to eliminate anybody who is nominated for a Federal judgeship who actually exercises their religious beliefs and states them for his own church, and that now disqualifies them? Let's start to take sandpaper out and scratch out ''in God we trust'' over there; let's start sanitizing this place of any faith that is not politically correct or of contemporary standards. Isn't that what faith is about, contemporary standards? It changes. If your faith doesn't change, you are out. If your faith doesn't adapt to the contemporary mores of today in America, you are disqualified.

Mr. President, that is what is being said here today. If you hold a traditional religion and stand by it, live it, practice it, espouse it, you need not apply, because your religion hasn't adapted to contemporary standards and, therefore, you cannot be a judge.

Imagine what our Founders would be doing right now. Imagine. Free exercise of religion. What does ''exercise'' mean? Does it mean sitting here like this? Is that exercise? How about going to church on Sunday, sitting in the pew, or staying at home and reading your Bible; is that exercise? We all know what exercise means. It means to get out and do it. They used an active word here. What was Leon Holmes doing? He was simply exercising his fundamental constitutional right to express his beliefs—not as a member of the legal community, not as a citizen of the State of Arkansas, but as a faithful Catholic to other Catholics in his Catholic community. And for that we say he cannot be a judge?

Some in this body today will vote against this man because he had the audacity to practice his faith. So we now understand the religious litmus test. If you belong to a religion that has not ''adapted,'' has not stayed with the times, if you are one of these old-fashioned religions who believes the truth was actually laid out and the truth doesn't change, and we actually have people who believe—incredibly, to some in this body—that God laid out certain truths, communicated them, and they have not changed because God has not changed. But if you feel that way, you are out. You are out because the narrow views that do not embody contemporary standards—God's ''narrow view''—at least some believe that, and I argue they have the right to believe in these ''narrow views'' that have been around for a couple thousand years, but they are narrow views. That is right, the path is narrow. Maybe now it is too narrow to get you through the Senate. Imagine. Imagine that here in a country that professes, as one of its highest ideals, the freedom of religion, in a country that, as we try to build a republic and a democracy in Iraq, that we had letters signed by people on both sides of the aisle in large numbers encouraging religious pluralism in Iraq, that we now say religious pluralism doesn't necessarily apply here anymore in the Senate.

This is a dangerous moment for us in the Senate. It is a dangerous moment, where a man may not become a judge simply because he holds religious tenets that have not kept up with contemporary mores.

Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. There are 109½ minutes on the majority side, and 110 minutes on the minority side, with time expiring for the noon recess.

Mr. SANTORUM. I thank the Chair.

Mr. President, I conclude by saying this is an important vote. This is not just a vote to confirm a district judge in Arkansas. I know that does not sound like a big deal to people who are hearing my voice. It is a district court, a small court, Arkansas. It is not Washington, DC, or New York City. It is not a glamourous place to serve, just like western Pennsylvania and central Pennsylvania are not glamourous places to serve. But we do justice in these communities because we get good people who are from the community, who are good, decent, moral people, who live their faith as they are allowed to do by our Constitution.

If we send a message out today that living your faith, espousing your faith, exercising your religion is now cause for defeat on the floor of the Senate, if we send the word out today that unless your religious beliefs are contemporary or have been contemporized, unless you have adapted the popular culture into your faith, you are no longer suitable to hold that office, then I think we make a dangerous statement, not just to people in this country, but to the world.

This is a big vote. Anybody who thinks this is not a big vote, let me assure them, I will remind people here for quite some time how big a vote this was. This is a vote about religious freedom. This is a vote about the free exercise of religion, and this is a vote about tolerance.

We hear so much from the other side about tolerance—tolerance, tolerance, tolerance. Where is the tolerance of people who want to believe what has been taught for 2,000 years as truth. You have a right to disagree with that teaching. You have a right to adapt your contemporary mores to that teaching. But where is the tolerance of people who choose to keep that faith?

We will have a vote on Judge Leon Holmes, but it will be a bigger vote than just on that judge. It will be a vote on the soul of the free exercise of religion clause and of tolerance to religion.

Mr. President, I yield the floor.

RECESS

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

Thereupon, the Senate, at 12:33 p.m., recessed until 2:17 p.m. and reassembled when called to order by the Presiding Officer (Mr. SMITH).

NOMINATION OF J. LEON HOLMES, TO BE UNITED STATES DISTRICT JUDGE—Continued

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. We are under controlled time. The Senator from Vermont controls 110 minutes, and the Senator from Utah has 106 minutes remaining.

Mr. LEAHY. I thank the Chair.

Mr. President, the Senator from California, Mrs. BOXER, wishes to speak on a matter of personal concern to her State. I believe she mentioned this to the Senator from Utah. I ask unanimous consent that she be yielded 8 minutes as in morning business.

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

(The remarks of Mrs. BOXER are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield myself such time as I may need.

I welcome the distinguished Presiding Officer back from his break, and I hope he enjoyed his as much as I did, being in Vermont. In fact, I must say I hated to leave Vermont today; it was so nice.

But as the Senate resumes our deliberations for this session, I would like to make note of some matters that occurred on this floor as we were adjourning for the recess. The Senate confirmed six more judicial nominees. That brings to 197 the total confirmations since President Bush took office.

The distinguished Presiding Officer and others may recall, we only had one roll call vote on a judicial nominations that week. At the request of the distinguished majority leader, I agreed to have five judicial confirmation votes done by a voice vote. As often happens when we consider the judges by voice vote, I think the public, many Senators, and the press have little opportunity to take note of our actions or, as in this case, the extