the major issues.

The fact is, he has the highest rating he can possibly have from the American Bar Association. He is an excellent lawyer. He is an excellent advocate. He is a person whom I believe will do justice on the courts. By all measurement by any fair person, any student of the law, you would have to conclude that this man not only is within the mainstream of American juris prudence, but he is one of the leaders in the mainstream of American juris prudence.

For the life of me, I don't understand why anybody would vote against Jeffrey Sutton. The mere fact that he may have represented some clients who they don't like, they on the other side, that is not a good enough argument. In fact, it is laughable. Good lawyers represent their clients.

In the Garrett case, contrary to what has been argued, he didn't ask for that case. He was called by the attorney general of the State involved and asked if he would be willing to represent them, if I recall correctly.

So the arguments that have been made—I haven't heard one meritorious argument on this whole debate. If you look at the record, there is every meritorious argument as to why those who really understand the law, those who really are fair about this process, would vote for Jeffrey Sutton.

Mr. President, if there is no one else who wants to speak, then I yield the remainder of my time.

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

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

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Jeffrey S. Sutton, of Ohio, to be United States Circuit Judge for the Sixth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. ROBERTS) is necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Georgia (Mr. MILLER), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

I further announce that, if present and voting, the Senator from Maine (Mr. KERRY) and the Senator from Arizona (Mrs. LINCOLN) would each vote ''no''.

The result was announced—yeas 52, nays 41, as follows:

[Rollcall Vote No. 135 Ex.]

YEAS—52

Alexander	Chafee	Dole
Allard	Chambliss	Domenici
Allen	Cochran	Ensign
Bennett	Coleman	Enzi
Bond	Collins	Feinstein
Brownback	Cornyn	Fitzgerald
Bunning	Craig	Frist
Burns	Crapo	Graham (SC)
Campbell	DeWine	Grassley

Gregg	McConnell	Specter
Hagel	Murkowski	Stevens
Hatch	Nelson (NE)	Sununu
Hutchison	Nickles	Talent
Inhofe	Santorum	Thomas
Kyl	Sessions	Voinovich
Lott	Shelby	Warner
Lugar	Smith	
McCain	Snowe	

NAYS—41

Akaka	Dayton	Lautenberg
Baucus	Dodd	Leahy
Bayh	Dorgan	Levin
Biden	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Schumer
Conrad	Kennedy	Stabenow
Corzine	Kohl	Wyden
Daschle	Landrieu	

NOT VOTING—7

Graham (FL)	Lincoln	Sarbanes
Kerry	Miller	
Lieberman	Roberts	

The nomination was confirmed.

● Mrs. LINCOLN. Mr. President, due to an electronic failure, I was absent during the vote on the confirmation of Jeffrey Sutton to be a United States Circuit Judge for the Sixth Circuit Court of Appeals. Had I been present, I would have voted ''no'' on his confirmation. After reviewing Mr. Sutton's record, I was not confident he could fulfill his obligation as a Federal appellate court judge to follow established precedent, interpret the law and Constitution fairly, and treat all litigants before him without favor or bias. In my estimation, Mr. Sutton's proactive and consistent advocacy to limit Federal civil rights protections is incompatible with the temperament and detachment I look for in nominees being considered for a lifetime appointment.●

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having passed, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:43 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NOMINATION OF PRISCILLA OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Mr. HATCH. Mr. President, I ask unanimous consent the Senate now resume consideration of the nomination of Priscilla Owen to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Without objection, the Senator will proceed.

Mr. HATCH. Mr. President, I am pleased today to voice my strong support for the confirmation of Justice Priscilla Owen to the Fifth Circuit Court of Appeals. Justice Owen's nomination has been pending now for nearly 2 years—720 days in total, so I hope we can vote on it soon. Justice Owen is among the longest pending judicial nominees selected by President Bush. She was first nominated on May 9, 2001, so it is natural that we should move forward at this time.

I should say at the outset that I truly hope the news reports are inaccurate about another move by the other side to filibuster a well-qualified nominee and deny a vote by the full Senate. We know the usual liberal interest groups are crying for a filibuster, but we ought to do what the American people have sent us here to do, and vote.

I expressed a similar hope when Miguel Estrada's nomination reached the floor on February 5. Yet here we are 3 months and 4 cloture votes later and still he has not been allowed a vote.

We have 200 years of precedent for providing an up-or-down vote on judicial nominees and we should follow that.

If certain Senators do not like Priscilla Owen or Miguel Estrada, they ought to vote no. That is their right. But they ought to vote.

I fully support an open debate on Justice Owen's nomination. And we have had a number of debates already. I do not, however, support any filibuster on a circuit court nominee, or any judge for that matter, or, frankly, anybody on the Executive Calendar. I think in the past some of us voted against cloture on Executive Calendar nominees without realizing how important it is to not filibuster the President's nominees, whoever the President might be. I believe we have made those mistakes. And I believe I probably have. It is the wrong thing. But nobody has ever filibustered a circuit court of appeals nominee until Miguel Estrada. If they filibuster Priscilla Owen, that means two in 1 year in a procedure that has never before been used.

I fully support an open debate on Justice Owen's nomination. Like I say, we should not suffer through another filibuster. My colleagues on the other side of the aisle have already set a terrible partisan precedent in filibustering for the first time in history a circuit court nominee, Miguel Estrada. A simultaneous filibuster of two nominees would not only be unprecedented, but I think it would damage all three institutions even more. Let us have a full and open debate and then leave it up to each Senator to decide for himself or herself by holding a simple up-or-down vote.

Let me now explain why I intend to vote yes on Justice Owen's nomination.

Justice Owen is a terrific selection for the Fifth Circuit Court of Appeals. She has the intelligence, the education, the experience, and the integrity we look for in a federal judge. A native of Texas, Justice Owen attended Baylor University and Baylor University School of Law. She graduated cum laude from both institutions and served as a member of Baylor's law review. In addition, she finished third in her law school class, which means that she is worthy of the appointment, something most lawyers can never dream about.

Justice Owen went on to earn the highest score on the Texas bar exam and thereafter accepted a position at the nationally ranked Houston law firm of Andrews & Kurth. She worked for the next 17 years as a commercial litigator with the firm, specializing in oil and gas matters and doing some work in securities and railroad issues.

Justice Owen has the full support of Senators HUTCHISON and CORNYN—both Senators from Texas—who know her well. Senator CORNYN has spoken in committee and on the Senate floor about his time working as a fellow Justice to Justice Owen on the Texas Supreme Court. Senator CORNYN has spoken to the criticism of Justice Owen's work on the bench and has made a strong case for Justice Owen's confirmation. I would commend Senator CORNYN's remarks regarding Justice Owen as worthy of the special attention of all my fellow Senators. Senator CORNYN's responses to criticisms of Justice Owen's judicial record are especially enlightening.

Former Texas Supreme Court Justices John L. Hill, Jack Hightower, and Raul Gonzalez—each of them a committed Democrat—also endorse Justice Owen. In particular, they note her impartiality and restraint on the bench. A group of 15 former Presidents of the Texas State Bar supports Justice Owen. This is no partisan group. They write: ''Although we profess different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit.''

I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

HUGHES LUCE LLP,
Dallas, TX, July 15, 2002.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, 224 Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: As past presidents of the State Bar of Texas. we join in this letter to strongly recommend an affirmative vote by the Judiciary Committee and confirmation by the full Senate for Justice Priscilla Owen, nominee to the United States Court of Appeals for the Fifth Circuit.

Although we profess different party, affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit. Based on her superb integrity, competence and judicial temperament, Justice Owen earned her Well Qualified rating unanimously from the American Bar Association Standing Committee on the Federal Judiciary—the highest rating possible. A fair and bipartisan review of Justice Owen's qualifications by the Judiciary Committee certainly would reach the same conclusion.

Justice Owen's stellar academic achievements include graduating cum laude from both Baylor University and Baylor Law School, thereafter earning the highest score in the Texas Bar Exam in November 1977. Her career accomplishments are also remarkable. Prior to her election to the Supreme Court of Texas in 1994, for 17 years she practiced law specializing in commercial litigation in both the federal and state courts. Since January 1995, Justice Owen has delivered exemplary service on the Texas Supreme Court, as reflected by her receiving endorsements from every major newspaper in Texas during her successful re-election bid in 2000.

The status of our profession in Texas has been significantly enhanced by Justice Owen's advocacy of pro bono service and leadership for the membership of the State Bar of Texas. Justice Owen has served on committees regarding legal services to the poor and diligently worked with others to obtain legislation that provides substantial resources for those delivering legal services to the poor.

Justice Owen also has been a long-time advocate for an updated and reformed system of judicial selection in Texas. Seeking to remove any perception of a threat to judicial impartiality, Justice Owen has encouraged the reform debate and suggested positive changes that would enhance and improve our state judicial branch of government.

While the Fifth Circuit has one of the highest per judge caseloads of any circuit in the country, there are presently two vacancies on the Fifth Circuit bench. Both vacancies have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts. Justice Owen's service on the Fifth Circuit is critically important to the administration of justice.

Given her extraordinary legal skills and record of service in Texas, Justice Owen deserves prompt and favorable consideration by the Judiciary Committee. We thank you and look forward to Justice Owen's swift approval.

Sincerely,

DARRELL E. JORDAN.

On behalf of former Presidents of the State Bar of Texas: Blake Tartt; James B. Sales; Hon. Tom B. Ramey, Jr.; Lonny D. Morrison; Charles R. Dunn; Richard Pena; Charles L. Smith; Jim D. Bowmer; Travis D. Shelton; M. Colleen McHugh; Lynne Liberaito; Gibson Gayle, Jr.; David J. Beck; Cullen Smith.

Mr. HATCH. Mr. President, Justice Owen is recognized for her services for the poor and for her work on gender and family law issues. Justice Owen has taken a genuine interest in improving access to justice for the poor. She successfully fought with others for more funding for legal aid services for the indigent. Hector De Leon, former president of Legal Aid of Central Texas, has written: ''Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.''

I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

DE LEON, BOGGINS & ICENOGLE,
Austin, TX, June 26, 2002.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, DC.

DEAR SENATOR LEAHY: This correspondence is sent to you in support of the nomination by President Bush of Texas Supreme Court Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

As the immediate past President of Legal Aid of Central Texas, it is of particular significance to me that Justice Owen has served as the liaison from the Texas Supreme Court to statewide committees regarding legal services to the poor and pro bono legal services. Undoubtedly, Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.

Additionally, Justice Owen played a major role in organizing a group known as Family Law 2000 which seeks to educate parents about the effect the dissolution of a marriage can have on their children. Family Law 2000 seeks to lessen the adversarial nature of legal proceedings surrounding marriage dissolution. The Fifth Circuit would be well served by having someone with a background in family law serving on the bench.

Justice Owen has also found time to involve herself in community service. Currently Justice Owen serves on the Board of Texas Hearing and Service Dogs. Justice Owen also teaches Sunday School at her Church, St. Barnabas Episcopal Mission in Austin, Texas. In addition to teaching Sunday School Justice Owen serves as head of the altar guild.

Justice Owen is recognized as a well rounded legal scholar. She is a member of the American Law Institute, the American Judicature Society, The American Bar Association, and a Fellow of the American and Houston Bar Foundations. Her stature as a member of the Texas Supreme Court was recognized in 2000 when every major newspaper in Texas endorsed Justice Owen in her bid for re-election to the Texas Supreme Court.

It has my privilege to have been personally acquainted with various members of the U.S. Court of Appeals for the Fifth Circuit. The late Justice Jerry Williams was my administrative law professor in law school and later became a personal friend. Justice Reavley has been a friend over the years. Justice Johnson is also a friend. In my opinion, Justice Owen will bring to the Fifth Circuit the same intellectual ability and integrity that those gentlemen brought to the Court.

I earnestly solicit your favorable vote on the nomination of Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

Thank you for your attention to this correspondence.

Very truly yours,

HECTOR DE LEON.

Mr. HATCH. Mr. President, Justice Owen is committed to opening opportunities to women in the legal profession. She has been a member of the Texas Supreme Court Gender Neutral Task Force, and she served as one of the editors of the Gender Neutral Handbook, a guide for all Texas lawyers and judges on the issue of recognizing and combating gender bias in the legal field. Incredibly, this is the same woman the usual interest groups mischaracterize as ''anti-woman.''

Justice Owen's confirmation is backed by Texas lawyers such as E. Thomas Bishop, president of the Texas Association of Defense Counsel, and William B. Emmons, a Texas trial attorney and a Democrat who says that Justice Owen ''will serve [the Fifth Circuit] and the United States exceptionally well.''

You can see the type of bipartisan support Justice Priscilla Owen enjoys.

Justice Owen has served on the Texas Supreme Court since 1994, winning reelection to another 6-year term in the year 2000. She had bipartisan support, earning the endorsement of all major Texas newspapers and the endorsement of the Texas voters—84 percent of the electorate to be exact.

This kind of support—running across the board and across party lines—leaves no doubt that Justice Owen is a fair-minded, mainstream jurist.

The fact that Justice Owen earned an ABA rating of unanimous well qualified, the gold standard of many of my colleagues on the other side when evaluating judicial nominees, is further evidence of Justice Owen's fitness to serve on the Fifth Circuit Court of Appeals.

This well qualified rating means that Justice Owen is at the top of the legal profession in her legal community; that she has outstanding legal ability, breadth of experience, and the highest reputation for integrity; and that she has demonstrated, or exhibited the capacity for, judicial temperament.

This ranking comes only after careful investigation and consideration. There is close examination of the nominee's legal writing—whether judicial opinions, law review articles, or other scholarship. Lawyers in private practice and in the public sector are interviewed and provide their candid assessment of the nominee. Those interviewed may be law school professors, lawyers working for public interest services, members of bar associations and legal organizations, and community leaders. Men and women of all backgrounds are invited by the ABA to assess the nominee's fitness for judicial service. All of this investigation is done to provide a full picture of the nominee's qualifications for the federal judiciary.

Justice Priscilla Owen will be a great asset to the Fifth Circuit. One can nitpick at her record, as many have done, and will no doubt continue to do, but when we lay out her full record and look at it with a sense of balance, we see a judge who honors the law and lives up to her judicial oath.

I express my hope, once again, that we will commit to hold a debate and

then vote on Justice Owen's confirmation. This will allow each Senator to decide the merits of her record for himself or herself and allow the entire Senate to fulfill its constitutional duty.

I, for one, hope we are not set up for another filibuster—another first time in history. I hope that will not be the case, but if it is, I hope we can face it head on. Ultimately, I hope we can somehow or other pull out the stops and get a vote for Justice Owen up and down. Those who do not agree with her can vote against her; and those who do, can vote for her.

This is an excellent woman, one of the best nominees I have seen in my whole 27 years on the Senate Judiciary Committee. I do not think you can find better people than Justice Owen. I personally believe she is a person of great capacity, and I think her record proves that.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Democratic leader is on his way to the floor and wants to be the first speaker on this matter on our side. We wish that he be the first speaker. In light of that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, I note we are now debating the Owen nomination. This morning we had a debate, as we have had over the last several days, on the Sutton nomination. There were those who supported Mr. Sutton. Many of us opposed him, we think for good reason. But there ought to be a recognition that, as we consider all of those nominees who come before the Judiciary Committee, there are those, of course, that will divide us but there are many that ought to unify us, that ought to bring us together in recognition of the importance of the record that has already been made with regard to judges these past 2½ years since this administration has come to office.

In that time, the Senate has now confirmed 119 circuit and district judges. I am told that is a record in that period of time, that we have never confirmed that many judges over that period of time. But whether it is a record or not, arguably there are other times when we have been virtually as productive.

We have only opposed two of those nominations. Judge Priscilla Owen was opposed before, and is opposed now. Judge Pickering, of course, in the committee was defeated 2 years ago. The only other nomination to come to the floor, as I said—the second one—is Judge Estrada, and that has to do with his lack of cooperation and his unwillingness to bring forward the documents that we think ought to be required if we are going to make a collective and a thoughtful judgment about his qualifications.

There are others who have been considered in the committee that I have offered to the distinguished Republican leader, the majority leader, who could be brought up and passed in a very short period of time.

One of those judges is Judge Edward Prado. Judge Prado happens to be in the same circuit as Judge Owen. Judge Owen is from the Fifth Circuit. So is Judge Prado. Judge Prado also happens to be Hispanic. There have been numerous statements on both sides of the aisle with regard to the importance of Hispanic nominees, nominees of any minority. Cases have been made for improving the diversity on the courts. It is in the interest of diversity and the interest of moving forward on those judges for whom there could be agreement that I wanted to come to the floor this afternoon and simply say: Let's take up those for which there is overwhelming agreement. As I noted, Judge Prado is one of those nominees.

I intend to ask unanimous consent that we agree at least on this nominee and many others. We may continue to disagree on the Owen nomination, and we will get into the reasons in the course of the debate. But there is no reason to hold hostage those nominees for whom there is agreement. So I thought it would be appropriate for us to set aside the Owen debate for 3 hours this afternoon so that we can take up an Hispanic nominee who enjoys broad bipartisan support. I would guess if there were a rollcall on Mr. Prado this afternoon, it would pass, if not unanimously, virtually unanimously.

We have a choice this afternoon. We have a choice of continuing this debate, this divisive debate on Priscilla Owen, which we may be forced to experience, or we could at least take a reprieve from that divisive debate and take up a qualified nominee, a Hispanic nominee on whom there is virtually no disagreement.

I ask unanimous consent that the Senate now proceed to Executive Calendar No. 105, the nomination of Edward C. Prado of Texas to be a U.S. Circuit Court Judge for the Fifth Circuit; that there be 3 hours of debate on the nomination equally divided between the chairman and ranking member; that at the conclusion or yielding back of the time, the Senate vote, without intervening action, on the confirmation of the nomination; that the motion to reconsider the Senate's action be laid upon the table; and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Reserving the right to object, I believe the majority leader realizes there is a way of doing this and a way not to do this. I will have to object to the unanimous consent request because Priscilla Owen has been nominated for the exact same court of appeals as Judge Prado. We all agree Judge Prado is an excellent candidate and nominee, and we intend to fully support him and to have him confirmed. We also know there is the matter of seniority and a number of other matters as well.

In addition, the majority leader has seen fit to bring the Owen nomination to the floor, because we hope to have a vote up or down on Priscilla Owen. We look forward to that particular vote. We would like to confirm her first.

I made it clear a short while ago, in fact early in the year, that we would try on the Judiciary Committee, to the extent that we can, to bring people up in chronological order. Justice Owen has been sitting in the Judiciary Committee as a nominee on the Executive Calendar for 2 years this May 9. So within a week and a half, she will have been sitting there for 2 solid years. It is only fair to ask that her nomination be acted upon first. We fully intend to do that although it has no reflection at all on Judge Prado.

I have to object at this time. We will get to Judge Prado in due course in the way it should be done, not by bringing him up out of order and not by trying to upset the motions of the majority leader in this body. I look forward to that. Having said all of that, I object.

The PRESIDING OFFICER. Objection is heard.

The Democratic leader.

Mr. DASCHLE. Mr. President, let me just say how disappointed I am at the decision made by our Republican colleagues. The distinguished chair of the Judiciary Committee made a comment that I may have misunderstood. I think he said there really is no difference between the Owen nomination and the Prado nomination with regard to Senate consideration. There is a huge difference.

The Owen nomination, of course, came before the Judiciary Committee in the last Congress. Her nomination was defeated in the Judiciary Committee. It is rare, almost unheard of, for a defeated nominee to be brought back before the committee and then brought back before the Senate.

There is a significant difference between the Owen nomination and the nomination of Edward Prado. Edward Prado was before the committee and now before the Senate in part because of his overwhelming support on both sides of the aisle, because he came before the committee, presented his qualifications and, as a result of those qualifications, was voted out unanimously. There is absolutely no reason to hold Mr. Prado hostage to other controversial nominees. If we wait until we resolve the Owen nomination, Mr. Prado will never be confirmed because I doubt that Ms. Owen will be confirmed. So that is a criterion I hope

will be reconsidered by our colleagues on the other side.

Again, let me express my disappointment and my hope that our colleagues will reconsider as we bring this unanimous consent request back to the floor at a later date.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I have a perfect solution to the distinguished minority leader's suggestion. I would like to have Judge Prado brought up as well. I ask unanimous consent that with respect to the Owen nomination, which was reported on March 27, there be 8 additional hours for debate prior to the vote on the confirmation of the nomination.

Mr. DASCHLE. Mr. President, I object.

Mr. HATCH. Then I modify my request to allow for 10 hours.

Mr. DASCHLE. Mr. President, as I noted before, there are many concerns. This nominee was defeated before the Judiciary Committee in the last Congress, and for many good reasons. We will have the debate. There is no way that 10 hours will accommodate the debate that will be required on Ms. Owen.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object.

Mr. HATCH. Mr. President, I think I have the floor.

The PRESIDING OFFICER. The Senator from Utah retains the floor, and the Chair has heard an objection.

Mr. HATCH. I yield to the Senator from Nevada without losing my right to the floor.

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

Mr. REID. Parliamentary inquiry: If Senator DASCHLE's request had been that we move to Prado without the conditions he set forth as to time, is that a debatable motion? We are in executive session.

The PRESIDING OFFICER. At this time, it would be a debatable motion.

Mr. REID. I don't want to do that because the Senator from Utah has the floor, but I want everyone to understand, as soon as I get the floor, I will move to Prado. That is debatable.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. REID. Mr. President, if I may complete my statement, I think we would be in a very strange situation where we would have the Republicans filibustering our moving to Prado.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, that is not only absurd, it is ridiculous. But that is typical of what is going on here. Rather than give an honest vote up or down, which is what advise and consent means under the Constitution, they would prefer to try to take back the floor, although they are in the minority.

I have nothing against Judge Prado. In fact, I will vote for him. I think he is terrific. But it is unseemly for them to try to interrupt the Owen nomination, which has been brought to the floor in accordance with the usual procedures around here, to try to justify their obstruction of not only Miguel Estrada but also Justice Owen by voting for another nominee and making it look as if they are being reasonable about these matters.

First of all, this is the first time in the history of this Republic that a second nominee for a circuit court of appeals is being filibustered.

To make it look like they are not filibustering, to make it look like they are being reasonable, they are trying to overrule what the majority leader has brought to the floor. I suspect if the Parliamentarian continues to maintain that ruling, we will have to face that problem.

Will our colleagues on the other side stop at nothing in their zeal to obstruct a vote up or down on President Bush's nominees? I think it shows even further how broken the Senate is, how broken this procedure and process is.

Now, my Democratic colleagues have brought up the fact that Priscilla Owen was defeated last year. Let us remember that she was defeated on a party line, partisan vote, a vote of obstruction. After the first of this year, she was brought up again in committee and passed through the committee with a majority vote—again, a straight partisan vote. All Republicans voted for her and all Democrats on the committee voted against her.

Mr. President, I think it is unseemly what the Democrats are trying to do. I think they are trying to cover up their approaches. I think they are trying to cover up their obstruction. I think it is an insult to Justice Owen, an insult to the President of the United States, and it is unfair. Unfortunately, I suspect we have to live with this type of unfairness.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Nevada is recognized.

Mr. REID. Mr. President, I say to my friend from Utah, earlier today, the majority leader announced there would be no votes today. He has been always very cooperative with me. So I am not going to move to the nomination of Prado today. But I want to put my friend on notice, as well as everybody else, that tomorrow, when we are going to be in a period of time where we can vote, I will do that.

I say to my friend from Utah, who is my friend, that I have respect for him and his legislative abilities and his fine legal mind. But I believe we should not get bogged down with Miguel Estrada and Priscilla Owen. There are many other things we can do to move forward with lots of Judiciary Committee appointments, as was seen from the vote today. We had 41 votes here. I think with Priscilla Owen and Miguel Estrada there have been extraordinary circumstances that have caused us to do what we have done. There is no need to go over again why we feel as strongly as we do with Miguel Estrada. The record is replete with that. With Priscilla Owen, the record hasn't been made, but it will be. Here is a person we feel should not be on the court; as simple as that.

I see my friend who was chair and is now ranking member of the important Judiciary subcommittee which deals with judges. So I believe we are fighting over issues that really are not helpful to the family. We have heard a lot of talk here saying let's get Hispanic people on the court. We have Prado; he is Hispanic. Let's move him this afternoon or tomorrow. Also, I am quite certain my friend from Utah did not mean this. I understand why the majority wants to have an orderly process to handle judicial nominations. It is understandable. But there are certain times when you have to clean your house on Friday and not Saturday. Things come up. In this instance, I suggest that there has been a tentative agreement worked out, for example, on Roberts, who has been waiting a long time to become a circuit court judge. Using the logic that I just heard from my friend from Utah, because Estrada is up ahead of him, maybe we should not move to Roberts. But maybe because Roberts has been around longer, he would supersede Estrada.

The point is I think the seniority issue means a great deal in a legislative body but very little in a judicial body. I know that one of the fine people on the Ninth Circuit—I think my friend from Utah would understand he has been an outstanding jurist—Procter Hug, of Stanford Law, served on the court a long time and became the chief judge of the Ninth Circuit. That is based on seniority. But we are not here talking about who is going to be the chief judge of the Fifth Circuit. We are talking about trying to get judicial nominations filled as quickly as we can.

The President said he wants them, and the majority leader said he wants more judges. The chairman of the Judiciary Committee said he wants more judges. We are here to please. We are willing to work. We have approved 119, and there is no reason that by the end of this week we could not get up over 120. We can do that, including Judge Prado. So I hope we can move beyond Priscilla Owen.

I say as respectfully as I can that Priscilla Owen is not going to be approved. Fact. I don't know everything, but one thing I do know is where the votes are most of the time. Priscilla Owen is not going to be approved. We should get off of her and go to something else.

If the majority wants us to go through lots of cloture votes on her, we will march down here and do the same as we have done on Miguel Estrada. I am prepared to lay out why, and I will do that if necessary, and I am sure others can do it. That is why we should move to more substantive matters.

My friend from New York is here and he knows much more than I do about this judge. I know plenty, but not as much as he does because that is one of his obligations as a Member of the Senate—to take care of judges in the country.

Mr. President, let me just say again that we are not here picking fights that we don't feel are not essential to what we stand for. Not very often do we choose to go to battle—very rarely. There are a lot of these judges I voted against because I don't think they are mainstream judges, but they are judges and they have lifetime appointments. The Democratic leader, supported by his caucus, said there are two judges we are not going to let through: Miguel Estrada—and we know the conditions there that will not be met—and Priscilla Owen.

It is not as if we are stopping everything going on with judges. When I go home, it is amazing. It happens that people say things and people have written editorials in opposition to my view saying: Isn't it terrible that he is holding up the judges? When I have had the chance to explain that we had approved 109 and turned down 1, that didn't seem too alarming. Now it is 119 to 2. That kind of quiets whole audiences.

The President of the United States was the owner of a baseball team. Boy, I will tell you, he would like to have a batting average with his team members like that, where for every 119 times up to bat, they made outs on only 2 occasions. Not bad. Ted Williams could not match that, Mr. President.

I would hope, again, everyone understands that we are not out cruising for a bruising. We are standing for what we believe is a principle, that we want a judiciary to be as good as it can be. It cannot be our judiciary—we understand that—but there are certain times when we draw a line in the sand. We have done it on two occasions. That is a pretty deep line we have drawn and people should understand that and not waste the time of the Senate.

We have so many other things to do. We have 13 appropriations bills to move. We have one new subcommittee on homeland security. It is going to be extremely difficult. We have a new chairman, a new ranking member. The whole subcommittee is made up of new people. It is going to be difficult to get that bill done. It is going to take some time. We should be moving toward that.

I went to a press conference that was sponsored by the Congressional Black Caucus, Hispanic Caucus, Native American Caucus, and Asian Pacific Caucus. They asked me to drop by, and I was happy to do that because it, again, suggested to me that we have to do something about our health care crisis. Forty-five million Americans have no health insurance, none. There are millions more who are underinsured. A significant number of those 45 million and those who are underinsured are people represented by those caucuses because of the diseases that people have in their genes as a result of being of that ethnicity. That is what we should be working on.

The State of Nevada is in desperate shape financially, as are 42 other States in this country. The Republican Governor of the State of Nevada has moved to increase taxes. He is no left-wing Socialist. He is a man who is 65 years old, who spent his entire life helping kids and being an outstanding businessman in the State of Nevada. He said: We are desperate.

One reason they are desperate is the Federal Government has failed the State of Nevada. We have required the State of Nevada to do all kinds of things in homeland security that they are paying for, and we are not helping.

In the Clark County School District there are about 260,000 kids. They are desperate for money. They are talking about creating a 4-day school week. Imagine that. They are talking about dropping band and some athletic programs. People may laugh and say, good, get rid of them, but the way I feel about it is those programs are some of the most important programs young people have. They develop character. It gives them a sense of worth. That is what education is all about.

We passed this Leave No Child Behind Act. It was something that had bipartisan support, but we have not funded it.

Those are the things we should be doing, rather than spending days—not minutes, not hours, but days—weeks, going into months on Estrada, and I guess Owen. I think it is wrong. We have too many other important things to do.

We have an environment about which we should be concerned. We are not dealing with those issues. Do we need to improve the Clean Air Act, the Clean Water Act? Do we need to do something about Superfund? As a member of the Environment and Public Works Committee, having been chairman of it twice, there are lots of things we can do, but it cannot be done if we are spending all of our time on two judges who are not going to become the judges that they have been nominated to become. That does not mean that we have ruined the judicial system.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, let's be honest about this. The Senator has been very blunt, very forthright and honest in his remarks that they intend to stop Miguel Estrada and Priscilla Owen. So now we are in the second filibuster. Let nobody have any illusions, we did not know until now that literally they were going to filibuster Priscilla Owen. Now we have two first-time-in-history filibusters against circuit court of appeals judges because the minority does not like these two judges, even though both of them have their gold standard imprinted upon them, unanimously well qualified, by their gold standard, the American Bar Association.

It is unseemly, and it appears to anybody who is a fairminded person that there is no real desire to treat Miguel Estrada, with all of his qualifications, and Priscilla Owen with all of her qualifications, in a fair manner. It is also very apparent that the President of the United States is not going to be treated in a fair manner as well.

I have no objection to Judge Prado. If that is what they want to do, we will see about that, and we will see about it tomorrow. The fact is, that does not negate the fact that for the first time in history we have this type of obstruction rather than up-or-down votes of executive nominee judges for the circuit court of appeals.

I hate to think how this body has devolved from a body that works together to try to albeit argue and fight over certain nominees, but usually and always in the past we voted on them, how it has devolved into this morass whereby two excellent people with the highest recommendations from the American Bar Association and virtually everybody in their communities are being held up for no good reason at all, other than obstruction.

Now we at least know where we stand. I am willing to say I believe both of these people will be confirmed in the end, and I believe our colleagues on the other side are going to see that confirmation occur. At least that is what I intend. I hope we can fully debate these matters and then vote up or down. If my colleagues do not like Miguel Estrada, vote against him. If they do not like Priscilla Owen, vote against her. But do not do this anticonstitutional approach of filibustering Executive Calendar circuit court of appeals nominees for the first time in history.

We have been willing to put up with a certain amount of this, but there is going to be an end to this type of obstruction. It has got to come to an end, and I intend to see that it comes to an end if I can. I may not be able to, but I think there is a way we can do that. I am just warning the other side that I believe sooner or later we are going to have up-or-down votes on these two jurist candidates.

I think it is pretty hard to make a case against Priscilla Owen that does not distort her record, that is factual and nondistortable. I think it is going to be very difficult to make a case against her. For the life of me, I do not understand why our colleagues on the other side are filibustering this excellent woman, who has such impeccable credentials. They have plucked a couple of cases out of the air to criticize her. I venture to say any judge who has been around for a considerable period of time, any of us could find some faults with that judge or we could find cases with which we do not agree. But relatively few matters can they point to that would justify the kind of treatment Priscilla Owen is receiving at this time.

I think we should continue the debate. I intend to do so, and we will see

where we go from there. I hope my colleagues will be fair, but so far I have not seen it. I think we are in the middle of an obstructive set of tactics that are beneath the dignity of the Senate.

Be that as it may, our colleagues do have certain rights. I respect those rights and we will just see where we go from here. I believe Priscilla Owen ought to be confirmed, as I believe Miguel Estrada ought to be confirmed, as I believe Mr. Sutton, who is now confirmed, needed to be confirmed.

With regard to Roberts, I might as well make it clear we already have a deal. We have made an agreement. So that should not even enter into this question of whether one person should be confirmed ahead of another. I agree that is a comme ci, comme ca type of thing, but we expect to have a vote on Mr. Roberts. So we will revote him out of committee. We have a rehearing after 12 hours of hearings.

We were promised a vote on Justice Cook from Ohio. I hope that vote will be tomorrow, or the next day, in accordance with the agreement we made, because she was supposed to come up right away within a week. Roberts will be up for his second extensive confirmation hearing tomorrow. I intend to be there. Then he will be put on the markup a week from this Thursday. We have had a good-faith assurance that they will not try to put him over for another week.

So let's hope our colleagues live up to this agreement. It has not been an easy one for me to make, but we have made it. There have been some pluses to us and some pluses to them. But it is done.

So Roberts is not part of the equation, nor should he be used as part of the equation.

It is the desire of the majority leader to have Owen approved first. On the other hand, we will see what happens tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I enjoy listening to all of our colleagues: Our leader from South Dakota, my friend from Nevada, and of course my good friend from Utah, who is just an excellent debater. I would say he is indefatigable because he is on the floor all the time.

I am rising in opposition to Priscilla Owen, and I have a whole bunch of points I would like to make. But I would like to just answer my good friend from Utah on two.

He constantly is using the word right now, ''obstruction.'' It would seem logical by his definition that nonobstruction is only when we approve every judge the President has nominated. The fact is that there are 119 who have been approved and only 3, if you include Judge Pickering in this—that is, Miguel Estrada, Priscilla Owen, and Judge Pickering—only 3 have been held up. Is it fair, I ask my friend from Utah, to call that obstruction?

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I will; 119 judges approved, 3 held up. That has been done with greater speed than in any time that anyone has heard of, in terms of the period of time.

So I just ask my colleague, is the only way we can fail to be obstructionist by approving every single judge the President nominates? Because we have come darned close. We only opposed three, and the word ''obstruction'' flows like water from my good friend's lips.

I yield.

Mr. HATCH. I appreciate the Senator yielding to me on that particular question because, yes, it is obstruction. For the first time in history to now, I understand from the Senator, he will be obstructing three circuit court of appeals nominees: Miguel Estrada, Priscilla Owen, and Judge Pickering; three nominees filibustered for the first time in history.

I agree with the distinguished Senator; I think there have been 119, with Jeffrey Sutton, who have been confirmed. That is a good record. But most of them are district court nominees who act as federal trial judges. There are a number of circuit court of appeals nominees. Five of them are still held over, as I recall it, from May 9 of 2001. Five of those original eleven are still not confirmed. There are all kinds of judicial emergencies out there that we are trying to take care of that are being obstructed. Yes, I think it is obstruction.

I do not expect my colleagues on the other side to approve everybody the President nominates. Vote against them. If you don't approve, vote against them.

Mr. SCHUMER. I would just like to reclaim my time.

Mr. HATCH. Sure. But I am saying if you don't approve of them, vote against them. We didn't obstruct yours. We voted. Everybody who came to the floor was voted upon, and there was no filibuster conducted by us.

Mr. SCHUMER. Reclaiming my time, I would remind my colleague that within a single day, cloture votes were held on Judge Paez and Judge Berzon. There were attempted filibusters on the other side. They waited large numbers of years—more years than Priscilla Owen, Miguel Estrada, or Judge Pickering have waited. I didn't once hear my friend from Utah call it obstruction.

What is good for the goose is good for the gander. There were cloture votes held. There is only one difference—actually there is no difference. Cloture was achieved eventually. But the bottom line is this is not true. For Paez and Berzon I think it was the same day, it may have been within a day of one another—cloture votes were held because a filibuster was being conducted.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I will yield in a minute. It was run by a number of his friends. I know my friend from Utah will say he worked out a deal and eventually they were approved. So I ask him, when he answers that, to remind all of us how long they waited to be approved. Was it a year? Was it 2 years? No.

So, if my good friend from Utah would have the same patience, and sort of maybe we can come to an agreement 2 or 3 years from now—maybe after 2004—then we would be being fair; we would be judging one side and the other with the same standard.

Unfortunately, there has been a double standard here, when my good colleagues from Alabama and the now-Attorney General but then-Senator from Missouri and others launched filibusters——

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. Against two nominees for the Ninth Circuit. Those folks waited years, longer times than any of the three we have mentioned. I didn't hear the word ''obstruction.''

I will be happy to yield.

Mr. HATCH. Remember, on Judge Paez, I was the one who moved Judge Paez admittedly in the 4 years. But in that 4-year period he issued a number of hearings that were highly suspect, not only by people on our side but some on your side. We had other investigations that had to be conducted. Admittedly, it was too long; there is no question in my mind. That is a glaring example.

In the case of Judge Berzon, I was the one who pushed her through. With regard to cloture votes——

Mr. SCHUMER. I would ask my colleague to yield for another question. How long did Judge Berzon wait?

Mr. HATCH. I don't recall how long she waited.

Mr. SCHUMER. I believe the record will show it was a longer time than any of these we are talking about.

Mr. HATCH. I don't know if that is true or not. All I can say is I was the one who put them through.

I also have to correct the record because there has never been a true filibuster against President Clinton's nominees or any other Democrat President's nominees—never. There have been cloture votes. In most of the cloture votes, those were time management approaches. Yes, we had a few people over here who wanted to filibuster, but we were able to stop them. There was no case—none, zero, nada, not ever—where a Democrat nominee who was brought to the floor was not ultimately voted on up or down—never—until this year with Estrada and now Priscilla Owen, and I presume, from what you have said, perhaps Judge Pickering.

My contention is this. I know the distinguished Senator from New York is a good lawyer. He is a good friend. I value his friendship. But the fact is, I think there is much merit in having healthy debate, raising the difficulties you have with a judge, but then having a vote up or down. Vote whichever way

you want to, for or against. But it is unseemly to start clogging up the Senate with true filibusters for the purpose of trying to stop these people from having a vote up or down. That was never done, not at any time during my tenure as chairman, and I made sure it wasn't done because I don't believe that is constitutionally a sound thing to do.

Mr. SCHUMER. I thank my colleague. But I say my good friend from Utah had another method even more effective in bottling up judges, and that was never bringing them up for a vote. I think it is hard to see how keeping someone from a vote in the Judiciary Committee when there were vacancies on the bench, when those nominees waited and waited and waited, is anymore commendable. To me, it seems certainly less commendable than bringing them up for a vote and then having a large number of Senators—not a majority but certainly more than 40 percent of this body, as the rules of the Senate allow—not do it.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I am going to move on now.

I will be happy to yield. But the bottom line is that there is a lot of sophistry going on here in terms of argument—not in terms of individuals. When you are forced to invoke cloture to get a vote, if that is not a filibuster, I don't know what is. It seems to me it is. When you don't allow a nominee to come to the floor and get a vote and you don't even bring them before the Judiciary to bring a vote, that is OK. But when they get the vote in Judiciary and then they come to the floor and large numbers of Members feel so strongly that in only 2 cases out of 119 they say this is the only method we can use to stop it, that is wrong. It makes no sense.

Finally, I would say this: It is obstruction when you stop any one of the President's nominees, because what our friend from Utah says he must do when he says just have them come up for a vote is to pass every nominee because, for whatever reason, the discipline on that side is such that they will always get 51 votes.

I am proud of what we have done. I believe we are upholding the Constitution. I believe we are checking the arrogance in the White House, particularly with Miguel Estrada and his refusal to even answer any questions. I believe history will look very kindly on this effort. They will look at it as courageous. They will look at it as right. They will look at it as judicious because it has not been used willy-nilly. They will look at it as fair.

I know my colleague from Utah is doing his job. He does it very well. My hat is off to him. But ultimately all he wants us to do is spend a little time debating each nominee and then approving each one, no matter what—whether they answer questions or not; whether he said, Well, Judge Paez had some bad cases that he ruled on.

Guess what. We think Judge Owen has a lot of bad cases. And some of them were called bad by very conservative colleagues of my friend: The White House counsel, then-Judge Gonzales; and the junior Senator from Texas, then-Judge CORNYN, on the record—very rare—chastising Judge Owen for going way beyond the law. These were not liberal Democrats. These were not even moderate Republicans. I don't think it is disputable that in the eyes of many, Judge Owen has ''some bad cases.'' And if it was permissible to delay Judge Paez for 4 or 5 years because of some bad cases, then clearly we should just have begun on Judge Owen.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I would be happy to yield.

Mr. HATCH. I appreciate the Senator yielding. I think it is a credit to him. We don't have enough debates around here where we have interchanges with each other. We stand up and make speeches, and generally they are written speeches. We don't have this type of high-quality debate.

Let me just answer the Senator on a few of his assertions that I think are profoundly wrong.

First of all, they were not just a few bad cases. They were activist cases that were clearly outside the realm, in the eyes of many, including mine, of what good judicial conduct should be. Second, I think there were other reasons—further investigation and so forth. But even more important than that, I would put my report record up as chairman of the Judiciary Committee against any Democrat chairman—my chairmanship with a Democrat in the White House—against any Democrat chairman with a Republican in the White House with regard to how many people were held over who didn't make it through the process.

For instance, when JOE BIDEN was chairman and the Democrats controlled the committee in 1992 and President Bush left office, there were 97 vacancies and 54 left holding. Two of the fifty-four included Mr. Roberts—who is going to come up again for another hearing tomorrow in committee—and Judge Boyle from North Carolina, who have been sitting there for over 12 years. We didn't complain about it. I think maybe somebody complained, but I didn't. We understand that there are some holdups.

Mr. SCHUMER. Reclaiming my time——

Mr. HATCH. Please let me finish.

Mr. SCHUMER. They were never nominated by President Clinton.

Mr. HATCH. I understand. They were nominated by a Republican President. Let me finish this. My colleague has been very generous with his time.

Mr. SCHUMER. I am happy to have the debate, and I want to clear the record. They were not sitting for 12 years and not disposed of at the end of Congress and not renominated by a new President.

Mr. HATCH. They were nominated—both of them—three times by two different Presidents. From the time they were first nominated to today, it has been 12 years. I will make that more clear.

With regard to the 54 holdovers when the Democrats controlled the committee and we had a Republican President, we didn't have the screaming and mouthing off about that from our side. Compare that to when President Clinton left office and there were 67 vacancies, 30 fewer during my chairmanship and 41 left holding versus the 54.

By the way, of the 41, 9 were put up so late that nobody could have gotten them through no matter who the Judiciary chairman was. There were really 32. If you take away those who had absolutely no consultation with home State Senators—I mean none—then that reduces it some more. If you take away those who had further investigatory problems, that reduced it some more. There were some—I have been honest to admit this—whom I wish I could have gotten through who I think deserved to go through. But there were many in the 54 who were left by the Democrats who should have gotten through, too.

The point I am making is that it isn't the same because the Judiciary Committee chairman can't get some of the holdovers through. I don't blame Senator BIDEN. I don't think I should be blamed. I did the best I could. It isn't the same as when somebody is brought to the floor and a filibuster occurs. The fact is there has never been a true filibuster up until Miguel Estrada—now Priscilla Owen—and from what the Senator told me, it looks as if they are going to filibuster Judge Pickering even before we have his hearing this year. I hope that is not true. But it apparently is true with regard to Miguel Estrada and Priscilla Owen.

I think we have to break through this nonsense. Maybe we will approve all of these judges who are brought to the floor. That is what we should do as Republicans with a Republican President, and we would hope—and, in fact, in every case we have had Democrats' support for these judges—in every case, including Jeffrey Sutton today. It isn't as if it was a wholly partisan process. The Senator is probably right. If we get these judges to the floor, presumably we will pass them. I am not sure of that in every case, as I think we should. But if the Senator doesn't like them, and if others on this side don't, as they did in the case of Jeffrey Sutton, vote against them.

It is true, Jeffrey Sutton is now confirmed and will receive his certification to become a circuit court of appeals judge. But my colleagues on the other side made this political point. They don't like some of the things he has done as an advocate. That was their right, to do so. I thought it wasn't the right thing to do myself. I believed there was too much politics

involved. But you had a right to do that. But he was confirmed. As Senator REID, the distinguished Senator from Nevada, pointed out, there were a number of Presidential candidates who were not here to vote on Jeffrey Sutton's nomination. If they thought it was so important a vote, and that the judicial confirmation process is important, they should have been here. I think we all would agree with that. They knew this was the game that was being played to embarrass Mr. Sutton—not by the Senator from New York, and not by a number of others.

Mr. SCHUMER. I will reclaim my time on that one. There are strong feelings on this side, as the Senator knows. It has nothing to do with games. To me, this rises to a sacred responsibility. And I don't use those words lightly.

The bottom line is—again, I would first say to my friend from Utah, this is not a referendum on his stewardship on the Judiciary. It is, again, part of an extremely important process about who is on the bench, who is part of that third branch of Government and put there for life.

But I would say to my friend—and he is the best in the business—the high dudgeon all of a sudden when a few nominees are held up for whatever reason and sort of the muted signs when he was chairman and many nominees were being held up, albeit not in exactly the same way—I would say it is a difference that doesn't make a difference; it is sort of, well, inconsistent.

Again, that doesn't go to the personal integrity of my friend from Utah who did try in many instances but didn't succeed. And how we should be judged, so to speak, is by who gets on the bench and who does not because that is ultimately what the process is about.

I would mention, in my colleague's recounting, there were lots who withdrew their nominations. You had the DC Circuit, the second most important circuit, for which both Miguel Estrada and Judge Roberts have been nominated, where there were no blue slip problems and there were no votes. So we can go over history. I am sure each side can point to wrongs on the other side.

The fact remains, of 119 judges who have been approved, there have been 3 we can be accused of holding up. As my friend from Nevada said, I have experienced the same thing. I go to parades and people say: What about Estrada? What about the judges? Because they listen to talk radio. I say: I voted for 113 out of 119, and they just be quiet. They say: Well, that is more than fair.

So this idea that we should roll over for every judge and allow them to be approved—and I would argue this with my friend from Utah—no President, certainly in my lifetime, and I think in the history of these United States, has so nominated judges of an ideological cast. You almost have to march lockstep and not be mainstream, not even be conservative but be way over, in case after case after case. That is what started this: no advise and consent, a desire to change America through the judiciary by creating an ideological litmus test for nominee after nominee after nominee. That is not what the Founding Fathers intended. My guess is, if Jefferson or Washington or Madison were looking down on this Chamber today, they would be approving of what we are doing because they would see that the balance in power—which they so carefully constructed between the President and the Senate, the President and the Congress, in terms of this awesome power to put people on the bench for life—is being eroded. That is why we are here. And we are going to continue to be here.

So my friend from Utah and the majority leader and others have a choice: They can hold up all these other judges and say, well, until we deal with Priscilla Owen we are not going to move anybody else. I would ask a jury of 12 people, fair and true, nonpartisan, who is obstructing?

That is why I would hope we could bring the nomination of Judge Edward Prado to the floor. And one of the reasons we want to do it is, yes, from the mouth of my friend from Utah, there is this view that only certain types of Hispanics would be approved or, from the mouths of others, that we are anti-Hispanic, a charge never leveled when Judge Moreno and Judge Rangel were not voted on to the same circuit by the other side.

But now we have Judge Prado, approved unanimously by the committee. I guess he is every bit as Hispanic as Miguel Estrada. There is one difference: He answered questions. And his views were not so far over as many who know Miguel Estrada report them to be. Why don't we approve him? Why don't we bring him up for a vote? Is he being used?

I will tell you what I think. I think the other side does not want us to approve a Hispanic judge who is within the mainstream. I think that—

Mr. HATCH. Will the Senator yield on that?

Mr. SCHUMER. I think I will call on my colleague in a minute.

Mr. HATCH. Well, if the Senator would yield, maybe I can satisfy—I have no objection——

Mr. SCHUMER. I think it sort of shows that why Miguel Estrada is being held up has nothing to do with his ancestry but, rather, his conduct as he went through the nomination process in a unique refusal to answer questions.

I am going to tell my colleague one other story. President Bush has just nominated a woman to the district court in my State, Justice Dora Irizarry. She is Hispanic. She happened to be the Republican candidate for attorney general in this last election. That does not bother me a bit. I called her to my office. I asked her many of the same questions I asked Miguel Estrada. She was forthright. I asked her for two Supreme Court cases with which she disagreed. She named them, expostulated on them. She did not say, canon 5 will not let her talk about them. She did not say: I did not have the briefs, so I could not talk about them—both absurd arguments, arrogant arguments, arguments that show contempt for the Senate. And she is going to be approved, with my wholehearted support, even though she is Hispanic, even though she is more conservative than I am, even though she is a Republican officeholder.

So the bottom line is simple: We can fill the bench and increase the number of Hispanic nominees quickly, if we work together, if the nominees would take the process not with contempt but with the responsibility that they should, given the awesome power that Federal judges have.

So I hope we will move to Judge Edward Prado. I hope we will move to him soon. I would like, as my colleague from Nevada, for us to bring him to the floor because there will not be a 2-week debate. There will be a day debate, maybe a 6- or 3-hour debate, and he will be approved.

By the way, if we are worried about vacancies, it is the same circuit as Priscilla Owen. The reason the other side does not want to bring up Judge Prado is very simple; it shows the glaring inconsistency and falsity of their arguments.

Our opposition to a few of these nominees has nothing to do with their ethnic background and nothing to do even with their political party. It has to do with the fact that some of them are so extreme that their own Republican colleagues thought that.

Again, you have Judge Gonzales who is now counsel to the White House. He said, in one of the cases that she dissented on, if the court went along with her, it would ''be an unconscionable act of judicial activism.'' That is from the Republican, conservative, White House counsel. It could be an isolated case, as my good friend from Utah mentions, except that those who followed her on the courts say that was her MO. She constantly wanted to be a judicial activist and make law from the right.

I would be equally opposed to somebody who wanted to make law from the left. I do not like nominees who are too far left or too far right. On my own judicial committee, when those appointed distinguished jurists from around my State have brought forth nominees and suggested nominees who were way over to the left, I have said no. Anyone who has watched me interview judges knows that I am very weary of that because judges of the extremes make law. They do not do what the Founding Fathers said, which is interpret the law.

And it was not just Judge Gonzales. We then have the situation in the case of Weiner v. Wasson. This was a medical malpractice case. Again, Justice Owen wrote a dissent about an injured

plaintiff while he was still a minor, and the issue was the constitutionality of a State law requiring minors to file medical malpractice actions before reaching the age of majority or risk being outside the statute of limitations.

Then Justice JOHN CORNYN, now our colleague in the Senate, said:

> Generally, we adhere to our precedents for reasons of efficiency, fairness, and legitimacy. First, if we did not follow our own decisions, no issue could ever be considered resolved. The potential volume of speculative relitigation under such certain circumstances alone ought to persuade us that stare decisis is a sound policy. Secondly, we should give due consideration to the settled expectations of litigants like Emmanuel Wasson, who have justifiably relied on the principles articulated in [the case]. . . . Finally, under our form of government, the legitimacy of the judiciary rests in part upon a stable and predictable decisionmaking process that differs dramatically from that properly employed by the political branches of government.
>
> According to the conservative majority on the Texas Supreme Court,
>
> —this is not a liberal court—
>
> Justice Owen went out of her way to ignore precedent and would have ruled for the defendants. The conservative Republican majority followed precedent and the doctrine of stare decisis.

So this is not a mainstream nominee. This is a nominee who has every indication of being an activist from the right, of being somebody who wishes to turn the clock back, of being somebody who sides over and over and over again with the larger corporate interests against the individual. In my judgment, she does not belong on the Fifth Circuit. If the only way we can stop her is to prolong this debate, so be it. There are many other people in Texas, many other lawyers, many other judges, many others in the realm of the Fifth Circuit who are conservative and intelligent and qualified. If the President wanted to come to some agreement with us, he would nominate them. In fact, one is before us—could be before us: Judge Prado. He will not have any issue with us.

Is there a litmus test? Absolutely not. I have no idea what Judge Prado has ruled. He has been for 19 years on the court. I don't know what his position is on choice. I don't know what it is on gun control. I don't know what it is on gay rights. But his hearing and his record show he is not out of the mainstream.

I have always had three watchwords with people I have supported, both in New York, where I am actively involved in the selection process, and around the country, where obviously I am one one-hundredth of the advise and consent process. Those are ''excellence,'' ''balance,'' and ''moderation.'' My three words are ''excellence,'' ''moderation,'' and ''diversity.''

I have to give the President credit. On criteria one and three, his nominees meet the bill. They are legally excellent, by and large. These are not political hacks or people who don't have the brainpower to be excellent judges. The President, to his credit, has gone out of his way for diversity.

But on moderation, it is almost as if he is not even making an effort. It is as if he has over and over and over again nominated people like Jeffrey Sutton, who we just approved, who are trying to change the law, who are trying to turn the clock back, who have an atavistic fear of the Federal Government and what it can do.

Again, it is our obligation to oppose such judges, just as it is our obligation to support those who are qualified.

I urge my colleagues on the other side to realize they are not going to win every single case. They are going to lose a few. I think they should have lost a few more than they did. I would have not liked to see Jeffrey Sutton go to the Sixth Circuit. But to say we will not bring up another judicial nominee until Priscilla Owen is passed is the real obstruction. I don't think it will stand up. We know there are some on the other side who quietly have said this has gone too far, who have urged the White House to moderate its stance, who have said, let us move on from Miguel Estrada or reveal his records. Unfortunately, the White House seems to feel they want it all in every way. They want it all theirs.

That is not what the Founding Fathers intended. It is not even what the Founding Fathers intended when there is a President and a Senate controlled by the same party, as we have today. We will oppose Judge Owen. We will continue to oppose her. We will proudly oppose her.

When we began this fight, which I guess I was one of the first people to get involved in in terms of moderating the judiciary and seeing that there be some moderation, when I proposed to our good majority leader and our chairman of the Judiciary Committee that we not allow Miguel Estrada to go forward until he answered questions, I thought politically it would be a loser. It is easy to get up and say: Just let a majority vote and let the chips fall where they may. I think we had some knowledge that illegitimate charges of not supporting someone because of his ethnic background would be hurled at us.

But do you know what has happened. As the debate has gone forward, first, our caucus is firmer and firmer and stronger and stronger in the belief that what we are doing is right and rises to noble constitutional principles. Second, the public is beginning to catch on.

I found, as I traveled across my State these 2 weeks while we were on Easter break, that people were saying: Why does the President want his way on every single nominee? As soon as people heard I had voted for 113 of 119 of the President's nominees, they said: You have been more than fair.

So anybody on the other end of Pennsylvania Avenue who thinks they are going to take a two by four and break us, we have proven that that is not the case. The fact that in our caucus there is such strong support to block Priscilla Owen shows we are gaining strength.

I plead with my colleagues to go back to the White House once again and tell them they are not going to win every single fight, that they have an obligation to advise and consent, that there is some degree of compromise in making this government work, and that, most of all, the bench should not be filled with ideologs who have an atavistic, instinctive preference to make law rather than interpret the law as the Founding Fathers intended.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CORNYN. Mr. President, I rise today to address the Senate with some regret and with somewhat of a heavy heart. I believe in the rule of law. Indeed, this Nation was built on the rule of law, the ultimate strength of our institutions that make up our representative democracy. So it saddens me, along with many of my distinguished colleagues, when I witness the abject failure of one of these institutions. Nowhere has this institution met with greater failure than in the area of judicial nominations.

Nearly two years ago, President Bush announced his first class of nominees to the Federal court of appeals. Five of the eleven nominees have not had a single vote in the Senate two years later. This list includes Justice Priscilla Owen, with whom I served on the Texas Supreme Court, and whose nomination is now pending before this body.

Two years is too long. I believe the Senate has reached a new low in recent months, with the unprecedented use of a filibuster of dubious merit that blocks an exceptionally qualified nominee who enjoys the support of a bipartisan majority. If we were allowed to vote, I am convinced that a bipartisan majority of the Senate would today vote to confirm Justice Priscilla Owen to the Fifth Circuit Court of Appeals.

This dismal political anniversary indicates the true range of the failure of the judicial confirmation process in this body. This process has become unnecessarily but increasingly bitter and destructive, and it does a terrible disservice to the President, to Senators, to nominees, and ultimately to the American people.

I do not know anyone who truly believes in their heart of hearts that the process works now the way it should. I believe most reasonable people looking at this process from the outside would agree with me that the process is broken. But the question now becomes, is it broken without hope of repair?

Today I announced that the Judiciary Committee's Subcommittee on the Constitution will convene a hearing on reform of the broken judicial confirmation process. This hearing will allow distinguished Members of the Senate, on a bipartisan basis, as well as the Nation's leading constitutional experts, the opportunity to discuss the serious constitutional questions raised by the obstruction of judicial nominations. We will address the problems facing the Senate and the Federal judiciary, and we will consider and debate potential solutions and reforms.

Yes, I believe two years is too long. Specifically, it is too long for a candidate as worthy and as qualified as Justice Priscilla Owen. Of the nominees currently pending before the Senate, no one has waited longer than Justice Owen for a vote on the Senate floor on a judicial nomination—no one. As a former state supreme court justice who served with Justice Owen for three years, and now as a member of the Senate Judiciary Committee which carefully considered and endorsed her nomination to the Federal bench last month, I firmly believe Justice Owen deserves to be confirmed to the Court of Appeals for the Fifth Circuit. Of course, the Fifth Circuit covers my home State of Texas as well as the States of Mississippi and Louisiana. If the Senate applies a fair standard, if we continue to respect our Constitution, Senate traditions, and the fundamental democratic principle of majority rule, she will be confirmed.

The arguments of those who oppose Justice Owen's nomination can be summed up in one phrase: Don't confuse us with the facts.

The facts are these: First, the American people are in desperate need of highly qualified individuals of the greatest legal talent and legal minds to fill the numerous vacant positions on the Federal bench, particularly those on the Fifth Circuit Court of Appeals, whose three vacancies are all designated judicial emergencies by the U.S. Judicial Conference.

Second, we must ensure that all judicial nominees understand that judges must interpret the law as written and not as judges or special interest groups would like them to be written. In other words, the judiciary must be a means by which the laws that are passed by Congress and signed by the President are implemented in the daily lives of the American people. The Constitution does not comprehend nor is it appropriate for judges to serve as a superlegislative body or to serve as another legislative branch in a black robe.

Of course, when it comes to interpreting the law faithfully and avoiding the pressure of special interest groups, Justice Owen satisfies both of these standards with flying colors. She is quite simply, by any measure, an outstanding jurist. The facts are testimony to her ability and her intelligence.

Justice Owen graduated at the top of her class at Baylor Law School and was an editor of the Law Review at a time when few women entered the legal profession. She received the highest score on the bar examination. And she was extremely successful in the private practice of law for seventeen years before joining the bench.

Since she has become a judge about eight years ago, she has served with enormous distinction on the Texas Supreme Court. In her last election to the Texas Supreme Court, she was endorsed by virtually every major Texas newspaper, and most recently when she was reelected she received the vote of 84 percent of those who cast a vote in the election.

She has the support of prominent Texas Democrats and Republicans alike, Democrats such as former members of the Texas Supreme Court, Chief Justice John Hill and Justice Gonzales, as well as a long list of former presidents of the State bar, and leaders in the legal profession in my State. The American Bar Association that provides some analysis of judicial nominees, an objective analysis, has rated her well qualified, a rating that some of my colleagues used to refer to as ''the gold standard,'' but which they now conveniently choose to ignore.

I simply cannot fathom how any judicial nominee can receive all these accolades from opinion leaders, from constituents, from legal experts across the political spectrum, unless the nominee is both an exceptionally qualified lawyer, a judge who respects the law, and a person who steadfastly refuses to insert his or her own political beliefs into the judging of cases.

Based on this remarkable record of achievement and success, of eloquent and evenhanded rulings, it should come as no surprise that Justice Owen has long commanded the support of a bipartisan majority of the Senate.

I would like to take a couple of moments to talk about my own personal observations while serving with Justice Owen on the Texas Supreme Court. She and I served together on that court for three years—from the time she joined the court in January 1995 until the time I left the court after serving seven years in October of 1997.

During those three years, I had the privilege of working closely with Justice Owen. I had the opportunity to observe on a daily basis precisely how she approaches her job as a judge, how she thinks about the law, and what she thinks about the job of judging in literally hundreds, if not thousands, of cases. I spoke with and indeed debated in conference with Justice Owen on countless occasions about how to faithfully read and follow statutes and how to decide cases based upon what the law is—not based on some result we would like to see achieved. I saw her taking careful notes, pulling down the law books from the shelves and studying them with dedication and diligence. I saw how hard she works to faithfully interpret and apply what the Texas legislature had written, without fear and without favor. Not once did I ever see her attempt to pursue some political agenda in her role as a judge, or try to insert her own belief as opposed to the intent of the legislature or some precedent from a higher court in the case at hand. To the contrary, I can tell you from my personal observation that Justice Owen feels very strongly that judges are called upon—not as legislators or as politicians, but as judges—to faithfully read statutes on the books and interpret and apply them faithfully in cases that come before the court. I can testify from my own personal experience, as her former colleague and as a fellow justice, that Justice Owen is an exceptional judge who works hard to follow the law and enforce the will of the legislature. She is a brilliant legal scholar and a warm and engaging person. To see the kind of disrespect the nomination of such a great Texas judge has received in this body is disappointing and really beneath the dignity, I believe, of this institution.

It is hard to recognize the caricature that opponents of this nominee have drawn. Unfortunately, as a Member of the Senate Judiciary Committee who has had a chance now to vote on a number of President Bush's nominees for the Federal bench, I have seen that the practice of vilifying and marginalizing and demonizing President Bush's judicial nominees is becoming all too common. Indeed, I began to wonder whether there are any good, honorable people with distinguished records in the legal profession or in the judiciary who will submit their names for consideration by this body, knowing that, regardless of the facts, regardless of the truth, they will be painted as some caricature not of what they really are, but of what others have cast them to be, when in fact the truth is far different, and with no justification.

It pains me to see what can only be called the politics of personal destruction played out in the course of the judicial confirmation process. We can and we must do better.

The special interest groups, and the minority in this body—who oppose even calling a vote on Justice Owen have no real arguments to oppose her nomination, at least none based in fact or any that would withstand scrutiny under any fair standard. Their past record shows these groups who have cast aspersions on many highly qualified nominees—many of whom currently serve on the Federal bench—their attacks against judges are simply not credible.

For example, these opponents of a bipartisan majority who would vote to confirm Justice Owen today are the very same folks who predicted that Justice Lewis Powell's confirmation would mean that ''justice for women will be ignored.'' Justice Owen's opponents are the same folks who argued that Justice John Paul Stevens had demonstrated ''blatant insensitivity to

discrimination against women'' and ''seems to bend over backwards to limit'' rights for all women. Justice Owen's opponents are the same folks who testified that confirming David Souter to the United States Supreme Court would mean ''ending freedom for women in this country''—the same folks who said they ''tremble for this country if you confirm David Souter''—who even described now-Justice Souter as ''almost Neanderthal'' and warned that ''women's lives are at stake'' if the Senate were to confirm him.

How many times must these irresponsible and baseless allegations be made before we finally say these special interest groups have no credibility when it comes to judicial confirmations? Their claims about Justice Owen are no more accurate and no less hysterical. It reminds me of the boy who cried wolf.

After these repeated charges and accusations and shrill attacks, which typically turn out—certainly in the cases I mentioned—to be utterly baseless and unfair, it makes you wonder just how credible these groups think they really are, or how long their arguments will continue to have currency in this body or in the media.

It also makes you wonder whether these groups make their claims not because they actually believe they are true, but in order to achieve their own political aims—in order to defeat judges nominated by this President, who believe that a judge's role is not to be an activist in a black robe or a super legislator. But I believe these shrill attacks are made with one purpose and one purpose only—to scare people and to support unsubstantiated and baseless attacks against highly qualified nominees like Justice Owen.

In the case of Justice Owen, their attacks are true to form. And they conform to their past patterns and practices—for they are like their attacks of the past, unfair and without foundation either in fact or in law. For example, some of Owen's detractors claim she rewrites statutes in order to further her own political agenda. That is a pretty incredible charge in light of her ABA rating of well qualified, which was unanimous, her strong bipartisan backing, and her enthusiastic support from Texans, people who know her best. It is also a baseless charge.

To ostensibly prove their point, Justice Owen's opponents point out that on occasion, other justices on the Texas Supreme Court have written opinions saying Justice Owen sometimes was rewriting statutes in order to achieve a particular result. That is an absurd standard to apply in a Senate confirmation, for reasons I will detail now. All judges of good faith struggle to read statutes and other legal texts carefully, and faithfully.

In close and difficult cases—and the docket of the Texas Supreme Court is chock full of them—judges will often disagree about the proper and most correct legal interpretation. Indeed, we establish courts of multiple members—nine members—a collegial decision-making body, believing that judges will sometimes disagree, but in that decision-making process, that there will be a full and fair debate about the various positions, about the various interpretations, and that ultimately majority rule will win out and a case will be fully and finally decided.

But when disagreements occur, a judge may naturally conclude that his or her own reading of a statute is correct. That is why they will decide the case in the way they choose, based on a belief that their interpretation of a statute is correct. And, of course, it only follows that if I believe, in deciding a case, that my interpretation of the statute is correct, that the interpretation of the statute by someone who achieves a different result is not correct.

Now, that is not the final word. Obviously, the final word is the decision of the majority of the court which decides, for all practical purposes, not necessarily in the abstract, but for all practical purposes, what the correct result is, so that the people in our States and across the country can know what the rules are and apply them with some predictability.

I would point out that practically everyone with any significant judicial experience has faced the same criticism that Justice Owen has received in terms of rewriting statute. Yet if Justice Owen's opponents are to be taken seriously, any judge who has been criticized of rewriting a statute is presumptively unfit for the Federal bench. As I pointed out at Justice Owen's confirmation hearing last month, such an absurd standard would exclude practically all of her current and past colleagues on the Texas Supreme Court.

Such an absurd standard would also disqualify numerous members of the U.S. Supreme Court, people with whom Justice Owen's opponents are known to agree. For example, in 1971, Justice Hugo Black and William O. Douglas sharply criticized Justices William Brennan, Harry Blackmun, and others, stating that the ''plurality's action in rewriting this statute represents a seizure of legislative power that we simply do not possess.''

In a 1985 decision, Justice John Paul Stevens accused Justices Lewis Powell, Sandra Day O'Connor, and Byron White of engaging in ''judicial activism.''

Countless other examples pervade the U.S. Reports.

Would Justice Owen's opponents and detractors apply the same standard and exclude those Justices with whom they tend to agree from Federal judicial service? Of course not. It is a double standard. It applies to Justice Owen but not to judges who they would prefer. But fairness only dictates that Justice Owen not be made to suffer from an absurd and unreasonable double standard.

I remind my colleagues that just last year, the Democrat-controlled Senate confirmed Professor Michael McConnell to the Federal court of appeals by unanimous consent, even though Judge McConnell, like Justice Ruth Bader Ginsburg and liberal law professors and commentators, has publicly criticized the analysis of several Supreme Court rulings, including Roe v. Wade. That is not something, however, that Justice Owen has done.

Now, don't get me wrong. I am glad that Judge McConnell was confirmed. He is an exceptional jurist who is already proving to be a fine judge on the Federal court of appeals. But his case illustrates the inherent foolishness of using ideological litmus tests when assessing the abilities and evenhandedness of judicial nominees.

Mr. President, I can tell you from personal experience, when you put your left hand on the Bible, and raise your right hand, and take an oath as a judge, you change. Your job changes. No longer are you an advocate for a particular position in a court of law that you hope some court will embrace. No longer are you a legislator—assuming you have been a legislator—used to making the law or affecting public policy in a very stark and direct way.

Mr. President, when you raise your right hand, and put your left hand on the Bible, and take a sacred oath to perform the duties of a judge, you change. And, indeed, Justice Owen has been true to that oath and has faithfully discharged her responsibilities as a judge, and will do so on the Fifth Circuit Court of Appeals if this body would simply vote on her nomination.

I want to spend a few moments talking about filibusters.

Clearly, debate is important. In a body such as the Senate, this is one place where we know if there is a difference of opinion on any issue, if there are competing points of view, that there will be a full debate. Debate is, indeed, the only way to ensure we make known to each other our views and our values. It is the only way to ensure we have the opportunity to make our arguments known and to respond to the arguments of others; to appeal to the public and reasonable people who will assess those arguments and achieve or arrive at a judgment on their own about what they believe, what they do not believe, which arguments have value and which have no value, which arguments are supported by facts or evidence and which are baseless. It is the only way to ensure that each of us can be convinced we have been given at least the opportunity to persuade others and to appreciate the wisdom of our respective positions.

But for democracy to work, and for the fundamental democratic principle of majority rule to prevail, the debate must eventually end, and we must eventually bring matters to a vote. As Senator Henry Cabot Lodge famously

said about filibusters: ''To vote without debating is perilous, but to debate and never vote is imbecile.''

So let's have a debate about this exceptional nominee. And after we have had the debate, let's vote. There should not be a filibuster. A minority of the Senate should not try to impose what is in effect a supermajority requirement for confirming judicial nominees, operating under the constant threat of filibuster.

The Constitution makes clear when the Founders intended to require a supermajority of this body to act. It specifies that two-thirds of each House shall be necessary to override a Presidential veto on legislation, and that two-thirds of each House shall be necessary to amend the Constitution, subject to the ratification by the people. It provides that two-thirds of the Senate shall be necessary to convict an officer pursuant to an impeachment trial, and that two-thirds of the Senate shall be necessary to consent to the ratification of treaties.

It does not say that a supermajority shall be necessary to confirm a President's judicial nominees. And it is well-settled and well-established law, as a matter of both Senate practice and Supreme Court precedent, that majority rule is the norm, whenever the text of the Constitution does not expressly provide otherwise.

The Constitution vests the advice-and-consent function in the entire Senate, not just in the Senate Judiciary Committee. During the last Congress, the Senate Judiciary Committee refused to report Justice Owen's nomination out to the entire Senate. The committee, it should be obvious, does not speak for the entire Senate. Indeed, the committee itself could have reconsidered the nomination and could have reported Justice Owen to the floor even after it had previously refused to do so.

The Constitution requires elections to make sure that the Senate remains accountable to the people. To insist that a new Senate cannot, after an intervening election, reconsider legislation or a nomination rejected by a previous Senate is to reject the very principle of democracy and accountability.

Accordingly, there is no Senate tradition that forbids the President from renominating an individual previously rejected by the full Senate, let alone by the Senate Judiciary Committee. Quite to the contrary, there is a wealth of precedent for such re-nominations.

As recently as 1997, the Senate Judiciary Committee refused to report Bill Lann Lee to the entire Senate. Yet President Clinton not only renominated Lee in subsequent sessions of the Senate, he even gave Lee a recess appointment in 2000 without triggering substantial opposition from the Senate.

I am not asking for the Senate to depart from its traditions. Indeed, the only departure from tradition that is occurring today is the filibuster of Miguel Estrada and now Priscilla Owen, something that has never happened before to a circuit court nominee.

I hope we have a good, vigorous debate on this nomination because I believe that by any measure Justice Owen is an exceptional judge and an exceptional human being who deserves confirmation.

I am confident that, at the end of the debate, if Members of the Senate really want to know what the facts are, as opposed to the caricature that has been drawn of Justice Owen by special interest groups intent on vilifying, marginalizing, demonizing a good and decent human being, that if we were allowed to have a vote, we would have a strong bipartisan majority that would support her nomination.

I hope no matter what the outcome, we will come to an end of the debate, and we will simply do what the people of our respective states sent us here to do, and that is to vote.

I would not ask the Senate to depart from its traditions of fairness in this case. By any fair measure, Justice Owen is an exceptional judge and exceptional nominee. I am confident she will not only maintain the strong bipartisan majority she has in support of her nomination, but that it will grow as Senators examine the record, test some of the allegations made against her, and find them without substantiation, without justification; that if what we are really interested in is finding the truth about this nominee, and determining whether she will uphold the oath she has taken and that she will take as a judge on the circuit court, she will be confirmed.

I hope this body will abide by the Constitution as written, and not impose some supermajority requirement where the Constitution requires none, and where the Supreme Court and Senate traditions and the fundamental principle of majority rule dictate a majority vote on this nominee, not a 60-vote supermajority.

As long as the Senate applies a fair standard to this nominee, I have no doubt Justice Owen will be confirmed. Now nearly two years have passed since she was nominated to the Federal bench. The Senate should vote to confirm her immediately.

We ask judges to be fair, to be impartial in deciding cases, to show neither fear nor favor. But certainly the requirement of fairness does not end in the judicial branch. It also applies to the Congress and to the Senate in performing our responsibilities. Certainly you would think it is self-evident that it should apply in confirming judicial nominees. Our current state of affairs is neither fair nor representative of the sentiment of a bipartisan majority of this body.

The distinguished Senator from Nevada has said that, when it comes to setting the hours of debate, ''there is not a number in the universe that would be sufficient.'' I say two years is more than sufficient.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I welcome the opportunity to address the issue about the qualifications of Priscilla Owen to serve on the Fifth Circuit of the United States.

In considering this nominee, particularly in the wake of the recent comments of my friend from Texas, it is worthy to point out that there have been 119 nominations for the Federal bench, including the Court of Claims, either for the district or the circuit court, over the period of this President. We have had one, Mr. Pickering, who was defeated a year ago and who was renominated by the President. There is Priscilla Owen now before the Senate. But there has only been one, according to my calculations, Miguel Estrada, where sufficient questions have been raised as to his commitment to the core values of the Constitution, where that issue is still before the Senate.

That is an extraordinary response by the Senate in considering favorably the series of nominees by this President. I don't know the course of our history, but this certainly has to be one of the most favorable records, certainly of any recent times, of response by the Senate in approval of the President's nominees.

I listened to my friend and colleague talk about the importance of Priscilla Owen being able to finally get a vote on her nomination. I was thinking about the recent history of the time when my friend from Utah, Senator HATCH, was chairman of the Judiciary Committee. We had three nominees for the Fifth Circuit: H. Alston Johnson, Enrique Moreno, and Jorge Rangel. All three individuals were never given a vote under the Republican committee and the Republican Senate. These are truly outstanding individuals.

It is important to have some understanding of history in terms of who has permitted votes to take place and who has failed to permit even these well-qualified individuals, in this instance, just on the Fifth Circuit. I am not taking the time of the Senate to list them all. I know Senator LEAHY has done this at other times.

I also refer to the history of the Senate to provide some awareness of background. The claim that it is unprecedented to filibuster a court of appeals nomination is false and hypocritical. Since 1980, cloture motions have been filed on 14 court of appeals and district court nominations.

Recently, Republicans filibustered, in the year 2000, in an attempt to block the nomination of Richard Paez, a Hispanic, and Marcia Berzon, onto the Ninth Circuit. This is after Richard Paez had been waiting 4 years due to anonymous holds by Senate Republicans. Bob Smith openly declared he was leading a filibuster, and he described Senator SESSIONS as a member of his filibustering coalition. Even Senator FRIST was among those voting

against cloture on the Paez nomination.

So requiring cloture on judicial nominations is not an extraconstitutional event. The Senate has the role of advise and consent on judicial nominations, and the Constitution leaves it to the Senate to carry out its responsibility in accordance with its own rules. Requiring cloture to end debate on a nomination is permitted under Senate rule XXII. The right of Senators to speak on the floor at length is central to the Senate's role.

I ask the Senate to listen to the history of the Senate on nominations. In the first decade of the Senate's history, the Founders rejected a rule providing for a motion to close debate, and for the rest of our history, our rules have provided that debate, which is the lifeblood of our power, cannot easily be cut short. For 111 years, unanimous consent was required to end debate in the Senate. Until 1975, a two-thirds majority was required. Now it is only 60 votes that are required. Until 1949, debates on nominations could not be cut off at all.

It is interesting to note the history of the rules as they have applied to nominations historically when we are considering controversial nominees. I daresay if we look at the record today—it is my understanding that there is only one of President Bush's judicial nominations that we have so far blocked on the Senate Floor, and that is Mr. Estrada, which is because of the failure of the Administration to provide key documents from his time in the Solicitor General office so that we can be able to understand Mr. Estrada's commitments to the core values of the Constitution.

It was interesting as well that earlier in the day our leaders requested that there be an opportunity to consider Judge Edward Prado, a nominee to the Fifth Circuit, who is on the registrar, to see whether we could move ahead with that nominee. There was objection that was filed, as I understand it, by the Republicans. He is a Republican. We may not all agree with his views or his rulings, but in his time on the bench he has shown that he is committed to the rule of law and not to reshaping the law to fit a rightwing ideology. There is not a single letter of opposition against him, and he is ready to be voted on by the full Senate. Senator DASCHLE, Senator REID, and others have indicated—the Judiciary Committee on our side has indicated—they were prepared to vote on him earlier today. But an objection was raised. Nominees such as Judge Prado should get our full support, but nominees such as Priscilla Owen should not.

There is also Judge Cecilia Altonaga. She would be the first Cuban American woman on the Florida district court. I understand she could be considered favorably and passed as the first Cuban American woman to serve on the Florida district court. She had a unanimous vote of the Judiciary Committee. She could be approved this afternoon. That would bring the number up to 121.

Earlier today the Senate narrowly voted to confirm Jeffrey Sutton to a lifetime appointment on the Sixth Circuit. Like far too many of President Bush's nominees, he was opposed by a broad array of citizens from across the country because there were many attempts to roll back rights and protections for people with disabilities, women, minorities, and older workers.

The drumbeat goes on. This afternoon we begin debate on yet another extremely controversial nominee—Priscilla Owen. It is shameful and shocking that the administration is so bent on packing the courts with nominees such as Jeffrey Sutton and Priscilla Owen, who are so clearly hostile to the rights and protections that are so important to vast numbers of Americans.

Many well-qualified, fairminded nominees could easily be found by this administration if they were willing to give up their rightwing litmus test. I have mentioned two who are pending that we could be considering at this very moment.

Priscilla Owen, I don't believe should be favorably considered. Her record on the Texas Supreme Court is one of activism, unfairness, and hostility to fundamental rights. I am particularly concerned about her record on issues of major importance to workers, consumers, victims of racial discrimination or gender discrimination, and women exercising their constitutional right to choose.

Justice Owen is one of the most frequent dissenters on her court in Texas in cases involving workers, consumers, and victims of discrimination. That she dissents from this court so frequently is immensely troubling. This court is dominated by Republican appointees and is known for frequently ruling against plaintiffs. Yet when the court rules in favor of plaintiffs, only one member of the court, Justice Hecht, has dissented more often than Justice Owen.

In her dissents, Justice Owen raises new barriers to limit the role of juries in product liability cases, personal injury cases, and narrowly construes employment discrimination laws. She has limited the time period for minors to remedy medical malpractice. She has limited the ability of individuals to obtain relief when insurance companies unreasonably, and in bad faith, deny claims. Justice Owen's many dissents reveal a pattern of far-reaching decisions to limit remedies for workers, consumers, and victims of discrimination or personal injury.

What is also very striking is the level of criticism of Justice Owen's opinions by her colleagues on the court, and efforts to explain these criticisms away are unconvincing.

We all know judges are often critical of the reasoning of their colleagues, and occasionally these opinions can be strongly worded. What stands out here are the frequent statements by her own colleagues on the court that Justice Owen puts her own views above the law, even when the law is crystal clear—she does this repeatedly in cases involving the rights of plaintiffs, or of young women seeking to exercise their right to choose.

Take Alberto Gonzales, her former colleague on the court, who is now President Bush's counsel in the White House. In one of her cases involving the interpretation of Texas' parental notification statute, Justice Gonzales accused Justice Owen of ''an unconscionable act of judicial activism.'' In these parental notification cases, Justice Owen repeatedly grafts barriers to restrict a young woman's right to choose. She inserts new standards that are based on her own views and not on the clear language of the statute.

At her hearing, Justice Owen and some of my Republican colleagues suggested, for the first time, that Justice Gonzales was not referring to Justice Owen and the other dissenters when he accused Justice Owen of ''unconscionable activism''

That isn't credible. Justice Gonzales wrote a separate concurring opinion specifically to defend the majority's opinion and to dispute the positions taken by the dissenters. He emphasized that the majority's opinion was based on the language of the Parental Notification Act as written by the Texas Legislature, and said:

> [O]ur role as judges requires that we put aside our own personal views of what we might like to see enacted, and instead do our best to discern what the legislature actually intended.

Justice Gonzales went on to say that, contrary to the legislature's intent:

> [T]he dissenting opinions suggest that the exceptions to the general rule of notification should be very rare and require a high standard of proof. I respectfully submit that these are policy decisions for the Legislature.

It is this narrow construction of the statute, put forward by the dissenters that Justice Gonzales criticizes as unconscionable activism. It is obvious—beyond any reasonable doubt—that Justice Gonzales is referring to the opinions of the dissenters, including Justice Owen.

Similar criticisms of Justice Owen appear repeatedly in other opinions of the Texas court.

A striking example of the lengths Justice Owen will take to narrow remedies for plaintiffs is found not in a dissent, but in a disturbing concurrence in a case called GTE v. Bruce.

In this case, three employees sued GTE for intentional infliction of emotional distress because of constant humiliating and abusive behavior of their supervisor. The supervisor harassed and intimated employees, including through daily use of profanity; screaming and cursing at employees; charging at employees and physically threatening them; and humiliating employees by, for instance, making an

employee stand in front of him in his office for as long as 30 minutes while he stared at her. The employees suffered from severe emotional distress, tension, nervousness, anxiety, depression, loss of appetite, inability to sleep, crying spells and uncontrollable emotional outbursts as a result of his behavior. They sought medical and psychological help because of their distress.

GTE argued that the employees could not pursue an intentional infliction of emotional distress claim in court. They said that the employees' remedies were limited to worker's compensation. Eight justices on the Texas court agreed that the Worker's Compensation Act did not bar the plaintiffs' claims. These justices concluded that the actions of the supervisor when looked at as a whole were so extreme and outrageous as to support the jury's verdict of intentional infliction of emotional distress. Justice Owen, alone, wrote a separate opinion. While she agreed that there was more than a ''scintilla of evidence'' to support the jury's finding that the supervisor intentionally inflicted emotional distress on the plaintiffs, she declined to join the court's opinion because ''most of the testimony that the court recounts is legally insufficient to support the verdict.'' Justice Owen then lists all the supervisor's behavior that is not a basis for sustaining a cause of action.

Justice Owen, alone among all the justices, felt the need to write separately to adopt as narrow a construction as possible of a plaintiff's right to recover for a supervisor's outrageous and harassing conduct. Justice Owen argued at her hearing last July, and again at her most recent hearing, that she wrote separately simply to make clear that no plaintiff could recover for any one of these individual actions standing alone. This is not, however, what Justice Owen's opinion says. Her opinion draws no such distinction. Furthermore, it is clear from the majority opinion that the standard is whether the supervisor's actions ''taken as a whole'' are sufficient to sustain a claim. Not only is Justice Owen's opinion troubling, but her answers to the concerns raised seem less than candid.

Justice Owen's record is particularly troubling given the range of important issues that come before the Fifth Circuit. The Fifth Circuit is one of the most racially diverse circuits, with a large number of Latinos and African-Americans. The States in the Fifth Circuit are also among the poorest. It is vital on this court in particular that a judge is fair to workers, victims of discrimination, and the personal injury victims that come before the court. Those who contend that we oppose Justice Owen simply because she is a Republican appointee miss the point. I oppose her because I believe she will put her own view above the law in cases regarding the basic and fundamental rights on which all Americans have come to rely, including the right to privacy and equal protection under law.

Not long ago, the Fifth Circuit was hailed as a brave court for protecting civil rights. When Congress passed the Civil Rights Act in 1964 and the Voting Rights Act in 1965, many States and localities in the South resisted these measures. Federal judges such as Elbert Tuttle, Frank Johnson, and John Minor Wisdom, all Republican appointees, helped to make real the promise of legal equality that was contained in these important Federal statutes. It is particularly important that a judge appointed to this Court show a commitment to civil rights and to upholding constitutional safeguards for all Americans. I do not believe that Justice Owen is in that proud tradition of independence and fairness.

Justice Owen's nomination has incited a great deal of opposition from a broad range of citizens and groups in her home State of Texas. Those individuals who have observed her on the Texas court, who have been harmed by her rulings, have written to us in droves opposing her appointment to the Fifth Circuit. These include the Gray Panthers of Texas, the National Council of Jewish Women of Texas, the Texas AFL–CIO, the Texas Civil Rights Project, and the Texas Chapter of the National Organization for Women. At least 20 attorneys who practice in Texas have written expressing their opposition. A broad range of environmental groups also oppose her nomination.

The issues at stake with Justice Owen's nomination go beyond partisan games. This debate is about lifetime appointments of courts that decide cases that shape the lives of all American people. Our Federal courts have made real the fundamental rights guaranteed by the Constitution and by Federal laws. Federal courts are the backbone of our pluralistic democracy, helping to ensure that black children have the same access to education as white children, that a disabled woman has the appropriate workplace accommodation so that she can help provide for her family, and that our children can breathe clean air and drink clean water in their communities. Because the Supreme Court takes less than 100 cases, many of the cases most important to Americans are decided by lower court judges.

The basic values of our society—whether we will continue to be committed to equality, freedom of expression, and the right to privacy—are at issue in each of these controversial nominations. If the administration continues to nominate judges who would weaken the core values of our country and roll back the laws that have made our country a more inclusive democracy, the Senate should reject them.

No President has the unilateral right to remake the judiciary in his own image. The Constitution requires the Senate's advice and consent on judicial nominations. It is clear that our duty is to be more than to rubber-stamp.

I urge my colleagues to vote against Priscilla Owen's nomination.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, earlier today Senator HATCH asked consent for a time certain for a vote on the pending Owen nomination. There was an objection from the other side of the aisle.

I make further inquiry of the assistant Democratic leader if there is still an objection to limiting debate on this nomination. I yield to him for a response.

Mr. REID. Mr. President, I say through you to the distinguished Senator from Kentucky, I don't think we can work out any time agreement. I have said so publicly. There have been a number of statements on the floor today. As I told Senator HATCH, there simply would be no time agreement ever on Priscilla Owen.

Mr. MCCONNELL. Mr. President, today we spent a good deal of time debating the nomination of Justice Priscilla Owen. Prior to today, we debated her nomination for 2 other days, so for 3 days of valuable legislative time our colleagues have had the opportunity to come to the floor and debate. We intend to continue this debate for another 2 days. But the debate must come to a reasonable end, so I am filing a cloture motion this evening so we can vote to close debate later this week.

I think we will be ready to vote. After all, Justice Owen was nominated by the President 2 years ago next week. She has had two hearings before the Judiciary Committee, over 30 editorials have been written about her nomination, and nearly all in support of her confirmation, including the Washington Post on three—three—separate occasions. There have been countless op-eds and news articles.

Senator SCHUMER asked earlier today if we on this side of the aisle expected the Senate to be a rubberstamp for the President's nominations. The answer, of course, is we do not. We do expect the Senate to do what the Constitution contemplates, and that is to vote; to vote yes or no but to vote.

We also expect the Senate to do the right thing by the Constitution, by this nominee, and by the President of the United States who nominated her.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send to the desk a cloture motion.

The PRESIDING OFFICER. The motion having been presented under rule XXII, the Chair directs the clerk to report the cloture motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit.

Senators William Frist, Tom Hatch, Kay Bailey Hutchison, John Cornyn, Mitch McConnell, Jon Kyl, Wayne Allard, Sam Brownback, Jim Talent, Michael Crapo, Gordon Smith, Peter Fitzgerald, Jeff Sessions, Lindsey Graham, Lincoln Chafee, and Saxby Chambliss.

Mr. MCCONNELL. For the information of all Senators, this cloture vote will occur on Thursday of this week. I now ask unanimous consent the live quorum under rule XXII be waived.

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business.

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

HONORING OUR ARMED FORCES

Mrs. FEINSTEIN. Mr. President, with the dramatic and precipitous fall of many Iraqi cities, including Baghdad, the military conflict in Iraq is all but officially over.

Isolated pockets of resistance still exist and there is the looming threat of suicide bombings, as happened last Friday at an ammunitions depot. But we can now proclaim that the barbarous regime of Saddam Hussein and his Ba'ath Party has finally come to an end.

As the military aspect subsides, the number of casualties—United States, coalition, and Iraqi—is also diminishing. And this, clearly, is wonderful news. Still, regrettably, there have been those over the last few weeks who have made the ultimate sacrifice, some of them with close ties to California. I would like to take a moment to honor these brave and selfless individuals.

Marine Cpl Jesus Medellin: On April 7, 21-year-old Jesus ''Marty'' Medellin was killed when an enemy artillery shell struck his vehicle. The second of four boys from a very close family from Fort Worth, TX, Medellin was remembered as a warm and relaxed family man who was active in local church.

As soon as he graduated from W.E. Boswell High School, in the year 2000, he went straight to Marine boot camp, having decided to do so when only 12 years old. ''There's no prouder way of losing someone than through serving their country,'' said his father, Freddy Medellin, Sr., who was prevented from joining the military because of physical problems.

As part of the 3rd Assault Amphibian Battalion, First Marine Division, based in Camp Pendleton, CA, Cpl Jesus Medellin died doing what he had always dreamed of doing. Americans everywhere should be as proud of him as his family.

Marine Sgt Duane Rios: Remembered as a gentle giant, as a light-hearted person with an infectious laugh, 6-foot-3-inch Duane Rios was killed in combat on the outskirts of Baghdad, on Friday, April 4. He was a squad leader for the 1st Combat Engineer Battalion of the 1st Marine Division, from Camp Pendleton, CA.

Raised in Indiana by his grandmother, Rios graduated from Griffith High School in 1996. It was there that he met his future bride, Erica, who, upon hearing of her husband's death, told the San Diego Union Tribune that ''there's no way he'd leave me behind knowing I couldn't take it. . . . He was a great guy, none better. . . . He did his job with pride because it was something that he felt was right.''

She recalled how much they loved the view of the ocean at San Clemente, walking their dog on the beach, and watching the sunset. Her strength, along with her husband's sacrifice, should serve as an inspiration to us all.

Marine 1stSgt Edward C. Smith: A 38-year-old native of Chicago, Sgt Edward Smith had served in the U.S. Marine Corps for 20 years, and had served for 4 years as a reserve officer for the police department of Anaheim, CA. His hope was to retire from the Marines and become a full-time police officer. He died in Qatar, of combat injuries sustained in central Iraq, on April 5.

A veteran of Operations Desert Storm and Desert Shield, Sergeant Smith received many commendations, including the Navy Commendation Medal and two Navy Achievement Medals

After graduating from the Palomar Police Academy with the ''Top Cop'' award, Sergeant Smith went on to receive such honors as the Rookie of the Year for the Anaheim Police Department and the Orange County Reserve Police Officer of the Year in 2001.

His coworkers in Anaheim remember Edward as a gentleman and a professional. He would send them e-mails and makeshift postcards made from empty MRE containers—one which promised that he would wear his SWAP cap into Baghdad.

Sergeant Smith leaves behind his wife Sandy and three young children, Nathan, Ryan, and Shelby. At a news conference held at the Anaheim police department, Ryan, an extraordinarily mature 10-year-old, talked about how their father was always there when they needed help.

''It made me feel so good,'' the boy said. ''He was the best dad you could ever have. I miss him a lot.''

Police Sgt. Rick Martinez, one of 100 colleagues who turned out to support the Smith family, noted that ''we all fell in love with his children. Edward's got to be so proud right now.''

And so America is so very proud of Sergeant Smith. Army Pvt. Devon D. Jones: Army Pvt. Devon Jones left for boot camp just a few weeks after graduating from Lincoln High School, in San Diego, last June. He was just 19 years old.

It was only 3 years earlier that, after moving from one San Diego group home to another, the artillery specialist found a foster mother who he called mom.

''I'm honored to talk about him,'' his foster mother Evelyn Houston said. ''He was a strong spirit. He was cool, but compassionate, and always concerned about everyone's well-being.''

He joined the military in order to pay for his education—his goal was to be a writer and a teacher.

In a letter he sent to his family last month, Private Jones described his life in the desert. ''Sometimes I just look into the sky at the stars and wonder what you all are doing, and smile.

''Hold on, be patient,'' he concluded, ''and know there is a reason for everything.''

GySgt. Jeffrey Bohr: 39-year-old Marine GySgt. Jeffrey Bohr, who was killed in downtown Baghdad during a 7-hour shootout outside a mosque, had been in the military his entire adult life. He joined the Army fresh of high school in Iowa, where he rode horses and played football, but switched to the Marine Corps 5 years later.

A large, broad-shouldered man known for his boundless energy—he could run all day with the younger Marines he commanded—Sergeant Bohr was also quiet and down-to-earth.

He lived with his wife Lori in San Clemente, CA, and loved reading history and John Grisham novels and taking his two boxers, Tank and Sea Czar, on 10-mile runs. He was also a diehard Oakland Raiders fan.

The last time Sergeant Bohr called Lori was a little over a month ago—he spoke of sandstorms and his belief that they would make good parents.

Lori's brother, Craig Clover, called Sergeant Bohr ''a stand-up guy—do it by the rules. For a friend or family, he'd do anything . . . and he loved the military.''

Marine LCpl Donald Cline Jr.: The same was true with 21 year-old LCpl Donald Cline, Jr., who was listed as missing in action just over 1 month ago, yet the Department of Defense confirmed last week that he had died in combat outside the city of Nasiriyah, in southern Iraq.

Born in Sierra Madre, CA, Corporal Cline moved to the town of La Crescenta, where he attended the public schools there until moving to Sparks, NV. It was there that he met his future wife Tina. They had two children together Dakota, 2, and Dylan, who is only 7 months old.

Sgt Troy Jenkins: On April 19, in an extraordinary act of heroic selflessness and sacrifice, 25-year-old Sgt Troy Jenkins threw himself on a cluster bomb just before it detonated. As a result, he saved the lives not only of several soldiers in his regiment—the 187th Infantry—but of a 7-year-old Iraqi girl.

Raised by his father in Evergreen, AL, Sergeant Jenkins loved roaming the woods, fishing, and music. He joined the Marines just before graduating from high school, in 1995, and later transferred to the Army. He also served in Afghanistan and was planning to leave the service this summer, with the hopes of joining the California Highway Patrol.

His reason for wanting to leave the military was so that his wife Amanda and their two children, ages 4 and 2, wouldn't be alone again. Amanda was not surprised by the circumstances of his death. ''He didn't have a selfish bone in his body,'' she said. ''He was always thinking of other people first.''

That was demonstrated, well beyond the call of duty, when he willingly gave his own life to save those of his fellow soldiers and a little girl.

1LT Osbaldo Orozco: 1LT Osbaldo Orozco, just 26 years old, was killed in Tikrit, Iraq, when his Bradley tank, rushing to defend a checkpoint under fire, flipped over as it moved into a position to return fire.

Strong, tall and fast, Lieutenant Orozco was a star football player, both at Delano High School, in Delano, CA, and later at California Polytechnic State University, San Luis Obispo. At college, he was voted ''Linebacker of the Year,'' was named as a Division II All-American, and racked up over 300 tackles. He gave up the opportunity to go pro by choosing to enter the Army.

He married his high school sweetheart Mayra in 2001. ''He commanded four Bradleys and he loved it,'' she said. ''He was ready to go and do his job. They all were.''

Lieutenant Orozco is also survived by his parents, Jorge and Reyes Orozco, and five brothers, all over 6 feet tall. Together, they spoke with great pride of Osbaldo's many accomplishments—academic and athletic—and those special leadership qualities that so endeared him to the men he commanded.

SFC John W. Marshall: SFC John Winston Marshall was a 30-year veteran of the U.S. Army—a career soldier to the core. He grew up in Los Angeles and kept close family ties in the area. His parents, Odessa and Joseph, live in Sacramento.

It is worth noting that both his parents served in World War II, in many ways as trailblazers for African Americans in the armed services. His mother served as a nurse in England and his father as a quartermaster.

Because of his 30 years of distinguished service, Sergeant Marshall was eligible to leave the Armed Forces with full retirement benefits and had, in fact, planned to retire last year. Yet he decided to stay because of looming hostilities in Iraq. He was struck and mortally wounded by rocket-propelled grenade launched in an ambush by Iraqi troops.

Born in St. Louis, he moved with his family to Los Angeles when he was only 3. An accomplished flute player and a self-taught mechanic who made motor scooters out of lawnmower engines, Sergeant Marshall graduated from Washington High School in 1972 and enlisted in the Army.

He went on to serve during the Vietnam war, in South Korea and Germany, and he was a veteran of Operation Desert Storm. At the time of his death, he was commanding a platoon of 40 men from the 3rd Infantry Division, based at Fort Stewart, GA.

According to his mother Odessa, ''He wasn't there to pass the time; he was there to do a job.''

His wife Denise told the Los Angeles Times: ''He knew it was dangerous. He didn't run from anything.''

And we should also remember that 50-year-old Sergeant Marshall was as devoted to his family as he was to his country. He leaves behind two sons and a daughter, ages 12, 13, and 14.

In one of the last e-mails he sent to his family, he noted: ''I am not a politician or policy maker, just an old soldier.''

Well, we politicians and policymakers must not forget any of these heroes, regardless of their age, rank, religion, sex, or ethnic background. Together, they embody the diversity and consummate professionalism of America's Armed Forces.

We all hope and pray for the time when there will be no more casualty lists—when there will no longer be a need to recount stories of courageous men and women who willingly sacrificed their own lives, and irrevocably changed the lives of their families, their spouses, and children, in order to overthrow Saddam Hussein and liberate the people of Iraq.

Clearly, this conflict was a signal military success, and the casualties were kept relatively small. I could not be prouder of the stellar performance of our Armed Forces.

But we must never forget to honor every single loss, to pay our deepest respects and offer our deepest sympathies to those left behind, to those whose worlds have been so completely changed—and changed forever.

Mrs. BOXER. Mr. President, as we pray for all those who are in harm's way, I rise to pay tribute to seven additional young Americans who were killed in the Iraqi war.

I have made it a priority of mine to come to the Senate Chamber to read the names of the fallen military personnel who were from California or were based in my State. So far, 41 individuals have died who are connected in some way to California.

GySgt Jeffrey Edward Bohr, age 39, was killed on April 10 during a shootout in downtown Baghdad. He was assigned to the 1st Battalion, 5th Regiment, Alpha Company of Camp Pendleton, CA. He and his wife lived in San Clemente, CA. He was originally from northeast Iowa. He began his military career 20 years ago, serving in both the Army and the Marine Corps. During his career, he fought in Operation Desert Storm, and took part in operations in Panama, Somalia and Granada.

Cpl Jesus Gonzalez, age 22, was killed on April 12 in Baghdad. He was assigned to the 1st Tank Battalion, 1st Marine Division, Twentynine Palms, CA. He was born in Mexico and moved with his family to Indio, CA, 10 years ago. He was known as ''Hugo'' by his friends and family. He was a soft-spoken activist in his short life, marching in a Gulf War protest in 1992 and organizing a walk-out at his high school to support immigrant rights. However, when he was called to duty, he did not hesitate to fulfill his orders. He is survived by his wife, his 2-year-old daughter, and his parents.

SSgt Riayan A. Tejada, age 26, was killed on April 11 during combat operations in northeast Baghdad. He was assigned to the 3rd Battalion, 5th Marine Regiment, Camp Pendleton, CA. He was from New York City. He moved from the Dominican Republic to the United States in 1989. After graduating from high school, he enlisted in the Marines. He is survived by his parents and two children.

LCpl David Edward Owens, Jr., age 20, died from a chest wound inflicted during combat on April 12 in Baghdad. He was assigned to the 3rd Battalion, 5th Marine Regiment, 1st Marine Division, Camp Pendleton, CA. He was from Winchester, VA. He graduated from James Wood High School in 2000. He loved hunting and athletics and was a wrestler and football player in high school. He joined the Marines with the long-term goal of a career in law enforcement. At his funeral service, he became the first person ever given an honorary appointment to the Virginia State Police. He is survived by his parents.

Cpl Jason David Mileo, age 20, was killed on April 14 in Iraq. He was assigned to the 3rd Battalion, 4th Marine Regiment, 1st Marine Division, Twentynine Palms, CA. He was from Centreville, MD. He was a 2000 graduate of Chesapeake High School in Pasadena, MD. He is survived by his parents.

Army SGT Troy David Jenkins, age 25, died on Friday, April 24, from injuries sustained during combat. He was from Ridgecrest, CA. He was assigned to the B Company, 3rd Battalion, 187th Infantry Regiment, Fort Campbell, KY.

Army 1LT Osbaldo Orozco, age 26, was killed in Iraq on April 25. He was from Delano, CA. He was assigned to C Company, 1st Battalion, 22nd Infantry Regiment, Fort Hood, TX. He was a star football player at Delano High School and later played football at Cal Poly San Luis Obispo, where he attended on a full athletic scholarship. He was a captain for the Mustangs in 1999 and was named the team's Most Inspirational Player. He was commissioned as an Army officer in 2001. He was the second oldest of five sons of Mexican immigrants and the first in his family to graduate from college.

Forty-one individuals who were from California or based in California have

died in the war. The people of California, as well as all Americans, mourn their loss.

May these beautiful young Americans rest in peace.

I continue to pray for those who have been injured in the war. I hope that they and the rest of our brave young men and women serving abroad will return home safely.

Mr. GRASSLEY. Mr. President, I rise today to pay tribute to a fellow Iowan and a great American. It is with a sense of sadness but also pride that I must call to the attention of the Senate the sacrifice of Marine GySgt. Jeff Bohr of Ossian, IA, who was killed April 10, 2003, while participating in the liberation of Baghdad. Jeff Bohr is the second Iowan to have died in Operation Iraqi Freedom, and hopefully the last. Jeff Bohr served his country in the military for 20 years and had no reservations about putting his life on the line to protect American freedom and to give freedom to the Iraqi people. His loss will be felt throughout Iowa, and particularly in his hometown of Ossian. My thoughts and prayers are with Jeff's wife Lori as well as his father Eddie and mother Jeanette, his brothers, and all his family and friends. As they mourn his loss, they can know that they are not alone. Many people in Iowa and across the country share their grief and reflect on the life of Jeff Bohr, whether they knew him or not. At the same time, Jeff's family can be very proud of his service to his country. Jeff Bohr's sense of patriotic duty is a source of inspiration to us all, and his sacrifice will not be forgotten. He paid the ultimate price for our freedom and security. Words can scarcely convey the debt of gratitude that we all owe Jeff Bohr, but I want to take this opportunity to express my deepest respect and admiration for Jeff and what he did for America. Although his loss is tragic, Jeff Bohr died fighting for his country and he died a true patriot.

THE ACCESSION OF CYPRUS TO THE EUROPEAN UNION

Mr. BIDEN. Mr. President, I rise today to commend the Republic of Cyprus on its April 16 signing of an accession agreement with the European Union, and also to bemoan the failure to reach an agreement to end the nearly three-decade-old division of the island.

The achievement of accession to the European Union marks the last phase of a 30-year enterprise by the Government and people of the Republic of Cyprus, which began with an Association Agreement in 1973 and will culminate in May 2004 with full membership.

Celebration of this historic success, however, is tempered by the absence of a settlement that would have allowed the island as a whole to join the EU. The failure of the parties to reach an agreement through the United Nations process was both regrettable and avoidable.

Although the Cyprus problem has been on the United Nations agenda for almost 40 years, it was the Clinton administration's decision in 1999 to make finding a solution in Cyprus a high priority that brought the two sides of the island back to proximity talks under the good offices of the United Nations Secretary General.

Since 1999, Secretary General Kofi Annan and his special representative Alvaro de Soto have engaged interested parties in an intensive peace effort with international support, including that of U.S. Special Coordinator for Cyprus Ambassador Tom Weston. They worked feverishly with leaders in Nicosia, Athens, Ankara, and Brussels to try to persuade the parties to agree to a draft plan prior to the European Union summit in Copenhagen last December, at which the EU invited Cyprus and nine other countries to join the Union. While that effort did not produce an equitable end to the tragic division of Cyprus, it did produce a realistic framework and concrete text on which to continue discussions to resolve the remaining issues.

After years of frustration and disappointment, the people of Cyprus saw a fragile but real possibility for settlement, and the overwhelming majority of the population in both communities embraced the process.

In the first months of 2003, with the clock running out to reach an agreement before the date for Cyprus to sign the EU accession agreement, the UN Secretary General asked Tassos Papadopoulos, the newly-elected President of the Republic of Cyprus, and Turkish Cypriot leader Rauf Denktash to submit the plan to a public referendum. On March 10, Mr. Papadopoulos in good faith conditionally agreed to do so. Mr. Denktash refused.

In response, tens of thousands of Turkish Cypriots took to the streets to express their support for the UN plan and to entreat Mr. Denktash to participate in the process. But Mr. Denktash did not respond to these calls from the citizens whom he nominally represents. In denying his own people a democratic vote, he bears the primary responsibility for quashing the peace talks.

Since then, Mr. Denktash has chosen to discredit the UN process though overheated rhetoric, calling the UN plan ''full of tricks'' and alleging that it did not take into account the non-negotiable requirements and ''realities'' of the Turkish Cypriot people. He did for the first time allow day-visits across the ''Green Line'' that divides the island, but this welcome conciliatory gesture appears to be more of a diversionary tactic than a return to the negotiating table.

The Turkish Cypriots do have genuine concerns about their status and security, and these concerns must be reflected in any settlement decision. The Greek Cypriots need to acknowledge that before 1974 there was a Cyprus Problem and that members of both communities committed unpardonable violence and murder. Similarly, the Turkish Cypriots need to acknowledge that there has been a Cyprus Problem ever since the Turkish invasion of 1974, with mass human suffering. Both sides must recognize that this is 2003, not 1974 or 1964, and that only a reunited Cyprus as a member of the European Union would have iron-clad, international security guarantees for all its citizens.

Yet Mr. Denktash seems incapable of seizing the moment by recognizing that a negotiated settlement requires compromise. As Secretary General Annan stated in his report to the UN Security Council, however, ''except for a very few instances, Mr. Denktash by and large declined to engage in negotiation on the basis of give and take,'' thereby complicating efforts ''to accommodate not only the legitimate concerns of principle, but also the concrete and practical interests of the Turkish Cypriots.''

The window for achieving a settlement is not closed. Secretary General Annan's plan remains on the table as a basis for negotiation. The European Union has affirmed that there is a place in the EU for Turkish Cypriots. Upon the signing of the accession treaty, Cypriot President Papadopoulos restated his commitment to working toward a settlement. Greek Prime Minister and EU Council Term President Simitis invited Mr. Denktash and other Turkish Cypriot political leaders to Nicosia to continue discussions toward a settlement, an invitation which Mr. Denktash to date has rejected. Turkish Prime Minister Erdogan, with an eye toward his own country's future EU membership once Ankara has met the Copenhagen criteria, endorsed on April 17 the continuation of talks based on the UN plan. I hope that Prime Minister Erdogan, Foreign Minister Gul, and other distinguished leaders in Turkey will prevail on Mr. Denktash to do what is right for all in the region.

EU leaders at the April 16 accession ceremony in Athens declared that the expanded EU represents a ''common determination to put an end to centuries of conflict and transcend former divisions.'' The people in northern Cyprus should not be barred from ''the closer ties of neighborhood'' described by European Commission President Prodi. Nor should they be excluded from the opportunity, now extended to their fellow-citizens in the south, to join the world's most powerful economic association.

A lasting settlement would allow the Turkish Cypriot people to emerge from their isolation and become fully a part of Europe. It would bring opportunities for economic growth, for expanded trade, for travel and for broader educational and cross-cultural exchanges. And it would end the second-class citizenship of the Turkish Cypriot people in which their standard of living is at best one-third that of the people in the south.

If Mr. Denktash does indeed have the interests of the people of northern Cyprus at heart, he should step aside and allow the Turkish Cypriot people to choose their own future. There is too much at stake to allow another opportunity to expire.

THE TROUBLED MEDIA ENVIRONMENT IN UKRAINE

Mr. CAMPBELL. Mr. President, later this week individuals around the world will mark World Press Freedom Day. The functioning of free and independent media is tied closely to the exercise of many other fundamental freedoms as well as to the future of any democratic society. The Commission on Security and Cooperation in Europe, which I co-chair, is responsible for monitoring press freedom in the 55 participating States of the Organization for Security and Cooperation in Europe, OSCE. Recently, I reported to the Senate on the deplorable conditions for independent media in the Republic of Belarus. Today, I will address the situation of journalists and media outlets in Ukraine.

Several discouraging reports have come out recently concerning the medic environment in Ukraine. These reports merit attention, especially within the context of critical presidential elections scheduled to take place in Ukraine next year. The State Department's Country Reports on Human Rights Practices in Ukraine for 2002 summarizes media freedoms as follows: ''Authorities interfered with the news media by intimidating journalists, issuing written and oral instructions about events to cover and not to cover, and pressuring them into applying self-censorship. Nevertheless a wide range of opinion was available in newspapers, periodicals, and Internet news sources.''

Current negative trends and restrictive practices with respect to media freedom in Ukraine are sources of concern, especially given that country's leadership claims concerning integration into the Euro-Atlantic community. Lack of compliance with international human rights standards, including OSCE commitments, on freedom of expression undermines that process. Moreover, an independent media free from governmental pressure is an essential factor in ensuring a level playing field in the upcoming 2004 presidential elections in Ukraine.

In her April 18, 2003 annual report to the Ukrainian parliament, Ombudsman Nina Karpachova asserted that journalism remains among the most dangerous professions in Ukraine, with 36 media employees having been killed over the past ten years, while beatings, intimidation of media employees, freezing of bank accounts of media outlets, and confiscation of entire print runs of newspapers and other publications have become commonplace in Ukraine.

The murder of prominent journalist Heorhiy Gongadze—who disappeared in September 2000—remains unsolved. Ukrainian President Kuchma and a number of high-ranking officials have been implicated in his disappearance and the circumstances leading to his murder. The Ukrainian authorities' handling, or more accurately mishandling of this case, has been characterized by obfuscation and stonewalling. Not surprisingly, lack of transparency illustrated by the Gongadze case has fueled the debilitating problem of widespread corruption reaching the highest levels of the Government of Ukraine.

Audio recordings exist that contain conversations between Kuchma and other senior government officials discussing the desirability of Gongadze's elimination. Some of these have been passed to the U.S. Department of Justice as part of a larger set of recordings of Kuchma's conversations implicating him and his cronies in numerous scandals. Together with Commission Co-Chairman Rep. CHRIS SMITH, I recently wrote to the Department of Justice requesting technical assistance to determine whether the recordings in which the Gongadze matter is discussed are genuine. A credible and transparent investigation of this case by Ukrainian authorities is long overdue and the prepetrators—no matter who they may be—need to be brought to justice.

The case of Ihor Alexandrov, a director of a regional television station, who was beaten in July 2001 and subsequently died also remains unsolved. Serious questions remain about the way in which that case was handled by the authorities.

A Human Rights Watch report, Negotiating the News: Informal State Censorship of Ukrainian Television, issued in March, details the use of explicit directives or temnyky, lists of topics, which have been sent to editors from Kuchma's Presidential Administration on what subjects to cover and in what manner. The report correctly notes that these temnyky have eroded freedom of expression in Ukraine, as ''editors and journalists feel obligated to comply with temnyky instructions due to economic and political pressures and fear repercussions for non-cooperation.'' To their credit, the independent media are struggling to counter attempts by the central authorities to control their reporting and coverage of issues and events.

Another troubling feature of the media environment has been the control exerted by various oligarchs with close links to the government who own major media outlets. There is growing evidence that backers of the current Prime Minister and other political figures have been buying out previously independent news sources, including websites, and either firing reporters or telling them to cease criticism of the government of find new jobs.

Last December, Ukraine's parliament held hearings on ''Society, Mass Media, Authority: Freedom of Speech and Censorship in Ukraine.'' Journalists' testimony confirmed the existence of censorship, including temnyky, as well as various instruments of harassment and intimidation. Tax inspections, various legal actions or license withdrawals have all been used as mechanisms by the authorities to pressure media outlets that have not towed the line or have supported opposition parties.

As a result of these hearings, the parliament, on April 3rd, voted 252 to one to approve a law defining and banning state censorship in the Ukrainian media. This is a welcome step. However, given the power of the presidential administration, the law's implementation remains an open question at best, particularly in the lead up to the 2004 elections in Ukraine.

I urge our Ukrainian parliamentary colleagues to continue to actively press their government to comply with Ukraine's commitments to fundamental freedoms freely agreed to as a signatory to the Helsinki Final Act. I also urge the Ukrainian authorities, including the constitutional ''guarantor'', to end their campaign to stifle independent reporting and viewpoints in the media. Good news from Ukraine will come not from the spin doctors of the presidential administration, but when independent media and journalists can pursue their responsibilities free of harassment, intimidation, and fear.

CHILD ABUSE PREVENTION MONTH

Mr. LAUTENBERG. Mr. President, today I rise to talk about Child Abuse Prevention Month. Child Abuse Prevention Month was established 20 years ago by Presidential proclamation and since then, this month has been devoted to raising awareness about this tragic problem.

This year holds particular sadness for those of us from New Jersey. This past January, 7-year-old Faheem Williams was found dead in a Newark, NJ, basement where he and his two brothers had been imprisoned for weeks. He had been starved and beaten. With Faheem were his twin, Raheem, and 4-year-old brother Tyrone, both of whom were found to be malnourished and dehydrated. All of this occurred under the supervision of the State agency that placed these three boys in foster care.

His death marks a tragic failure on the part of our State and country, as do the deaths of thousands of children each year. Mr. President, I was at Faheem's funeral. That day I said that it didn't matter whether his death was due to neglect or direct abuse. We cannot permit another child to go through this ever again.

Across the country last year, 879,000 children were victims of child abuse and neglect, of whom approximately 1,200 died from maltreatment. According to the national organization, Prevent Child Abuse America, three children die every day from abuse or neglect at the hands of those who are supposed to care for them. I don't need

to say that one is too many. Most disturbingly, confirmed reports of child abuse and neglect rose 3 percent in the last year nationwide. This is the second straight year child abuse has increased.

There is no doubt that child abuse and neglect continues to be a significant problem in the United States. Our children are our future, but their health and safety in our society continues to decline. Every one of us has a responsibility to work for the welfare of the Nation's children.

The Department of Health and Human Services runs a National Clearinghouse on Child Abuse and Neglect Information, providing research and resources for prevention to individuals and communities. Many nonprofit organizations, State agencies, individual social workers, counselors, teachers, and clergy work tirelessly to determine when children are in danger. We need to support the individuals and groups who advocate for abused children, and the foster families who care for them.

Faheem Williams paid a terrible price for his little life and we must honor his memory and the memories of other victims of abuse by educating the country about the risks and signs of abuse and providing the resources available to stop it.

HONORING JOHN HARDT

Mr. BENNETT. Mr. President, I take this opportunity today to pay tribute to a very distinguished servant of the legislative branch of the Congress. In May 2003, Dr. John Hardt will end his official service with the Congressional Research service after 32 years as a valuable resource to Congress in the field of international economics and foreign affairs. In many ways, Dr. Hardt's retirement symbolizes the ending of an era for the Congress; he is the only remaining CRS Senior Specialist now providing Congress with research and analysis in the field of foreign affairs. He has been a great asset to the Congress and to CRS throughout his long career in public service.

Dr. Hardt received both his Ph.D. in economics and a Certificate from the Russian institute from Columbia University. Prior to joining the Congressional Research Service, he had already had the kind of illustrious career that serves as a lifetime achievement for many others. He served his country with distinction during World War II, receiving ribbons and battle stars for both the European and Asiatic Theaters of Operations as well as the Philippine Liberation Ribbon. He has been an educator—specializing in economics, Soviet studies, and Sino-Soviet studies—at the University of Washington, the University of Maryland, Johns Hopkins University, the George Washington University, the Foreign Service Institute, and American military service schools. He has served in the American private sector, specializing in Soviet electric power and nuclear energy economics for the CEIR Corporation in Washington, DC, and as a director of the Strategic Studies Department at the Research Analysis Corporation in McLean, VA, where he specialized in Soviet Comparative Communist and Japanese Studies. He is a widely published author, with hundreds of research papers, journal articles, technical memoranda, and books and book chapters to his credit.

Dr. Hardt joined the Congressional Research Service as the Senior Specialist in Soviet Economics in November of 1971. It is his work for CRS—and for us, the Members of this body—that I want to honor today. For the past three decades, Dr. Hardt has served Members of Congress, their staffs, and committees with his considerable expertise in Soviet and post-Soviet and Eastern Europe economics, the economy of the People's Republic of China, East-West commercial relations, and comparative international economic analysis. He has advised, among others, both the Senate and House Commerce Committees on East-West trade; the senate and House Banking Committees on the Export-Import Bank and other U.S. government financing programs; and the Senate Finance and House Ways and Means Committees on U.S. trade policy. He frequently has traveled with congressional committee delegations, serving as a technical adviser on visits to the former Soviet Union, Poland, Hungary, the former Yugoslavia, the United Kingdom, the Federal Republic of Germany, Italy, and Sweden, and then preparing committee reports for these trips. On many occasions, Dr. Hardt has been called on to advise directly Members of Congress and congressional staff on Russian Federation debt reduction and its relationship to nonproliferation concerns, and has provided support to the Russian Leadership Program, especially those events and activities that involved Members of Congress. The extent of his national and international contacts is breathtaking and includes senior members of foreign governments and leading multinational businesses.

His most lasting legacy for Congress may well be his service as both editor and coordinator of a long series of Joint Economic Committee compendia on the economies of the PRC, Soviet Union, and Eastern Europe. The Congress can take pride in these important, well-known, and highly respected JEC studies, to which Dr. Hardt devoted so much of his talent and energies. The more than 70 volumes of this work include: China Under the Four Modernizations, 1982; China's Economy Looks Toward the Year 2000, 1986; The Former Soviet Union in Transition, 1993; East-Central European Economies in Transition, 1994; and Russia's Uncertain Economic Future, 2001. The series includes hundreds of analytical papers on various aspects of issues pertinent to Congress and to U.S. policy, all written by internationally recognized government, academic, and Private sector experts, and all coordinated and edited by Dr. Hardt. This work was not only a valuable source of analysis to the Congress but also to the policymaking and academic communities at large. For many years, these volumes were the most comprehensive sources of economic data and analyses on the economies of the Soviet Union, China, and Easter Europe.

Let me make one final point to illustrate the loss that we, as Members of Congress, will sustain with Dr. Hardt's retirement. That point concerns one of the great strengths that CRS offers to Congress, and which Dr. Hardt's tenure and contributions at CRS epitomize perfectly: institutional memory. Of the 525 Members of the 108th Congress, only 11 were Members of the 92nd Congress when Dr. Hardt first assumed his official congressional duties. Most of the countries that he has specialized in have undergone astounding transformation during his working life—some, indeed, no longer exist. The members of this deliberative body in which we serve has turned over many times. Committees have come and gone. But through it all, John Hardt has been a constant fixture, a strand of continuity in an environment of continual change—part of the collective institutional memory of CRS which is of such value to our work in Congress. We wish Dr. Hardt well in the new ventures on which he will be embarking. He will be greatly missed by us all.

ADDITIONAL STATEMENTS

CAPTAIN PENN HOLSAPPLE

● Mr. BURNS. Mr. President, I rise today in recognition of Captain Penn Holsapple's 90th birthday. Captain Holsapple served in the United States Marine Corps during the Second World War and was one of the first Marines to land on the Pacific island of Iwo Jima. Every American knows of the enormous sacrifices thousands of young Marines made on that island to defend our Nation, and Captain Holsapple himself was wounded in action twice. However, always living up to the Marine Corps motto ''first to enter, last to leave,'' Captain Holsapple remained on Iwo Jima with his fellow Marines to the very end. I ask all of my colleagues to join me in wishing Captain Penn Holsapple a happy 90th birthday and to thank him for the service and sacrifice he gave to his country. Happy Birthday good friend.●

TRIBUTE TO THE CHEMICAL WEAPONS WORKING GROUP

● Mr. BUNNING. Mr. President, I rise today to pay tribute to the Chemical Weapons Working Group, CWWG, for receiving the Kentucky Environmental Quality Commission's 2003 Earth Day Award. Each year a dozen organizations in Kentucky receive this award for their outstanding commitment to the environment.

CWWG, under the direction of Craig Williams, has played a vital role in the demilitarization of chemical weapons at the Blue Grass Army Depot in Kentucky. I have worked with the CWWG on this important issue and I know how strongly many Kentuckians feel about disposing of these weapons in the safest and quickest manner possible.

Although it took some time, the public and political pressure from CWWG was instrumental in the Department of Defense's decision to use water neutralization, not incineration, to destroy the chemical weapons at Blue Grass Army Depot. CWWG's research efforts to demonstrate effective alternatives to incineration were beneficial to all parties involved in this important decision.

I ask my colleagues in the Senate to pay tribute to the Chemical Weapons Working Group for their role in protecting the environment and the thousands of Kentuckians that live near the Blue Grass Army Depot.●

TRIBUTE TO DR. JAMES F. JOHNSON

● Mr. SARBANES. Mr. President, I rise today to pay tribute to Dr. James F. Johnson, an outstanding public servant, who is retiring from the U.S. Army Corps of Engineers after an exemplary career spanning more than three decades. I want to extend my personal congratulations and thanks for his many years of service and contributions to improving both the water resources of our Nation and the quality of Federal Government services.

Throughout his 32-year career with the Federal Government, Dr. Johnson has distinguished himself for his leadership, commitment, and dedication to public service, to making government work better, and to addressing some of our Nation's most critical water resource problems. Beginning in Corps of Engineers Headquarters as a program manager, he quickly advanced through the ranks to positions in senior management, including service as Chief of the Eastern Planning Management Branch, Special Assistant to the Chief of Planning, and Acting Assistant Director of Civil Works for the Upper Mississippi and Great Lakes region.

I first came to know Jim when he was selected as Chief of the Planning and Policy Division at the Baltimore District in 1985. During his 13-year tenure in Baltimore, I had the opportunity to work closely with him and his planning team on a number of water resource initiatives in the State of Maryland and the broader Chesapeake Bay Region, including the restoration of the north end of Assateague Island, the Coastal Bays of Maryland, and the Anacostia River. I know first hand the extraordinary leadership, vision and expertise Jim brought not only to projects in this region, but equally important, to building and encouraging one of the finest, most responsive and innovative planning teams in the Nation.

Among his accomplishments, perhaps the one that stands out most and underscores Jim's professionalism and creativity is the role he played in the planning, design and policy development process of one of the Corps' greatest success stories—the restoration of Poplar Island. This project, which is taking clean dredged materials from the channels leading to the Port of Baltimore and using it to restore a chain of environmentally sensitive islands in the Chesapeake Bay, has become a national model for habitat restoration and the beneficial use of dredged material. But developing and winning approval of the project was no easy task. The size and scale of the project were unprecedented. Federal policies at the time greatly limited the funding and contained other disincentives to making this a viable option. Jim and his planning staff put in countless hours helping to resolve these problems and develop innovative solutions that ultimately led to the construction of the project, relief for Maryland's dredged material disposal problem and development of the largest environmentally restoration initiative ever undertaken in the Chesapeake Bay.

Jim Johnson's contributions and accomplishments over the years have been recognized through many prestigious awards including the Army Decoration for Meritorious Civilian Service and the Secretary of Army Award for Publications Improvement, but perhaps no more so than by his selection in 1998 to return to Headquarters as Chief of the Planning and Policy Division of the Directorate of Civil Works. In this prestigious position, he has been responsible for managing some $200 million annually in water resource investments for navigation, ecosystem restoration, and flood and storm protection. He also developed and implemented a new program to expand planner training and leadership skills.

Dr. Johnson has served the Nation with distinction. His efforts, work ethic, and abiding sense of responsibility and commitment have earned him the admiration of everyone with whom he has worked. I have enormous respect for the professionalism, ingenuity, and integrity which he brought to the positions in which he has served and greatly value the assistance he has provided to me and my staff over the years.

It is my firm conviction that public service is one of the most honorable callings, one that demands the very best, most dedicated efforts of those who have the opportunity to serve their fellow citizens and country. Throughout his career Jim Johnson has exemplified a steadfast commitment to meeting this demand. I want to extend my personal congratulations and thanks for his many years of hard work and dedication and wish him well in the years ahead.●

RETIREMENT OF JOHN B. BROWN III, ACTING ADMINISTRATOR OF THE DEA

● Mr. BIDEN. Mr. President, James Bryant Conant once said that ''each honest calling, each walk of life, has its own elite, its own aristocracy, based on excellence of performance.'' I rise today to pay tribute to a man who is a member of the law enforcement elite, John B. Brown III, the Acting Director of the Drug Enforcement Administration.

John Brown has spent more than three decades as a special agent in the Drug Enforcement Administration. Last year he capped his law enforcement career when he was appointed deputy administrator of the agency. And when former Administrator Asa Hutchinson was appointed as under secretary at the Department of Homeland Security, John Brown was tapped to be Acting Director of the DEA.

John Brown is a dedicated, hard-working government leader. He is known at the DEA and in the larger law enforcement community as a thoughtful, personable administrator and a man of great humility.

His career at the DEA has been a distinguished one. As a young agent he worked in Mexico where he was deeply involved in the investigation into the murder of Kiki Camarena, the brave DEA agent who was tortured and killed by Mexican drug traffickers. During that time as in the rest of his career—whether it was in Miami, the Dallas field division, the El Paso intelligence center or at DEA Headquarters—John Brown rose to the challenge and excelled at each assignment.

But it was John Brown's first job as a teacher that really shaped him as an agent. John is known by the people who worked for him at DEA as a great teacher, someone who took the time to coach them, to motivate them, to counsel them. For that reason, he is one of the most popular administrators at DEA, and one of the most respected.

As a school teacher, John quickly found that many of the problems he saw among students in his classroom involved learning the skills and attitudes and character to cope with life. Drug use was becoming widespread in the early 1970s and prompted John to decide to join DEA as a special agent.

In truth, he never left the classroom. He has said many times that one of his proudest moments at DEA came when a former student—someone who as a young student had listened to one of his talks about the perils of drug use came up to him in an airport years later. He introduced himself, said that he had a great job and a wonderful family—both of which he said would have been impossible had he joined his many friends who used drugs in high school. He credited John Brown's talk on drugs with keeping away from a life of substance abuse.

I would be remiss if I did not mention John's wife, Christine Brown, who has been a source of tremendous support

and strength to John and their family. I know that she and their two children P.J. and Michael are incredibly proud of John and the superior and important work that he has done over the course of his career.

John Brown is a leader of integrity and total dedication. He has served his country well and I wish him all the best.●

SOUTH DAKOTA SCHOOL OF MINES AND TECHNOLOGY TAKE FIRST PLACE IN ROCKY MOUNTAIN REGIONAL CONCRETE CANOE COMPETITION

● Mr. JOHNSON. Mr. President, I rise today to recognize and congratulate the South Dakota School of Mines and Technology on earning first place for their remarkable display of ingenuity and design at the 2002 Rocky Mountain Regional Concrete Canoe Competition in Logan, UT.

Under the supervision of their advisor, Dr. Marion Hansen, the team earned their 14th first place regional win within the last 16 years. This win qualifies the team for the National Concrete Canoe Competition hosted by Drexel University in June. South Dakota School of Mines and Technology's American Society of Civil Engineering program has a strong record of finding ingenious solutions to complex problems, and has placed in the top five in the National Concrete Canoe Competition five times as well as winning the over all national competition in 1995.

Based on appearance, weight, presentation, and sprint and endurance races for men, women, and co-ed squads, the South Dakota School of Mines and Technology team defeated teams from Wyoming, Utah, and Colorado for their first place win. To effectively implement their strategy, students worked as a whole and within centralized teams, such as hull design, mix design, construction, and paddling, to bring the project together as an award-winning canoe. This win reflects the work ethic and dedication that is so visible in the state of South Dakota.

I want to acknowledge Dr. Richard J. Gowen, president of the South Dakota School of Mines and Technology, as well as Dr. Marion R. Hansen, for their guidance and support to help make this year's team so successful. I also want to congratulate all of this year's team members: Steve Lipetzky, Andy Coats, Ryan Hamilton, Dave Lowe, Eric Gassland, Jen Pohl, Mandy Kost, Katie Zeller, Tarar Boehmer, Wade Lein, and Marshall Cassady.

Again, congratulations to the South Dakota School of Mines and Technology on winning their 14th regional concrete canoe competition.●

JIM WILDING

● Mr. WARNER. Mr. President, I rise today to honor a friend and an outstanding citizen of the Commonwealth of Virginia, James A. Wilding, on the occasion of his retirement from the Metropolitan Washington Airports Authority. In the 25 years I have had the opportunity to serve in this body many Senators have come and gone. The faces of industry and its leaders have changed as well. In changing times Jim Wilding has been constant—always a trusted advisor to me and others for the more than 40 years he has served the Nation's capital airports.

In his role at the Authority, Jim is responsible for the management of two of our most important airports in the country—Washington Dulles International Airport and Ronald Reagan Washington National Airport. He has managed them through rapid growth, the transition away from Federal operation, and now into the new post 9/11 security paradigm. His vision is the result of strong knowledge, experience, and dedication to his craft.

Mr. Wilding began his career with the Federal Aviation Administration soon after graduating from the Catholic University of America in 1959 with a graduate degree in civil engineering. At the FAA, he participated in the original planning and development of Washington Dulles International Airport. I remember when that airport was being built—many scoffed at the idea. They questioned the need for a facility of that magnitude and objected to the seemingly rural location. Today we applaud the foresight that went into Dulles. Our transportation system relies on the balance between Dulles and Reagan. Jim Wilding has been an integral part of this visionary leadership.

Following the opening of Dulles in 1962, Mr. Wilding held progressively responsible positions in all phases of engineering for the two federally owned airports, eventually becoming the organization's chief engineer. He served as chief engineer until becoming the airports' deputy director in 1975, and then its director 4 years later.

Mr. Wilding served as the director of the FAA's Metropolitan Washington Airports organization from December 1979. In June 1987, the airports were transferred to the newly created Airports Authority, where he assumed his current position as president.

During his tenure as president and CEO of the Airports Authority, the Metropolitan Washington Airports Authority passenger activity at National and Dulles Airports nearly doubled to 31 million passengers in 2002. With this growth, he has overseen and managed a massive capital development program at both airports totaling well over $3 billion dollars. Under his leadership, Reagan National Airport was modernized with a new terminal building in 1997 which brought major improvements to airport traffic management and Metro system connections. At Dulles, he directed the expansion and construction of new concourses, the building of the airport's first parking garages, and is now managing a $3.2 billion capital improvement project. In addition, the Smithsonian will open its new Air and Space Museum later this year located at Dulles Airport.

Mr. Wilding's career is highlighted with many accolades, which, along with his outstanding performance, have earned him a national and international reputation as an aviation industry expert.

I wish to extend my sincerest congratulations to Mr. James A. Wilding on the occasion of his retirement. I am honored to recognize his many accomplishments to our region, applaud his service to our entire Nation's aviation transportation system, and to call him a friend.●

HONORING HENRY S. SCHLEIFF, CHAIRMAN AND CEO OF COURT TV NETWORK

● Mr. LAUTENBERG. Mr. President, on April 1, 2003, Henry Schleiff, chairman and CEO of Court TV, was awarded the Cable Television Public Affairs Association, CTPAA, President's Award. CTPAA is a national organization that focuses on public affairs issues within the cable industry. I can think of no better person to be honored with this award considering the efforts Mr. Schleiff has put forth to serve his industry and the public community.

His career has featured an impressive array of both private and public service. Since his career began with HBO, Mr. Schleiff has moved up the ranks of the entertainment industry—from senior vice president of business affairs and administration for HBO and head of HBO Enterprises in the 1980s, to executive producer for Viacom International Inc. and CEO of Viacom's Broadcast and Entertainment Groups in the early 1990s, to executive vice-president for Studios USA in the late 1990s. Mr. Schleiff has been the CEO of Court TV since December 1999 and has been the catalyst for its revival. Under his leadership, Court TV has become one of the most successful basic cable networks in the industry, growing from 30 million subscribers to nearly 80 million in just 4 years.

Equally impressive are Mr. Schleiff's efforts for the public community. He is vice chairman of the board of directors for the International Radio & Television Society Foundation, Inc. IRTS, and he serves on the board of directors of the International Council, The Creative Coalition, and Theatreworks. Court TV's Choices and Consequences education program, already in more than 100,000 schools, encourages children to make responsible decisions and positive contributions to society. The ''Everyday Heroes'' program honors brave and courageous individuals who made personal sacrifices or significant contributions.

Mr. President, I ask unanimous consent that a copy of Mr. Schleiff's award acceptance speech be printed in the RECORD.

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

It is really a great honor to appear this evening with a group of colleagues and friends, who I so admire and respect, because they clearly share our network's vision . . . and, our sense of duty to make a difference in the communities we serve. I accept this year's President's Award with great pride, as a validation of the important work done by our network, Court TV—work that is very much unfinished and ongoing—and, I accept this award with great appreciation on behalf of the extraordinarily dedicated and talented team led by Dick Beahrs and Scoot MacPherson in this area, at Court TV.

It is, equally, a real privilege to appear with a gathering of probably the most passionate, dedicated and caring people anywhere in the media. I am proud to be a part of an industry like cable that is recognized for its unequaled support for diverse programs and initiatives providing valuable public service outreach. Moreover, the suggestions and new ideas you have shared over the past three days will, no doubt, contribute significantly to our ability to maintain cable's position as both the moral and financial leader, in the field of telecommunications.

All of us in this room, tonight, know that we don't have to do public service. We don't have to go into neighborhoods and encourage better education, promote health care, or teach tolerance and understanding. Why do we—why do you—participate and pursue these causes: quite simply, because you choose to. I have some idea of the sacrifice and effort those here, tonight, make every day, and it is not unreflective of Winston Churchill's observation that ''we make a living by what we get, but we make a life . . . by what we give.'' Those who received this award, in senior management, like myself, do so merely on behalf of those, in the field, like you, who make the real contributions. It is we, who should give this award to you, because it is we who should appreciate and, indeed, should be inspired by what you do.

We must all recognize that public service is important from a number of perspectives: its impact is felt in both karma and dollars. Indeed, the legacy of the vast array of programs represented here, tonight, will live on long after most, if not all, of the shows and series that can be seen on any given network. I particularly value what people do in this area because, quite frankly, I am a product of the Kennedy 60's—I bought the ideal of contribution and, in fact, it has served me well; it has served Court TV well, and hopefully it serves you, because through your efforts, public service puts this industry in the best possible light, especially in these dark and troubled times.

In a world where we correctly criticize much of what we see on television . . . and in a business where we are struggling with customer service and competition, the one real, indisputable Beacon (no pun intended) of success in every corner . . . and, by any measure, is the diverse and important work that people in Public Affairs do every day. Cable, like any service industry, often gets a black eye. But, because of your words and, more importantly, your deeds, you are the people who ameliorate those complaints and put this industry in the enviable position of being community activists for positive social change.

Not only is what you do substantively important, but it is also well communicated to our audiences—both viewers of our programming and, more generally, subscribers who live in our communities of service. Oddly enough, the only ones who sometimes have trouble hearing your message and understanding its importance, are, frankly, those often responsible for the purse strings. The irony is that we must all do a better job in communicating the legitimate success and importance of our work not externally, outside our company, but rather, to those in the executive suites. . . . Not only because all of us here, tonight, are on the side of right (and, as we say at Court TV, justice), but also because, in the end, this is also very much in the best economic interests of our companies. We can do well . . . by doing good; we can do ''well'', financially . . . by doing ''good'', morally. In that regard, public affairs efforts are among the most distinctive and beneficial qualities of cable systems and their programming. Why: because you live where the rubber meets the road. You live where the cable operator or cable network meets the customer or viewer, as the case my be . . . you are part and parcel of the communities in which you serve . . . and, given your work, this industry simply could not ask for better representatives.

We take great pride in our commitment to public service at Court TV, and, especially, the recognition it is receiving tonight, because we have always understood the power of the medium of television—and, the potential for good that a network like ours can play. For example, I recently learned that five-year olds, typically, have watched more than 5,000 hours of TV before they even enter kindergarten—in most families, today, that's more time than they have spent in conversation with their parents—and, in all cases, that is, statistically, more hours . . . than it takes to earn a college degree. With our experience in creating quality educational initiatives—and, with the support and partnership of our cable affiliates, we are increasingly focused on harnessing the power of television—both, on and off air—for its use as an effective and engaging public service tool.

In that regard, allow me to point out some of the recent specific intiatives that Court TV's Public Affairs and Corporate Communications people have introduced or otherwise pursued and which provide me with the privilege of standing here, tonight, on their behalf.

Principally, you know us for our Golden Beacon Award-winning Choices and Consequences education programs, which, in its five year existence, has reached more than 100,000 schools with programs designed to keep our nation's youth . . . out of our nation's courts, by teaching young people that a poor choice made in a moment . . . can have devastating consequences . . . for a lifetime. Through Choices and Consequences, we aim to empower our children to make responsible decisions and to contribute, positively, to society. We have added educational programs like the Forensics in the Classroom Curriculum, and the Mobile Investigation Unit tour, which has made stops in 20 cities last year and plans 23 this spring and summer. Tomorrow afternoon, we celebrate the latest group of ''Everyday Heroes,'' honoring those who demonstrate bravery and courage, often through individual acts of personal sacrifice. As you may be aware, an element of education and pro-social causes runs, like a thread, through much of our programming. Certainly, many of our investigative documentaries and specials raise critical issues regarding tolerance, or the fairness of our criminal justice system. This year, for example, we will again focus on Robert F. Kennedy's legacy and the Human Rights Award. And, finally, our original movies attempt to raise important and relevant questions which lead to informed debate about a variety of judicial and social issues.

The poet Ralph Waldo Emerson said, ''to appreciate beauty, to find the best in others, to leave the world a little better, whether by a healthy child, a garden patch or a redeemed social condition; to know even one life has breathed easier because you have lived. This is the meaning of success.'' It is in that light, that we at Court TV share with you in your passion, your vision and our mutual goal of bringing about positive change through education and understanding.

I accept this year's CTPAA President's Award, as a validation of the public affairs work done by Court TV; I accept the President's Award, on behalf of all of you, whose tireless dedication has so contributed to tonight's . . . success; and, finally, I accept this award as a reflection of your values and ideals which are so important to the future of this industry and . . . this nation.●

PROFESSOR JOE WILKINS' RETIREMENT

● Mr. DURBIN. Mr. President, I rise today to recognize Professor Joe Wilkins' contributions to the State of Illinois and our country.

Professor Wilkins will retire from the University of Illinois in May 2003. He will officially become a ''University of Illinois Professor Emeritus of Management'' which is an accomplishment in and of itself, but is only one facet of his career.

Professor Wilkins has been a very effective teacher. He received an ''Outstanding Teacher'' award selected by a vote of the University student body. His graduate course in International Business was chosen by students in the College of Business and Management as their most valuable class. Additionally, during 2002 Professor Wilkins received the highest evaluation of all the faculty by students in the college.

Prior to his teaching career, Professor Wilkins served with distinction as a captain in the United States Air Force. While serving he was repeatedly decorated for heroism in combat. His many decorations include the Silver Star and two Purple Hearts, which were awarded for his twice being wounded in combat. Despite being injured in combat, he continues to run at least one 26.2-mile marathon a year and enjoys scuba diving and sky-diving.

In addition to his teaching and service to many organizations, Professor Wilkins has responded for over 30 years to the needs of his home community—Springfield, IL. Some of the many services he has provided to Springfield include being a regular blood donor and

providing flights to needy persons requiring medical assistance. He has donated more than 15 gallons of blood including 59 pints at the Central Illinois Community Blood Bank in Springfield.

Professor Wilkins has held positions with both the State of Illinois and the city of Springfield. As an operations research analyst for the State of Illinois he helped analyze managerial operations. Additionally, he has served in many capacities and consulted on multiple issues for the city of Springfield. Most notably, in 1982 he took an academic leave from the university to serve for 13 months as Comptroller of Springfield. On numerous occasions since then he has provided management advice to the city of Springfield.

Professor Wilkins has been a teacher and role model to thousands of undergraduate and graduate students. I am sure the University of Illinois will miss him greatly. Professor Wilkins has had a lifetime of community service in which he established a reputation of personal integrity and demonstrated courage. He is a distinguished citizen and deserves to be recognized for all of his contributions to society.●

IN HONOR OF E.E. WARD MOVING AND STORAGE COMPANY LLC OF COLUMBUS, OHIO

● Mr. VOINOVICH. Mr. President, I rise today to congratulate and pay tribute to the E.E. Ward Moving and Storage Company LLC of Columbus, OH, for 122 years of service to the great State of Ohio. Recently, the U.S. Department of Commerce and the Congressional Black Caucus recognized the E.E. Ward Company as the oldest African-American-owned business in America.

The Ward family has longstanding roots in Ohio dating back before the Civil War. From 1842 to 1858, John T. Ward was a conductor on the Underground Railroad which ran through Columbus, and the Ward home was a well-known stop. During the Civil War, John T. Ward received government contracts to haul munitions, supplies, and equipment for the U.S. Army.

After the Civil War, John's son, William Ward, began working for his father, and then he went to work for the Union Transfer and Storage Company. At Union Transfer, he moved up through the ranks serving as teamster, work supervisor, foreman, and rate clerk. In 1881, William Ward rejoined his father John T. Ward and together they founded the Ward Transfer Line, a wagon transportation business in downtown Columbus.

Since 1881 the company has evolved and changed with the times. In 1889, the company changed its name to E.E. Ward Transfer and Storage Company, when the youngest son, Edgar Earl Ward, assumed management of the company. He was 18 years old. Twenty-five years later, in 1914, the company began its shift to motorized moving and retired its last horse in 1921.

Over the years, E.E. Ward has performed moves for schools, museums, libraries, business, and homes. In the 1950s, the E.E. Ward Company was awarded two notable contracts in Columbus—from the Steinway Piano Company and the Franklin County Board of Elections. During the course of those contracts, it is estimated that the company moved over 900,000 pianos and hundreds of voting machines to various precincts in Columbus.

The Company's Chairman Emeritus is Eldon W. Ward, the grandson of William Ward. He joined the company in 1945 and retired 51 years later in 1996. Mr. Eldon Ward has been recognized as an accomplished business leader and is admired by many. He was inducted into the Ohio Corporate Hall of Fame in 1991 and the Central Ohio Business Hall of Fame in 1992. Under his leadership, the E.E. Ward Company received the National Torch Award of Marketplace Ethics from the Better Business Bureau.

As a community leader, Eldon Ward served on the boards of over 40 community organizations, including the local chapter of the American Red Cross, the Salvation Army, and the Chamber of Commerce. He served as board president of the Columbus Foundation, the Franklin County United Way, and the Central Ohio YMCA, which was renamed the Eldon W. Ward YMCA in 1991.

Today, E.E. Ward Moving & Storage Company is an agent of Bekins Van Lines and provides local and interstate household goods relocation services and a variety of logistics services to residential, government and corporate customers. The company focuses primarily on residential and business moves and storage.

The longevity of the E.E. Ward Company is the result of its commitment to excellent service. The current owners, Brian A. Brooks, president and godson of Eldon Ward, and Otto Beatty III, co-owner, recently purchased the company. Both are in their early thirties. They have chosen to carry on the entrepreneurial torch of their parents and grandparents and are wonderful examples to other young business owners. In fact, the company was recently awarded the 2002 Super Service Award from Angie's List, a consumer and household rating company.

Brian Brooks and Otto Beatty are privy to a wealth of experience and wisdom from family members and community members. Like their forebears, they focus on providing excellent service to their customers and giving generously to their community. Their dedication and commitment is a shining example of good corporate citizenship, something we need more of throughout America.

I am pleased that this year the King Arts Complex in Columbus will be the recipient of a beautiful painting by famed Columbus Artist Aminah Lynn Robinson that illustrates the history of the company and the Ward family's role in the Underground Railroad. We shall all pay tribute to people like the John T. Ward family who helped America's enslaved citizens gain freedom. That is why in my first year in the United States Senate, I co-sponsored the bill to provide Federal funding to the Underground Railroad Freedom Center in Cincinnati, the only national center of its kind in the country. I hope the painting about the Ward Family will inspire people of all ages to learn more about the significant role of the Underground Railroad in our history.

Recently, on the occasion of Ohio's bicentennial, I reminded a joint session of the Ohio General Assembly in Chillicothe that our forefathers delivered for us and now the future of our great State is in our hands. Throughout Ohio's history, the Ward family has made major contributions to the quality of life by creating jobs and opportunities for countless Americans and we should all be grateful for their hard work and dedication.

I believe Brian Brooks's and Otto Beatty's ancestors would be very proud of their work today. With the two of them at the helm of the E.E. Ward Moving and Storage Company, I think its future will be bright for many years to come.

I wish the E.E. Ward Moving and Storage Company the best of luck in all of its endeavors and I look forward to congratulating them on many successes in the future.●

JOHN C. CARY

● Mr. BOND. Mr. President, I rise today to pay tribute to the achievements of a distinguished member of the Missouri education community, Mr. John C. Cary.

Mr. Cary is retiring this year after 17 years of distinguished service to the children and families of the Mehlville school district. As superintendent of schools for the Mehlville district he has guided the district to academic success, ensuring quality education for all Mehlville children. He has helped nurture Missouri's youth with a steadfast dedication and care. His devotion to education has earned him awards and recognition from around the State, including the Distinction in Performance Award for 2002–2003 school year.

Mr. Cary's lifetime commitment to education and children is admirable and inspiring. Today I join with the 12,000 students in the Mehlville school district in celebrating his 31 years as a distinguished educator. I thank him for his hard work and dedication to the children and families of Missouri.●

HOLOCAUST MEMORIAL DAY

● Ms. CANTWELL. Mr. President, I rise today in honor of Holocaust Memorial Day, known in Hebrew as ''Yom Ha Shoa.''

Seventy years ago, Adolf Hitler was appointed Chancellor of Germany. In

1933, the German Government adopted numerous discriminatory policies against Jews. Jews were prohibited from working as newspaper editors or owning land, and many Jewish immigrants had their citizenship revoked. These actions fueled anti-Semitic sentiments among the general public. Seventy years ago this month, German citizens marched through the streets of Leipzig with signs that read: ''Don't buy from Jews—Shop in German businesses!''

It was a dark time for Germany, but many throughout the world thought that the situation would improve. The 1936 Olympic Games were held in Berlin, even against the backdrop of the rise of Hitler, the Gestapo, state-sponsored Aryan qualifications and the construction of the first concentration camps at Dachau and Buchenwald. In 1939, Jews were relocated into Jewish ghettos, placed under curfews and banned from most professions. The world still ignored the problem; in May of that year, a ship packed with 930 Jewish refugees was turned away by several countries and forced to return to Europe. One of those countries was the United States.

By late 1939, Polish Jews were forcibly placed in labor camps and required to wear yellow stars for identification at all times. Mass killings—called pogroms—took tens of thousands of lives, and Jews from conquered states were deported to German concentration camps. Following the German invasion, France signed an armistice with Hitler on June 22, 1940. Exactly 1 year later, Germany invaded the Soviet Union.

All the while, the world ignored the extermination of the Jewish people, and the United States wrapped itself in the flawed doctrine of isolationism. It took far too long for our Nation to grasp its responsibility and stake in World War II. When the war ended, Germany had murdered over 6 million Jews in the Holocaust. Pastor Martin Niemöller described his reluctance to stand up and help people in Germany, and I believe his critique can apply to individuals and countries:

First they came for the Jews, and I did not speak out because I was not a Jew. Then they came for the Communists, and I did not speak out because I was not a Communist. Then they came for the trade unionists and I did not speak out because I was not a trade unionist. Then they came for me and there was no one left to speak out for me.

Today we remember those who suffered. We remember those who were murdered. We remember those who spoke out. We will never forget them. This history informs the difficult choices that we face today.●

MESSAGE FROM THE HOUSE

At 11:47 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate.

H.R. 6. An act to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1937. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Dried Prunes Produced in California; revising the Regulations Concerning Compensation Rates for Handlers' Services Performed Regarding Reserve Prunes Covered Under the California Dried Prune Marketing Order (Doc. No. FV02–993–2 FR)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1938. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Dried Prunes Produced in California; Revising Pertaining to a Voluntary Prune Plum Diversion Program (Doc. No. FV02–993–3)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1939. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches (Doc. No. FV03–916–2)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1940. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Sweet Cherries Grown in Designated Counties in Washington; Establishment of Procedures to Allow the Grading or Packing of Sweet Cherries Outside the Production Area (Doc. No. FV02–923–1)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry .

EC–1941. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Raisins Produced form Grapes Grown in California; Final Free and Reserve Percentages for 2002–03 Crop Natural (sun-dried) Seedless and Zante Currant Raisins (Doc. No. FV03–989–4)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1942. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Onions Grown in South Texas; Increased Rate (Doc. No . FV03–959–1)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1943. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tomatoes Grown in Florida; Decreased Assessment Rate; Correction (Doc. FV03–966–03)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1944. A communication from the Regulatory Contact, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Exceptions to Geographic Areas for Official Agencies Under the USGSA (0580–AA76)'' received on April 16, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1945. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Recognition of Animal Disease Status of Regions in the European Union (Doc. No. 98–090–5)'' received on April 11, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1946. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Exotic Newcastle Disease; Additions to Quarantined Area (Doc. No. 02–117–5)'' received on April 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1947. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Pesticides; Minimal Risk Tolerance Exemptions (FRL 7302–6)'' received on April 16, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1948. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Control of Communicate Diseases (0920–AA03)'' received on April 11, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1949. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Civil Money Penalties: Procedures for Investigations, Imposition of Penalties and Hearings (0938–AM63)'' received on April 16, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1950. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Amendment for the Mental Health Parity Act of ERISA (29 CFR 2590) (1210–AA62)'' received on April 11, 2003 ; to the Committee on Health, Education, Labor, and Pensions.

EC–1951. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Final Rule for Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers (29 CFR 2520) (1210-AA54)'' received on April 11, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–1952. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Plans Established or Maintained Under Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA (1210–AA48)'' received on April 11, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1953. A communication from the Director, Regulations Policy and Management, Department of Health and Human Services,

transmitting, pursuant to law, the report of a rule entitled ''Medical Devices; Hematology and Pathology Devices; Reclassification of Automated Blood Cell Separator Devices Operating by Filtration Principle from Class III to Class II (Doc. No. 96P–0484)'' received on April 11, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1954. A communication from the Director, Division of Acquisition Management Services, Office of the Assistant Secretary for Administration and Management, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''29 CFR Part 99 Audits of States, Local Governments, and Non-Profit Organizations (1291–AA278)'' received on April 11, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1955. A communication from the Acting Executive Director & General Counsel, Appraisal Subcommittee, Federal Financial Institutions Examinations Council, transmitting, pursuant to law, the Appraisal Subcommittee's Fiscal Year 2002 audited financial statements, received on April 23, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1956. A communication from the Under Secretary for Industry and Security, Department of Commerce, transmitting, pursuant to law, the report to Congress relating to the Imposition of Foreign Policy Controls on Specially Designated Global Terrorists, received on April 11, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1957. A communication from the Under Secretary for Industry and Security, Department of Commerce, transmitting, pursuant to law, the report to Congress related to the Expansion of Foreign Policy-Based Controls on Explosives Detection Equipment, received on April 11, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1958. A communication from the Assistant Secretary, Export Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Exports and Reexports of Explosives Detection Equipment and Related Software and Technology; Clarification and Explanation of Foreign Policy Controls; to the Committee on Banking, Housing, and Urban Affairs.

EC–1959. A communication from the Assistant Secretary, Export Administration, Bureau of Industry and Security Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the Export Administration Regulations Related to the Missile Technology Control Regime (MTCR) (0694–AC22)'' received on April 11, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1960. A communication from the Deputy Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Standards Relating to Listed Company Audit Committees (3235–AI75)'' received on April 11, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1961. A communication from the Assistant General Counsel, Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Inflation Adjustment of Civil Money Penalty Amounts (2501–AC91)'' received on April 11, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1962. A communication from the Assistant General Counsel, Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Mortgage Insurance Premiums in Multifamily Housing Programs (2502–AH64)'' received on April 11, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1963. A communication from the Director, National Cemetery Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Eligibility for Burial of Adult Children; Eligibility for Burial of Minor Children; Eligibility for Burial of Certain Filipino Veterans (2900–AI95)'' received on April 22, 2003; to the Committee on Veterans' Affairs.

EC–1964. A communication from the Director, Regulations Management, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Reasonable Charges for Medical Care or Services; 2003 Update (2900–AL57)'' received on April 24, 2003; to the Committee on Veterans' Affairs.

EC–1965. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the report entitled ''Devolvement of Research, Development, Test, and Evaluation Programs and Activities Beginning in FV 2004'' received on April 11, 2003; to the Committee on Armed Services.

EC–1966. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the report entitled ''Department of Defense Fiscal Year 2002 Purchases From Foreign Entities'' received on April 11, 2003; to the Committee on Armed Services.

EC–1967. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the report of the Annual Selected Acquisition Reports (SARs) for the quarter ending December 31, 2002; to the Committee on Armed Services.

EC–1968. A communication from the Secretary of Defense, transmitting, pursuant to law, the report of a retirement; to the Committee on Armed Services.

EC–1969. A communication from the Assistant Secretary of Defense, Reserve Affairs, Department of Defense, transmitting, pursuant to law, the STARBASE program Annual Report for Fiscal Year 2002; to the Committee on Armed Services.

EC–1970. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report of a retirement; to the Committee on Armed Services.

EC–1971. A communication from the Deputy Secretary of Defense, Department of Defense, transmitting, pursuant to law, the report relative to the transportation of a chemical warfare agent; to the Committee on Armed Services.

EC–1972. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report of a retirement; to the Committee on Armed Services.

EC–1973. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report of a retirement; to the Committee on Armed Services.

EC–1974. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report relative to the Armed Forces' aviation programs, received on April 11, 2003; to the Committee on Armed Services.

EC–1975. A communication from the General Counsel of the Department of Defense, transmitting, pursuant to law, the report of a proposed Bill entitled ''The Defense Transformation for the 21st Century Act'' received on April 11, 2003; to the Committee on Armed Services.

EC–1976. A communication from the Director, Admissions Liaison, USAF Academy Group, Department of the Air Force, transmitting, pursuant to law, the report relative to sexual assault cases at the U.S. Air Force Academy; to the Committee on Armed Services.

EC–1977. A communication from the Acting Secretary of the Navy, Department of the Navy, transmitting, pursuant to law, the report relative to the addition of 150,000 workstations under the Navy Marine Corps Intranet (NMCI); to the Committee on Armed Services.

EC–1978. A communication from the Vice Admiral, Deputy Chief of Naval Operations, Manpower and Personnel, Department of the Navy, transmitting, pursuant to law, the report relative to the implementation of performance by the Most Efficient Organization (MEO); to the Committee on Armed Services.

EC–1979. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Foreign Acquisition (DFARS Case 2002–D009)'' received on April 11, 2003; to the Committee on Armed Services.

EC–1980. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Extension of Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Education (DFARS Case 2002–D038)''; to the Committee on Armed Services.

EC–1981. A communication from the Secretary of Energy, transmitting, pursuant to law, the report entitled ''Fiscal Year 2002 report on Laboratory Directed Research and Development (LDRD); Plant Directed Research, Development and Demonstration (PDRD); and Site Directed Research, Development and Demonstration (SDRD) Programs'' received on April 28, 2003; to the Committee on Energy and Natural Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany S. 113, a bill to exclude United States persons from the definition of ''foreign power'' under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism (Rept. No. 108–40).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

*Lawrence Mohr, Jr., of South Carolina, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences.

*Sharon Falkenheimer, of Texas, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences.

Marine Corps nomination of Maj. Gen. Henry P. Osman.

Air Force nominations beginning Brigadier General John B. Handy and ending Colonel Darryll D. M. Wong, which nominations were received by the Senate and appeared in the Congressional Record on April 7, 2003.

Marine Corps nomination of Col. Douglas M. Stone.

Navy nomination of Capt. Thomas K. Burkhard.

Army nomination of Maj. Gen. James J. Lovelace, Jr.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning Paul L. Cannon and ending Frank A. Yerkes, Jr., which nominations were received by the Senate and appeared in the Congressional Record on February 25, 2003.

Air Force nomination of Lawrence Mercandante.

Air Force nominations beginning Stanley J. Buelt and ending Christopher W. Castleberry, which nominations were received by the Senate and appeared in the Congressional Record on March 24, 2003.

Air Force nominations beginning Eugene L. Capone and ending Allen L. Womack, which nominations were received by the Senate and appeared in the Congressional Record on March 24, 2003.

Air Force nominations beginning Gary D. Bomberger and ending Warren R. Robnett, which nominations were received by the Senate and appeared in the Congressional Record on March 26, 2003.

Air Force nominations beginning Michael F. Adames and ending Scott A. Zuerlein, which nominations were received by the Senate and appeared in the Congressional Record on March 26, 2003.

Army nominations beginning Curtis J. Alitz and ending Mary J. Wyman, which nominations were received by the Senate and appeared in the Congressional Record on January 15, 2003.

Army nominations beginning Richard P. Bein and ending Kelly E. Taylor, which nominations were received by the Senate and appeared in the Congressional Record on January 15, 2003.

Army nominations beginning Deborah K. Betts and ending David Williams, which nominations were received by the Senate and appeared in the Congressional Record and appeared in the Congressional Record on January 15, 2003.

Army nominations of James R. Kerin, Jr.

Army nominations beginning Henry E. Abercrombie and ending Michelle F. Yarborough, which nominations were received by the Senate and appeared in the Congressional Record on March 26, 2003.

Army nominations beginning Michael P. Armstrong and ending Craig M. Whitehill, which nominations were received by the Senate and appeared in the Congressional Record on March 26, 2003.

Army nominations beginning John F. Agoglia and ending Jeffrey R. Witsken, which nominations were received by the Senate and appeared in the Congressional Record on March 26, 2003.

Army nominations beginning Paul F. Abel, Jr. and ending X4432, which nominations were received by the Senate and appeared in the Congressional Record on March 26, 2003.

Army nomination of William T. Boyd.

Army nominations beginning Richard D. Daniels and ending George G. Perry III, which nominations were received by the Senate and appeared in the Congressional Record on April 7, 2003.

Army nominations beginning Gary L. Hammett and ending David L. Smith, which nominations were received by the Senate and appeared in the Congressional Record on April 7, 2003.

Army nominations beginning Edward A. Hevener and ending Zeb S. Regan, Jr., which nominations were received by the Senate and appeared in the Congressional Record on April 10, 2003.

Marine Corps nomination of Kenneth O. Spittler.

Marine Corps nominations beginning Thomas Duhs and ending William M. Lake, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2003.

Marine Corps nominations beginning Patrick W. Burns and ending Daniel S. Ryman, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2003.

Marine Corps nominations beginning Donald J. Anderson and ending Donald W. Zautcke, which nominations were received by the Senate and appeared in the Congressional Record on March 11, 2003.

Marine Corps nominations beginning Sean T. Mulcahy and ending Steven H. Mattos, which nominations were received by the Senate and appeared in the Congressional Record on March 24, 2003.

Marine Corps nominations of Franklin McLain.

Marine Corps nominations beginning Bryan Delgado and ending Paul A. Zacharzuk, which nominations were received by the Senate and appeared in the Congressional Record on March 24, 2003.

Marine Corps nomination of Michael H. Gamble.

Marine Corps nomination of Jeffrey L. Miller.

Marine Corps nominations of Barett R. Byrd.

Marine Corps nominations beginning Jeffrey Acosta and ending John G. Wemett, which nominations were received by the Senate and appeared in the Congressional Record on April 7, 2003.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. STEVENS (for himself, Mr. CAMPBELL, Mr. DOMENICI, Mr. HATCH, Mr. INOUYE, and Ms. MURKOWSKI):

S. 931. A bill to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on visitors to units of the National Park System and on other recreational users of public land; to the Committee on Energy and Natural Resources.

By Mr. BREAUX (for himself, Mr. ENSIGN, Mr. CRAPO, and Mr. BUNNING):

S. 932. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for taxpayers owning certain commercial power takeoff vehicles; to the Committee on Finance.

By Mr. BREAUX:

S. 933. A bill to amend the Internal Revenue Code of 1986 to modify the active business definition under section 355; to the Committee on Finance.

By Mr. BREAUX (for himself and Mr. NICKLES):

S. 934. A bill to amend the Internal Revenue Code of 1986 to modify the small refiner exception to the oil depletion deduction; to the Committee on Finance.

By Mr. BREAUX:

S. 935. A bill to amend the Internal Revenue Code of 1986 to allow certain coins to be acquired by individual retirement accounts and other individually directed pension plan accounts; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, and Mr. MCCAIN):

S. 936. A bill to amend the Internal Revenue Code of 1986 to deny any deduction for certain fines, penalties, and other amounts; to the Committee on Finance.

By Mr. VOINOVICH (for himself, Mr. DEWINE, and Mr. LEVIN):

S. 937. A bill to reauthorize the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. MURRAY:

S. 938. A bill to amend title 38, United States Code, to provide for the payment of dependency and indemnity compensation to the survivors of former prisoners of war who died on or before September 30, 1999, under the same eligibility conditions as apply to payment of dependency an indemnity compensation to the survivors of former prisoners of war who die after that date; to the Committee on Veterans' Affairs.

By Mr. HAGEL (for himself, Mr. HARKIN, Mr. WARNER, Mr. CHAFEE, Ms. COLLINS, Ms. SNOWE, Mr. COLEMAN, Mr. KENNEDY, Mr. JEFFORDS, Mr. DODD, Ms. MIKULSKI, Mrs. CLINTON, Mrs. MURRAY, Mr. BINGAMAN, and Mr. REED):

S. 939. A bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part, to provide an exception to the local maintenance of effort requirements, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GRAHAM of South Carolina:

S. 940. A bill to amend the Immigration and Nationality Act relating to naturalization through service in the Armed Forces of the United States; to the Committee on the Judiciary.

By Mr. EDWARDS:

S. 941. A bill to establish the Blue Ridge National Heritage Area in the State of North Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BROWNBACK (for himself and Mr. NELSON of Nebraska):

S. 942. A bill to amend title XVIII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals; to the Committee on Finance.

By Mr. ENZI:

S. 943. A bill to authorize the Secretary of the Interior to enter into 1 or more contracts with the city of Cheyenne, Wyoming, for the storage of water in the Kendrick Project, Wyoming; to the Committee on Energy and Natural Resources.

By Mr. JEFFORDS (for himself, Mr. DURBIN, Mr. REID, and Mr. KERRY):

S. 944. A bill to enhance national security, environmental quality, and economic stability by increasing the production of clean, domestically produced renewable energy as a fuel source for the national electric system; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN:

S. 945. A bill to amend title 37, United States Code, to improve the process for adjusting the rates of pay for members of the uniformed services; to the Committee on Armed Services.

By Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. DURBIN, Mr. FEINGOLD, Mr. KOHL, and Mr. SCHUMER):

S. 946. A bill to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs; to the Committee on the Judiciary.

By Mr. ALLARD:

S. 947. A bill to better assist lower income families in obtaining decent, safe, and affordable housing through the conversion of the section 8 housing choice voucher program into a State-administered block grant; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SCHUMER:

S. 948. A bill to require prescription drug manufacturers, packers, and distributors to disclose certain gifts provided in connection with detailing, promotional, or other marketing activities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN):

S. 949. A bill to establish a commission to assess the military facility structure of the United States overseas, and for other purposes; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CORZINE (for himself, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mr. KERRY, Mrs. MURRAY, and Mr. KENNEDY):

S. Res. 122. A resolution expressing the sense of the Senate that the President should designate May 1, 2003 as ''National Child Care Worthy Wage Day''; to the Committee on the Judiciary.

By Mr. GREGG (for himself, Mr. LIEBERMAN, Mr. FRIST, Mr. ALEXANDER, Mr. CARPER, and Mr. BAYH):

S. Res. 123. A resolution designating April 28, 2003, through May 2, 2003, as ''National Charter Schools Week'', and for other purposes; to the Committee on the Judiciary.

By Mr. BURNS (for himself, Mr. BAUCUS, Mrs. CLINTON, Mr. COCHRAN, Mr. CRAPO, Mr. HATCH, Mr. MILLER, Mr. LEVIN, Mr. KOHL, and Mr. STEVENS):

S. Res. 124. A resolution designating September 28, 2003, as ''National Good Neighbor Day''; to the Committee on the Judiciary.

By Mr. GREGG (for himself, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. CARPER, and Mr. BAYH):

S. Res. 125. A resolution designating April 28, 2003, through May 2, 2003, as ''National Charter Schools Week'', and for other purposes; considered and agreed to.

By Mr. BREAUX (for himself and Ms. LANDRIEU):

S. Con. Res. 39. A concurrent resolution supporting the goals and ideals of St. Tammany Day on May 1, 2003, as a national day of recognition for Tamanend and the values he represented; considered and agreed to.

ADDITIONAL COSPONSORS

S. 132

At the request of Mr. FEINGOLD, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 132, a bill to place a moratorium on executions by the Federal Government and urge the States to do the same, while a National Commission on the Death Penalty reviews the fairness of the imposition of the death penalty.

S. 145

At the request of Mr. KYL, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 145, a bill to prohibit assistance to North Korea or the Korean Peninsula Development Organization, and for other purposes.

S. 171

At the request of Mr. DAYTON, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 171, a bill to amend title XVIII of the Social Security Act to provide payment to medicare ambulance suppliers of the full costs of providing such services, and for other purposes.

S. 243

At the request of Mr. ALLEN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 243, a bill concerning participation of Taiwan in the World Health Organization.

S. 300

At the request of Mr. KERRY, the names of the Senator from Louisiana (Ms. LANDRIEU), the Senator from Wisconsin (Mr. KOHL), the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. COLEMAN), the Senator from Washington (Mrs. MURRAY), the Senator from Kentucky (Mr. BUNNING), the Senator from Rhode Island (Mr. REED), the Senator from Hawaii (Mr. INOUYE), the Senator from Florida (Mr. NELSON), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. LEVIN), the Senator from Indiana (Mr. LUGAR), the Senator from North Dakota (Mr. DORGAN), the Senator from Montana (Mr. BURNS), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Arkansas (Mr. PRYOR), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from South Carolina (Mr. GRAHAM), the Senator from North Dakota (Mr. CONRAD), the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 318

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 318, a bill to provide emergency assistance to nonfarm-related small business concerns that have suffered substantial economic harm from drought.

S. 338

At the request of Mr. LAUTENBERG, the names of the Senator from North Dakota (Mr. CONRAD), the Senator from New York (Mrs. CLINTON) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 338, a bill to protect the flying public's safety and security by requiring that the air traffic control system remain a Government function.

S. 346

At the request of Mr. LEVIN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 346, a bill to amend the Office of Federal Procurement Policy Act to establish a governmentwide policy requiring competition in certain executive agency procurements.

S. 374

At the request of Mr. GRASSLEY, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 374, a bill to amend the Internal Revenue Code of 1986 to repeal the occupational taxes relating to distilled spirits, wine, and beer.

S. 392

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 392

At the request of Mr. REID, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 392, supra.

S. 451

At the request of Ms. SNOWE, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 465

At the request of Mrs. MURRAY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 465, a bill to amend title XVIII of the Social Security Act to expand medicare coverage of certain self-injected biologicals.

S. 473

At the request of Mr. FEINGOLD, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 473, a bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

S. 478

At the request of Mr. SARBANES, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 478, a bill to grant a Federal charter Korean War Veterans Association, Incorporated, and for other purposes.

S. 514

At the request of Mr. BUNNING, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 514, a bill to amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits.

S. 516

At the request of Mrs. BOXER, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 516, a bill to amend title 49, United States Code, to allow the arming of pilots of cargo aircraft, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the names of the Senator from Nevada (Mr. REID), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Michigan (Ms. STABENOW), the Senator from Michigan (Mr. LEVIN) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 582

At the request of Mr. BUNNING, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 582, a bill to authorize the Department of Energy to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help meet the growing need of the United States for the generation of reliable and affordable electricity.

S. 596

At the request of Mr. ENSIGN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 596, a bill to amend the Internal Revenue Code of 1986 to encourage the investment of foreign earnings within the United States for productive business investments and job creation.

S. 610

At the request of Mr. VOINOVICH, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 610, a bill to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

S. 617

At the request of Mr. LIEBERMAN, the names of the Senator from Michigan (Ms. STABENOW), the Senator from Vermont (Mr. JEFFORDS) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 617, a bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes.

S. 623

At the request of Mr. WARNER, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 623, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 654

At the request of Ms. SNOWE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 654, a bill to amend title XVIII of the Social Security Act to enhance the access of medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, and for other purposes.

S. 664

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 664, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 678

At the request of Mr. AKAKA, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 678, a bill to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

S. 727

At the request of Mr. BYRD, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 727, a bill to reauthorize a Department of Energy program to develop and implement accelerated research, development, and demonstration projects for advanced clean coal technologies for use in coal-based electricity generating facilities, to amend the Internal Revenue Code of 1986 to provide incentives for the use of those technologies, and for other purposes.

S. 740

At the request of Mr. LIEBERMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 740, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the medicare program.

S. 759

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 759, a bill to amend the Internal Revenue Code of 1986 to provide a tax credit for individuals and businesses for the installation of certain wind energy property.

S. 774

At the request of Ms. SNOWE, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 774, a bill to amend the Internal Revenue Code of 1986 to allow the use of completed contract method of accounting in the case of certain long-term naval vessel construction contracts.

S. 780

At the request of Mr. LOTT, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 780, a bill to award a congressional gold medal to Chief Phillip Martin of the Mississippi Band of Choctaw Indians.

S. 789

At the request of Mr. NELSON of Florida, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 789, a bill to change the requirements for naturalization through service in the Armed Forces of the United States.

S. 816

At the request of Mr. CONRAD, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 816, a bill to amend title XVIII of the Social Security Act to protect and preserve access of medicare beneficiaries to health care provided by hospitals in rural areas, and for other purposes.

S. 818

At the request of Ms. SNOWE, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 818, a bill to ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration.

S. 822

At the request of Mr. KERRY, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of S. 822, a bill to create a 3-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans.

S. 825

At the request of Mr. HARKIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 825, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of

1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986.

S. 837

At the request of Mr. BROWNBACK, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 837, a bill to establish a commission to conduct a comprehensive review of Federal agencies and programs and to recommend the elimination or realignment of duplicative, wasteful, or outdated functions, and for other purposes.

S. 845

At the request of Mr. GRAHAM of Florida, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 845, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S. 853

At the request of Ms. SNOWE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 853, a bill to amend title XVIII of the Social Security Act to eliminate discriminatory copayment rates for outpatient psychiatric services under the medicare program.

S. 874

At the request of Mr. TALENT, the names of the Senator from Louisiana (Mr. BREAUX) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 874, a bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes.

S. 876

At the request of Mr. WYDEN, the names of the Senator from West Virginia (Mr. BYRD) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 876, a bill to require public disclosure of noncompetitive contracting for the reconstruction of the infrastructure of Iraq, and for other purposes.

S. 883

At the request of Mr. BREAUX, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 883, a bill to amend title XIX of the Social Security Act to revise and simplify the transitional medical assistance (TMA) program.

S. 918

At the request of Mr. FEINGOLD, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 918, a bill to require the Secretary of Defense to implement fully by September 30, 2004, requirements for additional Weapons of Mass Destruction Civil Support Teams.

S.J. RES. 1

At the request of Mr. KYL, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

S. CON. RES. 7

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. Con. Res. 7, a concurrent resolution expressing the sense of Congress that the sharp escalation of anti-Semitic violence within many participating States of the Organization for Security and Cooperation in Europe (OSCE) is of profound concern and efforts should be undertaken to prevent future occurrences.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STEVENS (for himself, Mr. CAMPBELL, Mr. DOMENICI, Mr. HATCH, Mr. INOUYE, and Ms. MURKOWSKI):

S. 931. A bill to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on visitors to units of the National Park System and on other recreational users of public land; to the Committee on Energy and Natural Resources.

Mr. STEVENS. Mr. President, today I introduce, with Senators CAMPBELL, DOMENICI, HATCH, INOUYE, and MURKOWSKI, the Federal Land Recreational Visitor Protection Act of 2003.

Across our State of Alaska, Western States, and areas of the Northeast, local governments and businesses struggle each year to remove potential avalanches or recover form the disastrous effects of avalanches. The West Wide Avalanche Network calculated avalanche damage totals for the Western U.S. between $600 thousand and $800 thousand annually. These costs do not include the economic losses from town cut-off by avalanches. In our state alone, the Safety Center estimates upwards of $18 million in direct damages both to private property and economic losses over the past 5 years.

While such damage can bring hardships to many local communities, none can compare with the loss of a friend or family member. The U.S. averages 30 deaths a year from avalanches, a majority of which are results of recreational activities in unmitigated avalanche areas. Some States set aside money for rescues prior to the winter season, knowing that the resources required to clear all avalanche threats are not at hand.

This bill brings those resources to the entities that need them the most, enabling us to significantly reduce the effects of avalanches on visitors, recreational users, transportation corridors, and our local communities.

By Mr. BREAUX (for himself, Mr. ENSIGN, Mr. CRAPO, and Mr. BUNNING):

S. 932. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for taxpayers owning certain commercial power takeoff vehicles; to the Committee on Finance.

Mr. BREAUX. Mr. President, today I rise to introduce the Fuel Tax Equalization Credit for Substantial Power Takeoff Vehicles Act. This bill upholds a long-held principle in the application of the Federal fuels excise tax, and restores this principle for certain single engine ''dual-use'' vehicles.

This long-held principle is simple: fuel consumed for the purpose of moving vehicles over the road is taxed, while fuel consumed for ''off-road'' purposes is not taxed. The tax is designed to compensate for the wear and tear impacts on roads. Fuel used for a non-propulsion ''off-road'' purpose has no impact on the roads. It should not be taxed as if it does. This bill is based on this principle, and it remedies a problem created by IRS regulations that control the application of the federal fuels excise tax to ''dual-use'' vehicles.

Duel-use vehicles are vehicles that use fuel both to propel the vehicle on the road, and also to operate separate, on-board equipment. The two prominent examples of duel-use vehicles are concrete mixers, which use fuel to rotate the mixing drum, and sanitation trucks, which use fuel to operate the compactor. Both of these trucks move over the road, but at the same time, a substantial portion of their fuel use is attributable to the non-propulsion function.

The current problem developed because progress in technology has outstripped the regulatory process. In the past, duel-use vehicles commonly had two engines, IRS regulations, written in the 1950's, specifically exempt the portion of fuel used by the separate engine that operates special equipment such as a mixing drum or a trash compactor. These IRS regulations reflect the principle that fuel consumed for non-propulsion purposes is not taxed.

Today, however, typical duel-use vehicles use only one engine. The single engine both propels the vehicle over the road and powers the non-propulsion function through ''power takeoff.'' a major reason for the growth of these single-engine, power takeoff vehicles is that they use less fuel. And a major benefit for everyone is that they are better for the environment.

Power takeoff was not in widespread use when the IRS regulations were drafted, and the regulations deny an exemption for fuel used in single-engine, duel-use vehicles. The IRS defends its distinction between one-engine and two-engine, vehicles based on possible administrative problems if vehicle owners were permitted to allocate fuel between the propulsion and non-propulsion functions.

Our bill is designed to address the administrative concerns expressed by the

IRS, but at the same time, restore tax fairness for fuel-use vehicles with one engine. The bill does this by establishing an annual tax credit available for taxpayers that own a licensed and insured concrete mixer or sanitation truck with a compactor. The amount of the credit is $250 and is a conservative estimate of the excise taxes actually paid, based on information compiled on typical sanitation trucks and concrete mixers.

In sum, as a fixed income tax credit, no audit or administrative issue will arise about the amount of fuel used for the off-road purpose. At the same time, the credit provides a rough justice method to make sure these taxpayers are not required to pay tax on fuels that they shouldn't be paying. Also, as an income tax credit, the proposal would have no effect on the highway trust fund.

I would like to stress that I believe the IRS' interpretation of the law is not consistent with long-held principles under the tax law, despite their administrative concerns. Quite simply, the law should not condone a situation where taxpayers are required to pay the excise tax on fuel attributable to non-propulsion functions. This bill corrects an unfair tax that should have never been imposed in the first place, I urge my colleagues to cosponsor this important piece of legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fuel Tax Equalization Credit for Substantial Power Takeoff Vehicles Act''.

SEC. 2. CREDIT FOR TAXPAYERS OWNING COMMERCIAL POWER TAKEOFF VEHICLES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following new section:

''SEC. 45G. COMMERCIAL POWER TAKEOFF VEHICLES CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the amount of the commercial power takeoff vehicles credit determined under this section for the taxable year is $250 for each qualified commercial power takeoff vehicle owned by the taxpayer as of the close of the calendar year with or within which the taxable year ends.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED COMMERCIAL POWER TAKEOFF VEHICLE.—The term 'qualified commercial power takeoff vehicle' means any highway vehicle described in paragraph (2) which—

''(A) is propelled by any fuel subject to tax under section 4041 or 4081, and

''(B) is used in a trade or business or for the production of income (and is licensed and insured for such use).

''(2) HIGHWAY VEHICLE DESCRIBED.—A highway vehicle is described in this paragraph if such vehicle is—

''(A) designed to engage in the daily collection of refuse or recyclables from homes or businesses and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a load compactor, or

''(B) designed to deliver ready mixed concrete on a daily basis and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site.

''(c) EXCEPTION FOR VEHICLES USED BY GOVERNMENTS, ETC.—No credit shall be allowed under this section for any vehicle owned by any person at the close of a calendar year if such vehicle is used at any time during such year by—

''(1) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

''(2) an organization exempt from tax under section 501(a).

''(d) DENIAL OF DOUBLE BENEFIT.—The amount of any deduction under this subtitle for any tax imposed by subchapter B of chapter 31 or part III of subchapter A of chapter 32 for any taxable year shall be reduced (but not below zero) by the amount of the credit determined under this subsection for such taxable year.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the commercial power takeoff vehicles credit under section 45G(a).''.

(c) NO CARRYBACK BEFORE JANUARY 1, 2003.—Subsection (d) of section 39 of the Internal Revenue Code of 1986 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF SECTION 45G CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G may be carried back to a taxable year beginning before January 1, 2003.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45G. Commercial power takeoff vehicles credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2002.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, and Mr. MCCAIN):

S. 936. A bill to amend the Internal Revenue Code of 1986 to deny any deduction for certain fines, penalties, and other amounts; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today, we are introducing the ''Government Settlement Transparency Act of 2003.'' Over the past several months, we have become increasingly concerned about the approval of various settlements that allow penalty payments made to the government in settlement of a violation or potential violation of the law to be tax deductible. This payment structure shifts the tax burden from the wrongdoer onto the backs of the American people. This is unacceptable.

The issue of tax deductibility is particularly relevant in the settlement of various SEC investigations into violations or potential violations of the securities laws. The corporate meltdown of the past two years has caused investors to lose confidence in the stock market. To address investors' loss of faith, Congress passed the Sarbanes-Oxley Act last July. However, Sarbanes-Oxley begins to address only part of the corporate reform problem, as it applies solely to future corporate activity. To more fully restore confidence in the markets, America's State and Federal regulators are also working to hold accountable the corporate executives and others in corporate America responsible for damaging investor confidence. With these efforts to achieve greater accountability in the business community and ensure the integrity of our financial markets, it is important that the rules governing the appropriate tax treatment of settlements be clear and adhered to by taxpayers.

Section 162(f) of the Internal Revenue Code provides that no deduction is allowed as a trade or business expense under section 162(a) for the payment of a fine or penalty to a government for violation of any law. The enactment of section 162(f) in 1969 codified existing case law that denied the deductibility of fines and penalties as ordinary and necessary business expenses on the grounds that ''allowance of the deduction would frustrate sharply defined national or state policies proscribing the particular types of conduct evidenced by some governmental declaration thereof.'' Treasury regulations provide that fine or penalty includes an amount paid in settlement of the taxpayer's actual or potential liability for a fine or penalty.

The legislation introduced today modifies the rules regarding the determination of whether payments are nondeductible payments of fines of penalties under section 162(f). In particular, the bill generally provides that amounts paid or incurred, whether by suit, agreement, or otherwise to, or at the direction of, a government in relation to the violation of any law or the investigation or inquiry into the potential violation of any law are nondeductible. The bill applies to deny a deduction for any payment, including those where there is no admission of guilt or liability and those made for the purpose of avoiding further investigation or litigation.

An exception applies to payments that the taxpayer establishes are restitution. It is intended that a payment will be treated as restitution only if the payment is required to be paid to the specific persons, or in relation to the specific property, actually harmed by the conduct of the taxpayer that resulted in the payment. Thus, a payment to or with respect to a class broader than the specific persons or property that were actually harmed, for example, to class including similarly situated persons or property, does

not qualify as restitution. Restitution is limited to the amount that bears a substantial quantitative relationship to the harm caused by the past conduct or actions of the taxpayer that resulted in the payment in question. If the party harmed is a government, then restitution includes payment to such harmed government, provided the payment bears a substantial quantitative relationship to the harm. However, restitution does not include reimbursement of government investigative or litigation costs, or do payments to whistleblowers.

The bill would be effective for amounts paid or incurred on or after April 28th, 2003, except that it would not apply to amounts paid or incurred under any binding order or agreement entered into before such date.

We ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 936

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Government Settlement Transparency Act of 2003''.

SEC. 2. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government in relation to the violation of any law or the investigation or inquiry into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution for damage or harm caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government for the costs of any investigation or litigation.

''(3) TREATMENT OF CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—For purposes of paragraph (1), amounts paid or incurred to, or at the direction of, the following nongovernmental entities shall be treated as amounts paid or incurred to, or at the direction of, a government:

''(A) Any nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)).

''(B) To the extent provided in regulations, any nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

By Mr. HAGEL (for himself, Mr. HARKIN, Mr. WARNER, Mr. CHAFFEE, Ms. COLLINS, Ms. SNOWE, Mr. COLEMAN, Mr. KENNEDY, Mr. JEFFORDS, Mr. DODD, Ms. MIKULSKI, Mrs. CLINTON, Mrs. MURRAY, Mr. BINGAMAN, and Mr. REED.):

S. 939. A bill to amend part B of the individuals with Disabilities Education Act to provide full Federal funding of such part, to provide an exception to the local maintenance of effort requirements, and for other purposes; to the Commitee on Health, Education, Labor, and Pensions.

Mr. HAGEL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 939

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''IDEA Full-Funding Act of 2003''.

SEC. 2. AMENDMENTS TO IDEA.

(a) FUNDING.—Section 611(j) of the Individuals with Disabilities Education Act (20 U.S.C. 1411(j)) is amended to read as follows:

''(j) FUNDING.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated—

''(1) $10,874,000,000 for fiscal year 2004, and, there are hereby appropriated $2,000,000,000 for fiscal year 2004, which shall become available for obligation on July 1, 2004 and shall remain available through September 30, 2005;

''(2) $12,874,000,000 for fiscal year 2005, and, there are hereby appropriated $4,000,000,000 for fiscal year 2005, which shall become available for obligation on July 1, 2005 and shall remain available through September 30, 2006;

''(3) $14,874,000,000 for fiscal year 2006, and, there are hereby appropriated $6,000,000,000 for fiscal year 2006, which shall become available for obligation on July 1, 2006 and shall remain available through September 30, 2007;

''(4) $16,874,000,000 for fiscal year 2007, and, there are hereby appropriated $8,000,000,000 for fiscal year 2007, which shall become available for obligation on July 1, 2007 and shall remain available through September 30, 2008;

''(5) $18,874,000,000 for fiscal year 2008, and, there are hereby appropriated $10,000,000,000 for fiscal year 2008, which shall become available for obligation on July 1, 2008 and shall remain available through September 30, 2009;

''(6) $20,874,000,000 for fiscal year 2009, and, there are hereby appropriated $12,000,000,000 for fiscal year 2009, which shall become available for obligation on July 1, 2009 and shall remain available through September 30, 2010;

''(7) $22,874,000,000 for fiscal year 2010, and, there are hereby appropriated $14,000,000,000 for fiscal year 2010, which shall become available for obligation on July 1, 2010 and shall remain available through September 30, 2011;

''(8) $24,635,000,000 or the sum of the maximum amounts that all States may receive under subsection (a)(2), whichever is lower, for fiscal year 2011, and, there are hereby appropriated $15,761,000,000 for fiscal year 2011, which shall become available for obligation on July 1, 2011 and shall remain available through September 30, 2012, except that if the sum of the maximum amounts that all States may receive under subsection (a)(2) is less than $24,635,000,000, then the amount appropriated in this paragraph shall be reduced by the difference between $24,635,000,000 and the sum of the maximum amounts that all States may receive under subsection (a)(2);

''(9) $25,329,000,000 or the sum of the maximum amounts that all States may receive under subsection (a)(2), whichever is lower, for fiscal year 2012, and, there are hereby appropriated $16,455,000,000 for fiscal year 2012, which shall become available for obligation on July 1, 2012 and shall remain available through September 30, 2013, except that if the sum of the maximum amounts that all States may receive under subsection (a)(2) is less than $25,329,000,000, then the amount appropriated in this paragraph shall be reduced by the difference between $25,329,000,000 and the sum of the maximum amounts that all States may receive under subsection (a)(2);

''(10) $26,005,000,000 or the sum of the maximum amounts that all States may receive under subsection (a)(2), whichever is lower, for fiscal year 2013, and, there are hereby appropriated $17,131,000,000 for fiscal year 2013, which shall become available for obligation on July 1, 2013 and shall remain available through September 30, 2014, except that if the sum of the maximum amounts that all States may receive under subsection (a)(2) is less than $26,005,000,000, then the amount appropriated in this paragraph shall be reduced by the difference between $26,005,000,000 and the sum of the maximum amounts that all States may receive under subsection (a)(2); and

''(11) such sums as may be necessary for fiscal year 2014 and each succeeding fiscal year.''.

(b) EXCEPTION TO THE LOCAL MAINTENANCE OF EFFORT REQUIREMENTS.—Section 613(a)(2)(B) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(2)(B)) is amended to read as follows:

''(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures, for 1 fiscal year at a time, if—

''(i) the State educational agency determines, and the Secretary agrees, that the local educational agency is in compliance with the requirements of this part during that fiscal year (or, if appropriate, the preceding fiscal year); and

''(ii) such reduction is—

''(I) attributable to the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

''(II) attributable to a decrease in the enrollment of children with disabilities;

''(III) attributable to the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

''(aa) has left the jurisdiction of the agency;

''(bb) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

''(cc) no longer needs such program of special education;

''(IV) attributable to the termination of costly expenditures for long-term purchases,

such as the acquisition of equipment or the construction of school facilities; or

''(V) equivalent to the amount of Federal funding the local educational agency receives under this part for a fiscal year that exceeds the amount the agency received under this part for the preceding fiscal year, but only if these reduced funds are used for any activity that may be funded under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).''.

(c) REPEAL.—Section 613(a)(2) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(2)) is further amended—

(1) by striking subparagraph (C);

(2) by redesignating subparagraph (D) as subparagraph (C); and

(3) in subparagraph (A)(iii), by striking ''paragraphs (B) and (C)'' and inserting ''paragraph (B)''.

Mr. HARKIN. Mr. President, today, Senator HAGEL and I, and others introduce ''The IDEA Full Funding Act of 2003.'' This bill will provide increased mandatory funding for the Individuals with Disabilities Education Act, IDEA, and meet the Federal Government's commitment to pay 40 percent of the average per pupil expenditures. These additional funds will ensure that every child with a disability gets a free, appropriate public education.

In 1975, when the IDEA was passed in the House and Senate, there was an agreement made by negotiators based on the understanding that the Federal Government's goal would be to provide 40 percent of the average per pupil expenditures in each local education area. There was no time frame placed on this goal, but since that time it has been understood that ''full funding'' for IDEA means reaching that 40 percent goal.

For the past 28 years, we have put additional resources into IDEA but we have not come close to full funding. This bill will put our money where our mouth is and say that the federal government will be full partners with states and local governments in meeting the needs of children with disabilities.

This bill fully funds the IDEA. It appropriates funds for the next 10 years, gradually increasing the percentage of funds which are mandatory and increasing the amounts so that in year 8 we are at the level projected to equal 40 percent of the average per pupil expenditure. While we have seen welcome increases in IDEA spending over the past few years, past year increases do not guarantee future increases. This bill guarantees full funding, phased in over 8 years.

This bill does not create a new entitlement program. It provides advanced appropriations for the next 10 years, but it has a set amount for each year, not an open-ended figure.

This bill also provides incentive for compliance with the requirements of IDEA. If all of the IDEA-eligible children are getting the services that they are entitled to, then local property taxpayers get relief.

Last year, the Senate passed an amendment to the reauthorization of the Elementary and Secondary Education Act which would have required full funding of IDEA. The full funding provision was not in the final conference report. Prior to that amendment, there have been 22 separate bills and resolutions in the House and Senate calling for full funding.

This year, the time has come for full funding to make it into law. It has been 28 years since the Federal Government agreed to pay a share of IDEA and it is time to meet that goal.

The IDEA has been remarkably successful. In 1975, only ⅕ of children with disabilities received a formal education and several States had laws specifically excluding many children with disabilities, including those who were blind, deaf, or had mental health needs from receiving such an education. The most recent data on the number of children served under IDEA indicates that over 6 million children are currently benefiting from the law.

Although IDEA has been successful, there is more work to be done. Every time I speak to school districts in Iowa, they tell me that the costs of special education are very difficult for them to manage. Some parents of children with disabilities also complain that their children are not getting the education promised by IDEA.

This bill will provide significant additional resources. In 2003, we are funding $17.6 percent of the cost at 8.8 billion dollars. Under our bill, this number rises steeply to 22 percent of the cost and 10.8 billion dollars in 2004. The increases continue until 2011, when we reach 40 percent and an expenditure of 24.6 billion. Iowa sees its funding rise from 96 million in 2003 to 278.3 million in 2011. We are more than doubling the resources going to special education in Iowa and elsewhere.

I want to thank Senator HAGEL for his ongoing leadership on this issue and for his work in achieving bipartisan support for this bill. I also want to thank Senators KENNEDY, JEFFORDS and DODD for their longstanding commitment to fully funding IDEA. In addition, I want to acknowledge all of the co-sponsors of this bill, who are joining me today in leading the way for Congress to finally pass full funding into law.

This is a win-win-win bill. With this advance appropriations, students with disabilities will get the public education they have a right to, school districts will be able to provide services without cutting into their general education budgets, and in cases where all IDEA-eligible children are getting the services they are entitled to, property taxpayers get relief.

Ms. MIKULSKI. Mr. President, I rise in support of the IDEA Full Funding Act of 2003. I'm so proud to cosponsor this important legislation. This bill provides mandatory increases for IDEA funding each year, so that the Federal Government will be paying its full share of the cost of special education by 2011. This legislation is long overdue. I think it's shocking that the President is fighting for tax breaks for zillionaires while delaying help for those who need it most—the children with special needs and their parents and teachers. We must fully fund IDEA to ensure that children with disabilities are receiving the services they need to succeed with their classmates in public schools.

In 1975, Congress promised to pay 40 percent of the cost of special education when it passed the Individuals with Disabilities Education Act. Yet it has never paid more than 17.5 percent. That means local districts must make up the difference, either by cutting from other education programs or by raising taxes. I don't want to force States and local school districts to forage for funds, cut back on teacher training, or delay school repairs because the Federal Government has failed to live up to its commitment to special education. That's why fully funding IDEA is one of my top priorities.

Everywhere I go in Maryland, I hear about IDEA. I hear about it in urban, rural, and suburban communities, from Democrats and Republicans, and from parents and teachers. They tell me that the Federal Government is not living up to its promise, that special education costs about 18 percent of the average school budget, that schools are suffering, and the parents are worried.

Parents today are under a lot of stress—sometimes working two jobs just to make ends meet, trying to find day care for their kids, and elder care for their own parents. The Federal Government shouldn't add to their worries by not living up to its obligations. With the Federal Government not paying its share of special ed these parents have real questions in their minds: Will my child will have a good teacher? Will the classes have up-to-date textbooks? Will they be learning what they need to know?

Parents of disabled children face such a tough burden already. School should not be one of the many things they have to worry about, particularly when the laws are already on the books to guarantee their child a public school education. The bottom line is that the Federal Government is shortchanging these parents by not paying its share of special ed costs.

This bill will give local governments the resources they need to improve education for all children. It will free up money in local budgets for hiring more teachers, buying new textbooks and technology, and repairing old school buildings. It will help the teachers who struggle with teaching the toughest students. It will help students with disabilities and their families by providing enough funding for special education programs so parents can have one less thing to worry about, and students get the opportunities they deserve.

Full funding of IDEA is essential. It will give disabled children a chance to succeed in school and in life without

shortchanging other vital education programs. It will give parents peace of mind about their children's education. Let's pass this bill as soon as possible.

By Mr. GRAHAM of South Carolina:

S. 940. A bill to amend the Immigration and Nationality Act relating to naturalization through service in the Armed Forces of the United States; to the Committee on the Judiciary.

Mr. GRAHAM of South Carolina. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 940

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Armed Forces Citizenship Act of 2003''.

SEC. 2. NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES.

(a) MINIMUM PERIOD OF SERVICE ELIMINATED.—Section 328(a) of the Immigration and Nationality Act (8 U.S.C. 1439(a)) is amended by striking ''for a period or periods aggregating three years,''.

(b) PROHIBITION ON IMPOSITION OF FEES RELATING TO NATURALIZATION.—Section 328(b) of the Immigration and Nationality Act (8 U.S.C. 1439(b)) is amended—

(1) in paragraph (3)—

(A) by striking ''honorable. The'' and inserting ''honorable (the''; and

(B) by striking ''discharge.'' and inserting ''discharge); and''; and

(2) by adding at the end the following:

''(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing an application under subsection (a) or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.''.

(c) CONDUCT OF NATURALIZATION PROCEEDINGS OVERSEAS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES.—Notwithstanding any other provision of law, the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) relating to naturalization of members of the Armed Forces are available through United States embassies, consulates, and as practicable, United States military installations overseas.

(d) REVOCATION OF CITIZENSHIP FOR SEPARATION FROM MILITARY SERVICE UNDER OTHER THAN HONORABLE CONDITIONS.—Section 328 of the Immigration and Nationality Act (8 U.S.C. 1439) is amended by adding at the end the following:

''(f) Citizenship granted pursuant to this section may be revoked in accordance with section 340 if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.''.

(e) TECHNICAL AND CONFORMING AMENDMENT.—Section 328(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1439(b)(3)) is amended by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''.

By Mr. BROWNBACK (for himself and Mr. NELSON of Nebraska):

S. 942. A bill to amend title XVIII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals; to the Committee on Finance.

Mr. BROWNBACK. Mr. President, rural America has been depopulating at an alarming rate. The same is true for the rural counties in Kansas. In fact, over half of the counties in the State are losing population.

We are going to stop that trend.

Senators, like BEN NELSON and I, who grew up in small towns know a little secret. Rural America is a great place to live. However, for rural towns to compete with urban areas for talented young people, they have to be able to provide the basics—like high quality health care.

For the hospitals represented here today to be able to provide high quality health care for rural America, they have to be able to count on Medicare for fair reimbursement. For quite a few hospitals in Kansas, 70 and 80 percent of their caseload is paid for by Medicare. For the communities these hospitals serve, fair Medicare reimbursement is vitally important.

Unfortunately, much of the regulation that comes out of CMS is based on economics of scale. The actuaries and accountants in Baltimore produce payment systems and formulas for reimbursement. The assumption is that the hospitals that are the most efficient will be the most successful. Unfortunately, efficiency is often a product of volume. If you treat 5,000 stroke patients in a year, you are probably going to be more efficient than if you treat only 5.

Efficiency is a laudable goal, but it shouldn't be the only goal of Medicare. Particularly, when it comes to providing health care in a hospital with fewer than 50 beds.

That is why Senator NELSON and I are introducing the ''Rural Community Hospital Assistance Act of 2003.'' Rather than rely on formulas calculated by CMS bureaucrats in Baltimore, the hospitals covered under our bill will rely on cost-based reimbursement. In addition, the bill recognizes that these hospitals don't have the volume to cover bad debt from patients and to keep up with growing demands for new technology and infrastructure.

This bill will create a new Rural Community Hospital designation within Medicare for rural hospitals with fewer than 50 beds.

These hospitals will be eligible for cost-based reimbursement for impatient and outpatient services; a technology and infrastructure add on; cost based reimbursement for home health services where the provider is isolated; cost based reimbursement for ambulance services; and the restoration of Medicare bad debt payments at 100 percent.

And the cost of the bill, which we believe with stabilize health care in rural America, is less than ½ of 1 percent of annual Medicare expenditures.

This is an important bill for rural hospitals; and I don't think you can overestimate the importance of rural hospitals to the communities they serve.

Mr. NELSON of Nebraska. Mr. President, today I join Senator BROWNBACK in introducing the Rural Community Hospital Assistance Act. This legislation is intended to ensure the future of small rural hospitals by restructuring the way they are reimbursed for Medicare services by basing the reimbursements on actual costs instead of the current pre-set cost structure.

Current law allows for very small hospitals—designated Critical Access Hospitals, CAH, to receive cost-based Medicare reimbursements. To qualify as a CAH the facility must have no more than 15 acute care beds.

In rural communities, hospital facilities that are slightly larger than the 15 bed limit share with Critical Access Hospitals the same economic conditions, the same treatment challenges, the same disparity in coverage area but do not share the same reimbursement arrangement. These rural hospitals have to compete with larger urban-based hospitals that can perform the same services at drastically reduced costs. They are also discouraged from investing in technology and other methods to improve the quality of care in their communities because those investments are not supported by Medicare reimbursement procedures.

The legislation would provide cost-based Medicare reimbursement by creating a new ''rural'' designation under the Medicare reimbursement system. This new designation would benefit seven Nebraska hospitals. Hospitals in McCook, Alliance, Broken Bow, Beatrice, Columbus, Holdrege and Lexington would fall under this new designation, and would have similar benefits provided to nearly sixty other Nebraska hospitals classified under the CAH system.

The legislation would also improve the hospitals with critical access status. Nearly sixty existing CAH facilities in Nebraska already receive cost-based reimbursements for inpatient and outpatient services. The legislation would further assist these existing CAH facilities by allowing them a return on equity for technology and infrastructure investments and by extending the cost-based reimbursement to certain post-acute services.

Rural hospitals cannot continue to provide these services without having Medicare cover the costs. If something

is not done, the larger hospitals may be forced to cut back on the number of beds they keep—and the number of people they care for, and others may be forced to close their doors. These hospitals provide jobs, good wages, health care and economic development opportunity for these communities. Without access to these hospitals, these communities would not survive. The Rural Community Hospital Assistance Act will ensure that the community has access to high quality health care that is affordable to the patient and the provider.

By Mr. JEFFORDS (for himself, Mr. DURBIN, Mr. REID, and Mr. KERRY):

S. 944. A bill to enhance national security, environmental quality, and economic stability by increasing the production of clean, domestically produced renewable energy as a fuel source for the national electric system; to the Committee on Energy and Natural Resources.

Mr. JEFFORDS. Mr. President, I rise today to introduce, along with Senators DURBIN, REID, and KERRY, the ''Renewable Energy Investment Act of 2003.''

This legislation will guarantee that by the year 2020, twenty percent of our electricity will be produced from renewable energy resources. These resources include wind, biomass, solar, ocean, geothermal and landfill gas.

Again and again, I have heard members come to this floor and say how important renewable energy is to our environment, to our national security, and to our domestic economic stability. I agree. But if we want to achieve these great benefits, we must, as they say, ''put our money where our mouth is.'' It is time to pass realistic, achievable standards to guarantee that renewable energy is produced.

The Renewable Energy Investment Act of 2003 is a very important step in that direction. It will create a renewable portfolio standard or ''RPS'' under which utilities and others who supply electricity to retail consumers will be required to ensure that by the year 2020, twenty percent of our domestic electricity is generated from renewable energy sources. The RPS in this legislation provides a flexible, market-driven system of tradeable credits by which utilities can readily achieve these renewable energy requirements.

Why twenty percent by 2020? Because the U.S. Department of Energy, through its Energy Information Administration, has repeatedly indicated that requiring that twenty percent of our electricity come from renewable energy by the year 2020 will actually lower overall consumer energy costs, while at the same time achieving tremendous environmental benefits.

According to the most recent estimates derived from the Department of Energy, consumer electricity prices under a twenty percent renewable portfolio standard would be largely the same as without one. According to the Department of Energy, retail electricity costs by the year 2020 without an RPS would be 6.5 cents per kilowatt hour. If a 20 percent RPS is in effect, retail electricity costs would be approximately 6.7 cents per kilowatt hour.

However, the Department of Energy studies also indicate that because an RPS creates a more diverse and competitive market for energy supply, overall domestic consumer energy costs will actually decrease by almost nine percent.

Equally important, shifting to greater renewable energy production will have dramatic impacts on human health and the environment. The Department of Energy has found that, as demand for energy grows, without changes to Federal law U.S. carbon emissions will increase forty seven percent above the 1990 level by 2020. However, with a twenty percent renewables standard, U.S. carbon dioxide emissions will decrease by more than eighteen percent by 2020.

Electricity production, primarily from burning coal, is the source of an estimated sixty six percent of sulfur oxide, SO_x, emissions. These chemicals are the main cause of acid rain, which kills rivers and lakes, and damages crops and buildings. Burning fossil fuels to produce electricity also emits nitrogen oxides, NO_x, which cause health-damaging smog. Ground-level ozone caused by nitrogen oxide contributes to asthma, bronchitis and other respiratory problems.

Electricity produced from nuclear power, while not responsible for the emissions associated with burning of fossil fuels, results in highly toxic, and essentially permanent wastes for which no complete disposal option currently exists.

Switching to renewable resources virtually eliminates these concerns. The Renewable Energy Investment Act of 2003 will help reduce emissions of carbon dioxide, sulfur dioxide, nitrogen dioxide, mercury and particulate matter, without creation of toxic wastes.

The twenty percent RPS established in this legislation will also create thousands of new, high quality jobs and bring significant new investment to rural communities. It will create an estimated $80 million in new capitol investment, and result in more than $5 billion in new property tax revenues.

It will bring increased diversity to our energy sector, creating greater market stability and reducing the price spikes that so often plague our domestic natural gas markets.

Greater diversity also reduces the vulnerability of our energy infrastructure to terrorist threats.

In a letter to Congress shortly after the attacks of September 11, 2001, several national security experts endorsed congressional passage of an RPS. The letter, signed by former CIA director James Woolsey; former National Security Advisor to President Reagan, Robert McFarlane; and former Chairman of the Joint Chiefs of Staff, Thomas Moorer, stated that a strong RPS is an important component of addressing the significant challenges to America's new energy security.

Rapidly increasing the production of renewable energy is vital to America's future. We must be willing to take the steps necessary to make that happen. The Renewable Energy Investment Act of 2003 is an essential part of that goal and I urge my colleagues to join with me in supporting this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 944

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Renewable Energy Investment Act of 2003.''

SEC. 2. DEFINITIONS.

In this Act:

(1) BIOMASS.—

(A) IN GENERAL.—The term ''biomass'' means—

(i) organic material from a plant that is planted for the purpose of being used to produce energy;

(ii) nonhazardous, cellulosic or agricultural waste material that is segregated from other waste materials and is derived from—

(I) a forest-related resource, including—

(aa) mill and harvesting residue;

(bb) precommercial thinnings;

(cc) slash; and

(dd) brush;

(II) an agricultural resource, including—

(aa) orchard tree crops;

(bb) vineyards;

(cc) grains;

(dd) legumes;

(ee) sugar; and

(ff) other crop byproducts or residues; or

(III) miscellaneous waste such as—

(aa) waste pallet;

(bb) crate; and

(cc) landscape or right-of-way tree trimmings; and

(iii) animal waste that is converted to a fuel rather than directly combusted, the residue of which is converted to a biological fertilizer, oil, or activated carbon.

(B) EXCLUSIONS.—The term ''biomass'' does not include—

(i) incineration of municipal solid waste;

(ii) recyclable postconsumer waste paper;

(iii) painted, treated, or pressurized wood;

(iv) wood contaminated with plastic or metal; or

(v) tires.

(2) DISTRIBUTED GENERATION.—The term ''distributed generation'' means reduced electricity consumption from the electric grid due to use by a customer of renewable energy generated at a customer site.

(3) INCREMENTAL HYDROPOWER.—The term ''incremental hydropower'' means additional generation achieved from increased efficiency after January 1, 2003, at a hydroelectric dam that was placed in service before January 1, 2003.

(4) LANDFILL GAS.—The term ''landfill gas'' means gas generated from the decomposition of household solid waste, commercial solid waste, or industrial solid waste disposed of in a municipal solid waste landfill unit (as

those terms are defined in regulations promulgated under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.)).

(5) RENEWABLE ENERGY.—The term ''renewable energy'' means electricity generated from—

(A) a renewable energy source; or

(B) hydrogen that is produced from a renewable energy source.

(6) RENEWABLE ENERGY SOURCE.—The term ''renewable energy source'' means—

(A) wind;

(B) ocean waves;

(C) biomass;

(D) solar sources;

(E) landfill gas;

(F) incremental hydropower; or

(G) a geothermal source.

(7) RETAIL ELECTRIC SUPPLIER.—The term ''retail electric supplier'', with respect to any calendar year, means a person or entity that—

(A) sells retail electricity to consumers; and

(B) sold not less than 500,000 megawatt-hours of electric energy to consumers for purposes other than resale during the preceding calendar year.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

SEC. 3. RENEWABLE ENERGY GENERATION STANDARDS.

(a) RENEWABLE ENERGY CREDITS.—

(1) IN GENERAL.—For each calendar year beginning in calendar year 2006, each retail electric supplier shall submit to the Secretary, not later than April 30 of each year, renewable energy credits in an amount equal to the required annual percentage of the retail electric supplier's total amount of kilowatt-hours of nonhydropower electricity sold to consumers during the previous calendar year.

(2) CARRYOVER OF RENEWABLE ENERGY CREDITS.—A renewable energy credit for any year that is not used to satisfy the minimum requirement for that year may be carried over for use within the next 2 years.

(b) REQUIRED ANNUAL PERCENTAGE.—Of the total amount of nonhydropower electricity sold by each retail electric supplier during a calendar year, the amount generated by renewable energy sources shall be not less than the percentage specified below:

Calendar year:	Percentage of Renewable energy each year:
2006–2009	5
2010–2014	10
2015–2019	15
2020 and subsequent years	20.

(c) SUBMISSION OF RENEWABLE ENERGY CREDITS.—

(1) IN GENERAL.—To meet the requirements under subsection (a), a retail electric supplier shall submit to the Secretary—

(A) renewable energy credits issued to the retail electric supplier under subsection (e);

(B) renewable energy credits obtained by purchase or exchange under subsection (f);

(C) renewable energy credits purchased from the United States under subsection (g); or

(D) any combination of renewable energy credits obtained under subsections (e), (f), and (g).

(2) NO DOUBLE COUNTING.—A renewable energy credit may be counted toward compliance with subsection (a) only once.

(d) RENEWABLE ENERGY CREDIT PROGRAM.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program to issue, monitor the sale or exchange of, and track renewable energy credits.

(e) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

(1) APPLICATION.—

(A) IN GENERAL.—Under the program established under subsection (d), an entity that generates electric energy through the use of a renewable energy resource may apply to the Secretary for the issuance of renewable energy credits.

(B) CONTENTS.—An application under subparagraph (A) shall indicate—

(i) the type of renewable energy resource used to produce the electric energy;

(ii) the State in which the electric energy was produced; and

(iii) any other information that the Secretary determines to be appropriate.

(2) ISSUANCES.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the Secretary shall issue to an entity applying under this subsection 1 renewable energy credit for each kilowatt-hour of renewable energy generated in any State from the date of enactment of this Act and in each subsequent calendar year.

(B) VESTING.—A renewable energy credit will vest with the owner of the system or facility that generates the renewable energy unless the owner explicitly transfers the renewable energy credit.

(C) AMOUNT.—The Secretary shall issue 3 renewable energy credits for each kilowatt-hour of distributed generation.

(3) ELIGIBILITY.—

(A) IN GENERAL.—To be eligible for a renewable energy credit, the unit of electricity generated through the use of a renewable energy resource shall be sold for retail consumption or used by the generator.

(B) ENERGY GENERATED FROM A COMBINATION OF SOURCES.—If both a renewable energy resource and a nonrenewable energy resource are used to generate the electric energy, the Secretary shall issue renewable energy credits based on the proportion of the renewable energy resource used.

(C) IDENTIFICATION OF TYPE AND DATE.—The Secretary shall identify renewable energy credits by the type and date of generation.

(4) SALE UNDER CONTRACT UNDER PURPA.—In a case in which a generator sells electric energy generated through the use of a renewable energy resource to a retail electric supplier under a contract subject to section 210 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 824a–3), the retail electric supplier shall be treated as the generator of the electric energy for the purposes of this Act for the duration of the contract.

(f) SALE OR EXCHANGE OF RENWABLE ENERGY CREDITS.—

(1) IN GENERAL.—A renewable energy credit may be sold or exchanged by the entity issued the renewable energy credit or by any other entity that acquires the renewable energy credit.

(2) MANNER OF SALE.—A renewable energy credit may be sold or exchanged in any manner not in conflict with existing law, including on the spot market or by contractual arrangements of any duration.

(g) PURCHASE FROM THE UNITED STATES.—

(1) IN GENERAL.—The Secretary shall offer renewable energy credits for sale at the lesser of 3 cents per kilowatt-hour or 110 percent of the average market value of renewable energy credits for the applicable compliance period.

(2) ADJUSTMENT FOR INFLATION.—On January 1 of each year following calendar year 2006, the Secretary shall adjust for inflation the price charged per renewable energy credit for the calendar year.

(h) STATE PROGRAMS.—Nothing in this section precludes any State from requiring additional renewable energy generation in the State under any renewable energy program conducted by the State not in conflict with this Act.

(i) CONSUMER ALLOCATION.—

(1) RATES.—The rates charged to classes of consumers by a retail electric supplier shall reflect a proportional percentage of the cost of generating or acquiring the required annual percentage of renewable energy under subsection (a).

(2) REPRESENTATIONS TO CUSTOMERS.—A retail electric supplier shall not represent to any customer or prospective customer that any product contains more than the percentage of eligible resources if the additional amount of eligible resources is being used to satisfy the renewable generation requirement under subsection (a).

(j) ENFORCEMENT.—

(1) IN GENERAL.—A retail electric supplier that does not submit renewable energy credits as required under subsection (a) shall be liable for the payment of a civil penalty.

(2) AMOUNT.—The amount of a civil penalty under paragraph (1) shall be calculated on the basis of the number of renewable energy credits not submitted, multiplied by the lesser of 4.5 cents or 300 percent of the average market value of renewable energy credits for the compliance period.

(k) INFORMATION COLLECTION.—The Secretary may collect the information necessary to verify and audit—

(1) the annual electric energy generation and renewable energy generation of any entity applying for renewable energy credits under this section;

(2) the validity of renewable energy credits submitted by a retail electric supplier to the Secretary; and

(3) the quantity of electricity sales of all retail electric suppliers.

(l) VOLUNTARY PARTICIPATION.—The Secretary may issue a renewable energy credit under subsection (e) to any entity not subject to the requirements of this Act only if the entity applying for the renewable energy credit meets the terms and conditions of this Act to the same extent as entities subject to this Act.

SEC. 4. STATE RENEWABLE ENERGY GRANT PROGRAM.

(a) DISTRIBUTION OF AMOUNTS.—The Secretary shall distribute amounts received from sales under subsection 3(h) and from amounts received under subsection 3(k) to States to be used for the purposes of this section.

(b) PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program to promote State renewable energy production and use.

(2) USE OF FUNDS.—The Secretary shall make funds available under this section to State energy agencies for grant programs for—

(A) renewable energy research and development;

(B) loan guarantees to encourage construction of renewable energy facilities;

(C) consumer rebate or other programs to offset costs of small residential or small commercial renewable energy systems including solar hot water; or

(D) promotion of distributed generation.

(c) PREFERENCE.—In allocating funds under the program, the Secretary shall give preference to—

(1) States that have a disproportionately small share of economically sustainable renewable energy generation capacity; and

(2) State grant programs that are most likely to stimulate or enhance innovative renewable energy technologies.

By Mr. MCCAIN:

S. 945. A bill to amend title 37, United States Code, to improve the process for adjusting the rates of pay for members of the uniformed services; to the Committee on Armed Services.

Mr. MCCAIN. Mr. President, I am proud to sponsor the Military Pay Comparability Act of 2003. In 1999, the Committee on Armed Services passed landmark legislation providing significant benefits to the entire Total Force. I believe we must improve upon this legislation so that we not only eliminate ''pay comparability gap,'' but ensure that we do not recreate one in the future.

Under the 1999 legislation, military raises will exceed growth in the ECI by one-half percent per year through fiscal year 2006. However, starting in 2007, military raises will revert to being capped one-half percentage point below the ECI.

As a former ranking member and long-time member on the Personnel Subcommittee when Senator John Glenn was the chairman, my experience with capping military raises below ECI during the last three decades shows that such caps inevitably lead to significant retention problems among second-term and career service members.

Those retention problems cost our Nation more in the long run in terms of lost military experience, decreased readiness, and increased training costs. Since military pay was last comparable with private sector pay in 1982, military pay raises have lagged a cumulative 6.4 percent behind private sector wage growth—although recent efforts of the executive and legislative branches have reduced the gap significantly from its peak of 13.5 percent in 1999. Our efforts in 1999 increased pay raises, reformed the pay tables, took nearly 12,000 service members off of food stamps, and established a military Thrift Savings Plan.

We have to improve upon the 1999 law to ensure future raises track to civilian pay growth so we don't fall back into pay caps that will get us back in the negative retention/readiness cycle. Subsequent raises after 2006 must sustain full comparability with increases in the ECI. A key principal of the all volunteer force, AVF, is that military pay raises must match private sector pay growth, as measured by ECI. Our action in this area will send a strong message of support to our service men and women and their families that will continue to promote high morale, better quality-of-life, and a more ready military force.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 945

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REVISED ANNUAL PAY ADJUSTMENT PROCESS.

(a) REQUIREMENT FOR ANNUAL ADJUSTMENT.—Subsection (a) of section 1009 of title 37, United States Code, is amended to read as follows:

''(a) REQUIREMENT FOR ANNUAL ADJUSTMENT.—Effective on January 1 of each year, the rates of basic pay for members of the uniformed services under section 203(a) of this title shall be increased under this section.''.

(b) EFFECTIVENESS OF ADJUSTMENT.—Subsection (b) of such section is amended by striking ''shall—'' and all that follows and inserting ''shall have the force and effect of law.''.

(c) PERCENTAGE OF ADJUSTMENT.—Subsection (c) of such section is amended to read as follow:

''(c) EQUAL PERCENTAGE INCREASE FOR ALL MEMBERS.—(1) Subject to subsection (d), an adjustment made under this section in a year shall provide all eligible members with an increase in the monthly basic pay that is the percentage (rounded to the nearest one-tenth of 1 percent) by which the ECI for the base quarter of the year before the preceding year exceeds the ECI for the base quarter of the second year before the preceding calendar year (if at all).

''(2) Notwithstanding paragraph (1), but subject to subsection (d), the percentage of the adjustment taking effect under this section during each of fiscal years 2004, 2005, and 2006, shall be one-half of 1 percentage point higher than the percentage that would otherwise be applicable under such paragraph.''.

(d) PUBLICATION OF ADJUSTED RATES.—Subsection (e) of such section is amended—

(1) by striking ''(e) NOTICE OF ALLOCATIONS.—'' and inserting ''(e) NOTIFICATION AND PUBLICATION REQUIREMENTS.—(1)''; and

(2) by adding at the end the following new paragraph:

''(2) The rates of basic pay that take effect under this section shall be printed in the Federal Register and the Code of Federal Regulations.''.

(e) PRESIDENTIAL DETERMINATION OF NEED FOR ALTERNATIVE PAY ADJUSTMENT.—Such section is further amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

''(g) PRESIDENTIAL DETERMINATION OF NEED FOR ALTERNATIVE PAY ADJUSTMENT.—(1) If, because of national emergency or serious economic conditions affecting the general welfare, the President considers the pay adjustment which would otherwise be required by this section in any year to be inappropriate, the President shall prepare and transmit to Congress before September 1 of the preceding year a plan for such alternative pay adjustments as the President considers appropriate, together with the reasons therefor.

''(2) In evaluating an economic condition affecting the general welfare under this subsection, the President shall consider pertinent economic measures including the Indexes of Leading Economic Indicators, the Gross National Product, the unemployment rate, the budget deficit, the Consumer Price Index, the Producer Price Index, the Employment Cost Index, and the Implicit Price Deflator for Personal Consumption Expenditures.

''(3) The President shall include in the plan submitted to Congress under paragraph (1) an assessment of the impact that the alternative pay adjustments proposed in the plan would have on the Government's ability to recruit and retain well-qualified persons for the uniformed services.''.

(f) DEFINITIONS.—Such section, as amended by subsection (e), is further amended by adding at the end the following:

''(i) DEFINITIONS.—In this section:

''(1) The term 'ECI' means the Employment Cost Index (wages and salaries, private industry workers) published quarterly by the Bureau of Labor Statistics.

''(2) The term 'base quarter' for any year is the 3-month period ending on September 30 of such year.''.

By Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. DURBIN, Mr. FEINGOLD, Mr. KOHL, and Mr. SCHUMER):

S. 946. A bill to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, last November, the Drug Competition Act passed the Senate by unanimous consent. This morning, I am proud to join Senator GRASSLEY, along with Senators Durbin, Feingold, Kohl and Schumer in re-introducing this important bill, I hope that in this Congress it is actually enacted into law. Prescription drug prices are rapidly increasing, and are a source of considerable concern to many Americans, especially senior citizens and families. Generic drug prices can be as much as 80 percent lower than the comparable brand name version.

While the Drug Competition Act is small in terms of length, it is large in terms of impact. It will ensure that law enforcement agencies can take quick and decisive action against companies that are driven more by greed than by good sense. It gives the Federal Trade Commission and the Justice Department access to information about secret deals between drug companies that keep generic drugs off the market. This is a practice that hurts American families, particularly senior citizens, by denying them access to low-cost generic drugs, and further inflating medical costs.

Last fall, the Federal Trade Commission released a comprehensive report on barriers the entry of generic drugs into the pharmaceutical marketplace. The FTC had two recommendations to improve the current situation and to close the loopholes in the law that allow drug manufacturers to manipulate the timing of generics' introduction to the market. One of those recommendations was simply to enact our bill, as the most effective solution to the problem of ''sweetheart'' deals between brand name and generic drug manufacturers that keep generic drugs off the market, thus depriving consumers of the benefits of quality drugs at lower prices. In short, this bill enjoys the unqualified endorsement of the current FTC, which follows on the support by the Clinton Administration's FTC during the initial stages of our formulation of this bill. We can all have every confidence in the common sense approach that our bill takes to ensuring that our law enforcement agencies have the information they need to take quick action, if necessary, to protect consumers from drug companies that abuse the law.

Under current law, the first generic manufacturer that gets permission to sell a generic drug before the patent on the brand-name drug expires, enjoys protection from competition for 180

days—a headstart on other generic companies. That was a good idea—but the unfortunate loophole exploited by a few is that secret deals can be made that allow the manufacturer of the generic drug to claim the 180-day grace period—to block other generic drugs from entering the market—while, at the same time, getting paid by the brand-name manufacturer not to sell the generic drug.

Our legislation closes this loophole for those who want to cheat the public, but keeps the system the same for companies engaged in true competition. I think it is important for Congress not to overreact and throw out the good with the bad. Most generic companies want to take advantage of this 180-day provision and deliver quality generic drugs at much lower costs for consumers. We should not eliminate the incentive for them. Instead, we should let the FTC and Justice look at every deal that could lead to abuse, so that only the deals that are consistent with the intent of that law will be allowed to stand. The Drug Competition Act accomplishes precisely that goal, and helps ensure effective and timely access to generic pharmaceuticals that can lower the cost of prescription drugs for seniors, for families, and for all of us.

I regret that some in the Senate stalled action on this worthwhile measure until very late in the last Congress and that the House chose not to act at all, and I hope that the growing need for more cost-effective health care solutions will serve as a catalyst for quick action on this needed legislation.

Mr. GRASSLEY. Mr. President, I am pleased to join Senator LEAHY today in introducing the Drug Competition Act of 2003. This bill will help Federal regulators ensure that there is full and unfettered access to competition for prescription drugs under the law. As the past Chairman of the Special Committee on Aging and now as the Chairman of the Finance Committee, I want to make sure that American consumers—especially our seniors—are able to get the life-saving drugs they need in a competitive manner.

Our patent laws provide drug companies with incentives to invest in research and development of new drugs. But the law also provides that generic drug companies have the ability to get their own drugs on the market so that there can be price competition and lower prices for prescription drugs. We have a legal system in place that provides for such a balance—the Hatch-Waxman law. Ultimately, we want consumers and seniors to have more choices and to get drugs at lower prices.

So, I was concerned when I heard reports that the Federal Trade Commission had brought enforcement actions against brand-name and generic drug manufacturers that had entered into anti-competitive agreements, resulting in the delay of the introduction of lower priced drugs. This bill targets that problem.

Under the Hatch-Waxman Act, manufacturers of generic drugs are encouraged to challenge weak or invalid patents on brand-name drugs so consumers can benefit from lower generic drug prices. Current law gives temporary protection from competition to the first generic drug manufacturer that gets exclusive permission to sell a generic drug before the patent on the brand-name drug expires. This gives the generic firm a 180-day head start on other generic companies.

However, the FTC discovered that some companies were exploiting this law by entering into secret deals, which allowed the generic drug makers to claim the 180-day grace period and to block other generic drugs from entering the market, while at the same time getting paid by the brand-name manufacturer for withholding sales of the generic version of the drug. This meant that consumers continued to pay high prices for drugs, rather than benefiting from more competitive and lower prices. So the FTC brought enforcement actions against these companies.

In addition, the FTC conducted a comprehensive review of agreements that impacted the 180-day exclusivity period. The FTC found that there are competition problems with some of these agreements that potentially delayed generic drug entry into the market. The FTC recommended:

Given this history, we believe that notification of such agreements to the Federal Trade Commission and the U.S. Department of Justice is warranted. We support the Drug Competition Act of 2001, S. 754, introduced by Senator Leahy, as reported by the Committee on the Judiciary.

The Drug Competition Act is a simple solution to the 180-day exclusivity problems that the FTC has identified. The bill would require drug companies that enter agreements relating to the 180-day period to file those documents with the FTC and DOJ. It would impose sanctions on companies who do not provide timely notification. This process would facilitate agency review of the agreements to determine whether they have anti-competitive effects.

The Drug Competition Act will ensure that consumers are not hurt by secret, anti-competitive contracts, so that consumers can get competition and lower drug prices as soon as possible. I urge my colleagues to support this bill.

By Mr. SCHUMER:

S. 948. A bill to require prescription drug manufacturers, packers, and distributors to disclose certain gifts provided in connection with detailing, promotional, or other marketing activities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 948

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Drug Company Gift Disclosure Act''.

SEC. 2. DISCLOSURE BY PRESCRIPTION DRUG MANUFACTURERS, PACKERS, AND DISTRIBUTORS OF CERTAIN GIFTS.

Section 503 of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 353) is amended by adding at the end the following:

''(h)(1) Each manufacturer, packer, or distributor of a drug subject to subsection (b)(1) shall disclose to the Commissioner—

''(A) not later than June 30, 2004, and each June 30 thereafter, the value, nature, and purpose of any—

''(i) gift provided during the preceding calendar year to any covered health entity by the manufacturer, packer, or distributor, or a representative thereof, in connection with detailing, promotional, or other marketing activities; and

''(ii) cash rebate, discount, or any other financial consideration provided during the preceding calendar year to any pharmaceutical benefit manager by the manufacturer, packer, or distributor, or a representative thereof, in connection with detailing, promotional, or other marketing activities; and

''(B) not later than the date that is 6 months after the date of enactment of this subsection and each June 30 thereafter, the name and address of the individual responsible for the compliance of the manufacturer, packer, or distributor with the provisions of this subsection.

''(2) Subject to paragraph (3), the Commissioner shall make all information disclosed to the Commissioner under paragraph (1) publicly available, including by posting such information on the Internet.

''(3) The Commissioner shall keep confidential any information disclosed to or otherwise obtained by the Commissioner under this subsection that relates to a trade secret referred to in section 1905 of title 18, United States Code. The Commissioner shall provide an opportunity in the disclosure form required under paragraph (4) for a manufacturer, packer, or distributor to identify any such information.

''(4) Each disclosure under this subsection shall be made in such form and manner as the Commissioner may require.

''(5) Each manufacturer, packer, and distributor described in paragraph (1) shall be subject to a civil monetary penalty of not more than $10,000 for each violation of this subsection. Each unlawful failure to disclose shall constitute a separate violation. The provisions of paragraphs (3), (4), and (5) of section 303(g) shall apply to such a violation in the same manner as such provisions apply to a violation of a requirement of this Act that relates to devices.

''(6) For purposes of this subsection:

''(A) The term 'covered health entity' includes any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe or dispense drugs that are subject to subsection (b)(1), in the District of Columbia or any State, commonwealth, possession, or territory of the United States.

''(B) The term 'gift' includes any gift, fee, payment, subsidy, or other economic benefit with a value of $50 or more, except that such term excludes the following:

''(i) Free samples of drugs subject to subsection (b)(1) intended to be distributed to patients.

''(ii) The payment of reasonable compensation and reimbursement of expenses in connection with any bona fide clinical trial conducted in connection with a research study

designed to answer specific questions about drugs, devices, new therapies, or new ways of using known treatments.

''(iii) Any scholarship or other support for medical students, residents, or fellows selected by a national, regional, or specialty medical or other professional association to attend a significant educational, scientific, or policy-making conference of the association.''.

By Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN):

S. 949. A bill to establish a commission to assess the military facility structure of the United States overseas, and for other purposes; to the Committee on Armed Services.

Mrs. HUTCHISON. Mr. President, today Senator FEINSTEIN and I are introducing the ''Overseas Military Facility Structure Review Act'' to establish a congressional panel to conduct a detailed study of U.S. military facilities overseas. This bill creates a bipartisan congressional commission charged with undertaking an objective and thorough review of our overseas basing structure. The commission will consider a host of criteria to determine whether our overseas bases are prepared to meet our needs in the 21st Century. The commission will be comprised of national security and foreign affairs experts who will present their findings to the 2005 domestic Base Realignment and Closure, BRAC, Commission, providing a comprehensive analysis of our worldwide base and force structure.

We believe it is important to determine our overseas basing requirements, assess training constraints, and provide recommendations on future realignments. As a result, we are proposing legislation that would create a congressional Overseas Basing Commission to review our basing strategy to ensure that it is consistent with both our short- and long-term national security objectives. We believe the time is right to move forward with a more structured approach to reviewing these overseas bases.

Such a review is timely. The 2005 BRAC is just around the corner and some in the Pentagon have suggested it could result in the closure of nearly one out of every four domestic bases. Before we close stateside military bases, we must first analyze our overseas infrastructure. If we reduce our overseas presence, we need stateside bases to station returning troops. It is senseless to close bases on U.S. soil in 2005 only to determine a few years later that we made a costly, irrevocable mistake. A painful lesson we learned in the last rounds of closures.

Though our military force structure has decreased since the Cold War, the responsibilities placed upon our service members have significantly increased. While operational effectiveness is paramount, it would be irresponsible to build on an inefficient, obsolete overseas base structure, as we face new strategic threats in the 21st century, taking valuable dollars needed elsewhere.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 122—EXPRESSING THE SENSE OF THE SENATE THAT THE PRESIDENT SHOULD DESIGNATE MAY 1, 2003 AS ''NATIONAL CHILD CARE WORTHY WAGE DAY''

Mr. CORZINE (for himself, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mr. KERRY, Mrs. MURRAY, and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 122

Whereas approximately 14,000,000 children are in out-of-home care during part or all of the day so that their parents may work;

Whereas the average salary of early childhood educators is $16,000 per year, and only one third of these educators have health insurance and even fewer have a pension plan;

Whereas low wages make it difficult to attract qualified individuals to the early childhood education profession and impair the quality of child care and other early childhood education programs, which is directly linked to the quality of early childhood educators;

Whereas the turnover rate of early childhood educators is approximately 30 percent per year because low wages and a lack of benefits make it difficult to retain high quality educators;

Whereas research has demonstrated that young children require caring relationships and a consistent presence in their lives for their positive development;

Whereas the compensation of early childhood educators must be commensurate with the important job of helping the young children of the United States develop the social, emotional, physical, and intellectual skills they need to be ready for school;

Whereas the cost of adequate compensation for early childhood educators cannot be funded by further burdening parents with higher child care fees, but requires instead public as well as private resources to ensure that quality care and education is accessible for all families; and

Whereas the Center for the Child Care Workforce and other early childhood education organizations recognize May 1st as National Child Care Worthy Wage Day: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL CHILD CARE WORTHY WAGE DAY.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the President should designate May 1, 2003, as ''National Child Care Worthy Wage Day''.

(b) PROCLAMATION.—The Senate requests the President to issue a proclamation—

(1) designating May 1, 2003, as ''National Child Care Worthy Wage Day''; and

(2) calling on the people of the United States to observe ''National Child Care Worthy Wage Day'' by—

(A) honoring early childhood educators and programs in their communities; and

(B) working together to resolve the early childhood educator compensation crisis.

Mr. CORZINE. Mr. President, I rise today to submit, along with Senators DODD, DURBIN, FEINGOLD, KENNEDY, KERRY and MURRAY, a resolution supporting national Child Care Worthy Wage Day. It is my hope that it will bring attention to early childhood education and the importance of attracting and retaining qualified childcare workers.

Every day, approximately 13 million children are cared for outside the home so that their parents can work. This figure includes 6 million of our Nation's infants and toddlers. Children begin to learn at birth, and the quality of care they receive will affect them for the rest of their lives. Early childcare affects language development, math skills, social behavior, and general readiness for school. Experienced childcare workers can identify children who have development or emotional problems and provide the care they need to take on life's challenges. Through the creative use of play, structured activities and individual attention, childcare workers help young children learn about the world around them and how to interact with others. They also teach the skills children will need to be ready to read and to learn when they go to school.

Unfortunately, despite the importance of their work, the committed individuals who nurture and teach our Nation's young children are undervalued. The average salary of a childcare worker is about $15,000 annually. In 1998, the middle 50 percent of childcare workers and pre-school teachers earned between $5.82 and $8.13 an hour, according to the Department of Labor. The lowest 10 percent of childcare workers were paid an hourly rate of $5.49 or less. Only one third of our Nation's childcare workers have health insurance and even fewer have pension plans. This grossly inadequate level of wages and benefits for childcare staff has led to difficulties in attracting and retaining high quality caretakers and educators. As a result, the turnover rate for childcare providers is 30 percent a year. This high turnover rate interrupts consistent and stable relationships that children need to have with their caregivers.

If we want our children cared for by qualified providers with higher degrees and more training, we will have to make sure they are adequately compensated. Otherwise, we will continue to lose early childhood educators with BA degrees to kindergarten and first grade, losing some of our best teachers of young children from the early years of learning.

In order to bring attention to childcare workers, I am sponsoring a resolution that would designate May 1 as National Child Care Worthy Wage Day. On May 1 each year, childcare providers and other early childhood professionals nationwide conduct public awareness and education efforts highlighting the importance of good early childhood education.

I encourage my colleagues to join me in recognizing the importance of the work and professionalism that childcare workers provide and the need to increase their compensation accordingly. The Nation's childcare workforce, the families who depend on them, and the children they care for, deserve our support.

SENATE RESOLUTION 123—DESIGNATING APRIL 28, 2003, THROUGH MAY 2, 2003, AS ''NATIONAL CHARTER SCHOOLS WEEK,'' AND FOR OTHER PURPOSES

Mr. GREGG (for himself, Mr. LIEBERMAN, Mr. FRIST, Mr. ALEXANDER, MR. CARPER, and Mr. BAYH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 123

Whereas charter schools are public schools authorized by a designated public body and operating on the principles of accountability, parental involvement, choice, and autonomy;

Whereas in exchange for the flexibility and autonomy given to charter schools, they are held accountable by their sponsors for improving student achievement and for their financial and other operations;

Whereas 39 States, the District of Columbia, and the Commonwealth of Puerto Rico have passed laws authorizing charter schools;

Whereas 39 States, the District of Columbia, and the Commonwealth of Puerto Rico will have received substantial assistance from the Federal Government by the end of the current fiscal year for planning, startup, and implementation of charter schools since their authorization in 1994 under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

Whereas 36 States, the District of Columbia, and the Commonwealth of Puerto Rico are serving nearly 700,000 students in almost 2,700 charter schools during the 2002–2003 school year;

Whereas charter schools can be vehicles for improving student academic achievement for the students who attend them, for stimulating change and improvement in all public schools, and for benefiting all public school students;

Whereas charter schools must meet the same Federal student academic achievement accountability requirements as all public schools, and often set higher and additional goals, to ensure that they are of high quality and truly accountable to the public;

Whereas charter schools assess and evaluate students annually and often more frequently, and charter school student academic achievement is directly linked to charter school existence;

Whereas charter schools give parents new freedom to choose their public school, charter schools routinely measure parental approval, and charter schools must prove their ongoing and increasing success to parents, policymakers, and their communities;

Whereas more than two-thirds of charter schools report having a waiting list, the average size of such a waiting list is more than one-half of the school's enrollment, and the total number of students on all such waiting lists is enough to fill another 1,000 average-sized charter schools;

Whereas students in charter schools nationwide have similar demographic characteristics as students in all public schools;

Whereas charter schools in many States serve significant numbers of students from families with low incomes, minority students, and students with disabilities, and in a majority of charter schools almost half of the students are considered at risk or are former dropouts;

Whereas charter schools have enjoyed broad bipartisan support from the Administration, Congress, State Governors and legislatures, educators, and parents across the Nation; and

Whereas charter schools are laboratories of reform and serve as models of how to educate children as effectively as possible: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 28, 2003, through May 2, 2003, as ''National Charter Schools Week'';

(2) honors the 11th anniversary of the opening of the Nation's first charter school;

(3) acknowledges and commends the growing charter school movement and charter schools, teachers, parents, and students across the Nation for their ongoing contributions to education and improving and strengthening the Nation's public school system;

(4) supports the goals of National Charter Schools Week, an event sponsored by charter schools and charter school organizations across the Nation and established to recognize the significant impacts, achievements, and innovations of the Nation's charter schools; and

(5) requests that the President issue a proclamation calling on the people of the United States to conduct appropriate programs, ceremonies, and activities to demonstrate support for charter schools in communities throughout the Nation.

SENATE RESOLUTION 124—DESIGNATING SEPTEMBER 28, 2003, AS ''NATIONAL GOOD NEIGHBOR DAY''

Mr. BURNS (for himself, Mr. BAUCUS, Mrs. CLINTON, Mr. COCHRAN, Mr. CRAPO, Mr. HATCH, Mr. MILLER, Mr. LEVIN, Mr. KOHL, and Mr. STEVENS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 124

Whereas while our society has developed highly effective means of speedy communication around the world, it has failed to ensure communication among individuals who live side by side;

Whereas the endurance of human values and consideration for others is of prime importance if civilization is to survive; and

Whereas being a good neighbor to those around us is the first step toward human understanding: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 28, 2003, as ''National Good Neighbor Day''; and

(2) requests that the President issue a proclamation calling upon the people of the United States and interested groups and organizations to observe National Good Neighbor Day with appropriate ceremonies and activities.

Mr. BURNS. Mr. President, today I am introducing a resolution designating September 28, 2003 as National Good Neighbor Day. I would like to thank my colleagues Senators BAUCUS, HATCH, STEVENS, CRAPO, CLINTON, MILLER, LEVIN, KOHL, and COCHRAN, for their support. I would also like to thank Becky Mattson of Lakeside, Montana, who has taken this cause to heart and championed it for so long.

In the aftermath of September 11th, Americans united in an unprecedented way. With the threat of terrorism still very real, it has never been so important to remain unified and conscious of the concerns of our neighbors.

This resolution has a long history. This resolution was first proposed by a fellow Montanan, Senator Mike Mansfield, in 1971. National Good Neighbor Day was then proclaimed by Presidents Nixon, Ford, and Carter because, as President Nixon explained, ''the responsibility for building a happier, livelier, fuller life in each of our communities must rest, in the end, with each of us.''

This bipartisan resolution will set aside a day to promote a better understanding and appreciation of our neighbors. However, in the trying times in which we now live, it will hopefully serve as a catalyst for making every day National Good Neighbor Day.

SENATE RESOLUTION 125—DESIGNATING APRIL 28, 2003, THROUGH MAY 2, 2003, AS ''NATIONAL CHARTER SCHOOLS WEEK'', AND FOR OTHER PURPOSES

Mr. GREGG (for himself, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. CARPER, and Mr. BAYH) submitted the following resolution; which was considered and agreed to:

S. RES. 125

Whereas charter schools are public schools authorized by a designated public body and operating on the principles of accountability, parental involvement, choice, and autonomy;

Whereas in exchange for the flexibility and autonomy given to charter schools, they are held accountable by their sponsors for improving student achievement and for their financial and other operations;

Whereas 39 States, the District of Columbia, and the Commonwealth of Puerto Rico have passed laws authorizing charter schools;

Whereas 39 States, the District of Columbia, and the Commonwealth of Puerto Rico will have received substantial assistance from the Federal Government by the end of the current fiscal year for planning, startup, and implementation of charter schools since their authorization in 1994 under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

Whereas 36 States, the District of Columbia, and the Commonwealth of Puerto Rico are serving nearly 700,000 students in almost 2,700 charter schools during the 2002–2003 school year;

Whereas charter schools can be vehicles for improving student academic achievement for the students who attend them, for stimulating change and improvement in all public schools, and for benefiting all public school students;

Whereas charter schools must meet the same Federal student academic achievement accountability requirements as all public schools, and often set higher and additional goals, to ensure that they are of high quality and truly accountable to the public;

Whereas charter schools assess and evaluate students annually and often more frequently, and charter school student academic achievement is directly linked to charter school existence;

Whereas charter schools give parents new freedom to choose their public school, charter schools routinely measure parental approval, and charter schools must prove their ongoing and increasing success to parents, policymakers, and their communities;

Whereas more than two-thirds of charter schools report having a waiting list, the average size of such a waiting list is more than one-half of the school's enrollment, and the total number of students on all such waiting

lists is enough to fill another 1,000 average-sized charter schools;

Whereas students in charter schools nationwide have similar demographic characteristics as students in all public schools;

Whereas charter schools in many States serve significant numbers of students from families with low incomes, minority students, and students with disabilities, and in a majority of charter schools almost half of the students are considered at risk or are former dropouts;

Whereas charter schools have enjoyed broad bipartisan support from the Administration, Congress, State Governors and legislatures, educators, and parents across the Nation; and

Whereas charter schools are laboratories of reform and serve as models of how to educate children as effectively as possible: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 28, 2003, through May 2, 2003, as ''National Charter Schools Week'';

(2) honors the 11th anniversary of the opening of the Nation's first charter school;

(3) acknowledges and commends the growing charter school movement and charter schools, teachers, parents, and students across the Nation for their ongoing contributions to education and improving and strengthening the Nation's public school system;

(4) supports the goals of National Charter Schools Week, an event sponsored by charter schools and charter school organizations across the Nation and established to recognize the significant impacts, achievements, and innovations of the Nation's charter schools; and

(5) requests that the President issue a proclamation calling on the people of the United States to conduct appropriate programs, ceremonies, and activities to demonstrate support for charter schools in communities throughout the Nation.

SENATE CONCURRENT RESOLUTION 39—SUPPORTING THE GOALS AND IDEALS OF ST. TAMMANY DAY ON MAY 1, 2003, AS A NATIONAL DAY OF RECOGNITION FOR TAMANEND AND THE VALUES HE REPRESENTED

Mr. BREAUX (for himself and Ms. LANDRIEU) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 39

Whereas in 1810, President James Madison declared the Territory of West Florida to be a part of the Louisiana Purchase, and in 1811, William C. C. Claiborne, the first American territorial Governor of Louisiana, named the area north of Lake Pontchartrain as ''St. Tammany Parish'' in honor of the saintly Amerindian Tamanend, who was a sachem of the Lenni Lenape;

Whereas Tamanend is admired and respected for his virtues of honesty, integrity, honor, fairness, justice, and equality for the common person;

Whereas in colonial times, May 1st was celebrated in honor of Tamanend and the common person; and

Whereas the St. Tammany Parish Council of St. Tammany Parish, Louisiana, has passed a resolution designating May 1, 2003, as St. Tammany Day, and urging the reinstatement of May 1st as a national day of recognition for Tamanend and the values he represented: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress supports the goals and ideals of St. Tammany Day as a national day of recognition for Tamanend and the values he represented.

NOTICES OF HEARING/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, April 30, 2003, at 2:00 p.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 519, the Native American Capital Formation and Economic Development Act of 2003.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, May 7, 2003 at 10:00 a.m., in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 550, the American Indian Probate Reform Act of 2003.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, April 29, 2003, at 9:30 a.m. on the future of intercity passenger rail service and Amtrak.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Tuesday, April 29, 2003, at 10:00 a.m. to consider comprehensive energy legislation

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 29, 2003, at 9:30 a.m. to hold a hearing on An Enlarged NATO: Mending Fences and Moving Forward on Iraq.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on The Severe Acute Respiratory syndrome Threat, SARS, during the session of the Senate on Tuesday, April 29, 2003, at 2:00 p.m. in SD–106.

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

SPECIAL COMMITTEE ON AGING

Mr. HATCH. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Tuesday, April 29, 2003, at 10:00 a.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUPPORTING THE GOALS AND IDEALS OF ST. TAMMANY DAY ON MAY 1, 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate connection of S. Con. Res. 39 submitted earlier today by Senators BREAUX and LANDRIEU.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 39) supporting the goals and ideals of St. Tammany Day on May 1, 2003, as a national day of recognition for Tamanend and the values he represented.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the concurrent resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The concurrent resolution (S. Con. Res. 39) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 39

Whereas in 1810, President James Madison declared the Territory of West Florida to be a part of the Louisiana Purchase, and in 1811, William C. C. Claiborne, the first American territorial Governor of Louisiana, named the area north of Lake Pontchartrain as ''St. Tammany Parish'' in honor of the saintly Amerindian Tamanend, who was a sachem of the Lenni Lenape;

Whereas Tamanend is admired and respected for his virtues of honesty, integrity, honor, fairness, justice, and equality for the common person;

Whereas in colonial times, May 1st was celebrated in honor of Tamanend and the common person; and

Whereas the St. Tammany Parish Council of St. Tammany Parish, Louisiana, has passed a resolution designating May 1, 2003, as St. Tammany Day, and urging the reinstatement of May 1st as a national day of recognition for Tamanend and the values he represented: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress supports the goals and ideals of St. Tammany Day as a national day of recognition for Tamanend and the values he represented.

NATIONAL CHARTER SCHOOLS WEEK

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 125, submitted earlier today by Senators GREGG, LIEBERMAN, and others.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 125) designating April 28, 2003, through May 2, 2003, as ''National Charter Schools Week,'' and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. GREGG. Mr. President, today my colleagues, Senators LIEBERMAN, FRIST, ALEXANDER, CARPER and BAYH, joined me in the introduction of S. Res. 125, a resolution to designate the week of April 28 through May 2, 2003, as National Charter Schools Week. This year marks the 11th anniversary of the opening of the Nation's first charter school in Minnesota. In the last 11 years, we have come a long way since that auspicious moment when one teacher collaborating with parents started a public school specifically designed to meet the needs of the students in the community.

Today, we have almost 2,700 charter schools serving nearly 700,000 students. Charter schools are immensely popular: two-thirds of them report having long waiting lists, and there are currently enough students on waiting lists to fill another 1,000 average-sized charter schools. Survey after survey shows parents are overwhelmingly satisfied with their children's charter schools.

Charter schools are popular for a variety of reasons. They are generally free from the burdensome regulations and policies that govern traditional public schools. They are founded and run by principals, teachers, and parents who share a common vision of education, a vision which guides each and every decision made at the schools, from hiring personnel to selecting curricula. Furthermore, charter schools are held accountable for student performance in a unique way—if they fail to educate their students well and meet the goals of their charters, they close.

Since each charter school represents the unique vision of its founders, these schools vary greatly, but all strive for excellence.

For example, the Jean Massieu Academy in Arlington, TX, was created in 1999 to serve deaf and hearing-impaired children and their siblings. All instruction at Jean Massieu is in American Sign Language, accompanied by English text. For 2 consecutive years, the academy has earned the second-highest rating in the State's accountability system based on its students' excellent performance.

Here in the District of Columbia, low-income fifth graders at KIPP DC/KEY Academy performed remarkably in reading and math on a national test, increasing their scores by more than twice the amount children typically gain from year to year. Students and teachers at the KEY Academy log long hours, attending class from 8 a.m. to 5 p.m. each weekday, half a day on many Saturdays, and for much of the summer, but their hard work is obviously reaping rewards.

These are but a handful of the success stories in the charter school movement, which includes a wide range of schools serving a variety of different learning needs and styles, often at a lower cost than traditional public schools.

I expect that we will see the popularity of charter schools continue to grow. Last year, the President signed into law the No Child Left Behind Act, which gives parents in low-performing schools the option to transfer to another public school. The act also provides school districts with the option of converting low-performing schools into charter schools. I believe these provisions will strengthen the charter school movement by creating more opportunities for charter school development. And, as parents exercise their right to school choice and ''vote with their feet'', the demand for charters schools will grow.

I commend the more than 1.6 million people involved in the charter school movement, from parents to teachers to community leaders and members of the business community. Together, they have led the charge in education reform and have started a revolution with the potential to transform our system of public education. Districts with a large number of charter schools reported becoming more customer service oriented and creating new education programs, many of which are similar to those offered by charter schools, and increasing contact with parents. These improvements benefit all our students, not just those who choose charter schools.

I encourage my colleagues to visit a charter school this week to witness firsthand the ways in which these innovative schools are making a difference, both in the lives of the students they serve as well as in the community in which they reside.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 125) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 125

Whereas charter schools are public schools authorized by a designated public body and operating on the principles of accountability, parental involvement, choice, and autonomy;

Whereas in exchange for the flexibility and autonomy given to charter schools, they are held accountable by their sponsors for improving student achievement and for their financial and other operations;

Whereas 39 States, the District of Columbia, and the Commonwealth of Puerto Rico have passed laws authorizing charter schools;

Whereas 39 States, the District of Columbia, and the Commonwealth of Puerto Rico will have received substantial assistance from the Federal Government by the end of the current fiscal year for planning, startup, and implementation of charter schools since their authorization in 1994 under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

Whereas 36 States, the District of Columbia, and the Commonwealth of Puerto Rico are serving nearly 700,000 students in almost 2,700 charter schools during the 2002–2003 school year;

Whereas charter schools can be vehicles for improving student academic achievement for the students who attend them, for stimulating change and improvement in all public schools, and for benefiting all public school students;

Whereas charter schools must meet the same Federal student academic achievement accountability requirements as all public schools, and often set higher and additional goals, to ensure that they are of high quality and truly accountable to the public;

Whereas charter schools assess and evaluate students annually and often more frequently, and charter school student academic achievement is directly linked to charter school existence;

Whereas charter schools give parents new freedom to choose their public school, charter schools routinely measure parental approval, and charter schools must prove their ongoing and increasing success to parents, policymakers, and their communities;

Whereas more than two-thirds of charter schools report having a waiting list, the average size of such a waiting list is more than one-half of the school's enrollment, and the total number of students on all such waiting lists is enough to fill another 1,000 average-sized charter schools;

Whereas students in charter schools nationwide have similar demographic characteristics as students in all public schools;

Whereas charter schools in many States serve significant numbers of students from families with low incomes, minority students, and students with disabilities, and in a majority of charter schools almost half of the students are considered at risk or are former dropouts;

Whereas charter schools have enjoyed broad bipartisan support from the Administration, Congress, State Governors and legislatures, educators, and parents across the Nation; and

Whereas charter schools are laboratories of reform and serve as models of how to educate children as effectively as possible: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 28, 2003, through May 2, 2003, as ''National Charter Schools Week'';

(2) honors the 11th anniversary of the opening of the Nation's first charter school;

(3) acknowledges and commends the growing charter school movement and charter schools, teachers, parents, and students across the Nation for their ongoing contributions to education and improving and strengthening the Nation's public school system;

(4) supports the goals of National Charter Schools Week, an event sponsored by charter schools and charter school organizations across the Nation and established to recognize the significant impacts, achievements, and innovations of the Nation's charter schools; and

(5) requests that the President issue a proclamation calling on the people of the United States to conduct appropriate programs, ceremonies, and activities to demonstrate support for charter schools in communities throughout the Nation.

ORDERS FOR WEDNESDAY, APRIL 30, 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m., Wednesday, April 30. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 11 a.m., with the time equally divided between the two leaders or their designees, provided that at 11 a.m., the Senate proceed to the consideration of Calendar No. 60, S. 196, the digital and wireless technology bill, as provided under the previous order.

I further ask consent that following the vote on S. 196, the Senate return to executive session to resume the consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit.

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

PROGRAM

Mr. MCCONNELL. For the information of all Senators, following morning business, the Senate will take up S. 196, the digital and wireless technology bill. Under the agreement, the Senate will vote on the measure at approximately 12 noon.

Upon the disposition of that bill, the Senate will resume consideration of the Owen nomination. The majority leader has asked me to announce that while he regrets being forced to file cloture on this important appeals court nomination, he believes it is vital that the Senate fulfill its advise and consent responsibility. With that being said, I inform my colleagues that the cloture vote on the Owen nomination will occur Thursday morning, and Members will be notified when the vote is scheduled.

I also announce to my colleagues that the majority leader is working with the Democratic leader to clear several items for floor action. The items under discussion include the State Department authorization bill, the bioshield bill, the FISA legislation, and several judicial nominations. Therefore, Members should anticipate additional votes during tomorrow's session.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, there was some discussion on the floor today that the minority would move to the nomination of Prado tomorrow. That is a debatable motion when we are in executive session. We have been in contact with the majority. In fact, the distinguished majority whip and I have been talking all afternoon to try to work something out. We understand the difficulty of our doing what we have said we would likely do. We acknowledge it is better that the majority sets the schedule. But there are times when we have to try to protect our rights.

I am the one who said I would do this at the first opportunity. I am not going to do that tomorrow until the ability we have to work out a fair proposal on a number of circuit court judges is exhausted. We were very close to doing something on that tonight. I am confident the distinguished Senator from Kentucky and I can work something out tomorrow, with the consent of both of our caucuses.

So I just want to put everyone on notice that I am not going to move to Prado tomorrow and that we are going to try to work things out on our own, and that would be the most expeditious and, I am sure, best way to go. I am confident and hopeful we can do that.

Mr. MCCONNELL. Mr. President, I just add that the Senator from Nevada and I spent some considerable amount of time this afternoon trying to clear some additional votes for nominees for the circuit court, and we are going to continue that effort tomorrow in the hopes of reaching an agreement to dispose of some of these nominations that are going to be allowed to be voted on, on an up-or-down basis. We will continue that effort in the morning.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:12 p.m., adjourned until Wednesday, April 30, 2003, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate April 29, 2003:

THE JUDICIARY

JEFFREY S. SUTTON, OF OHIO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.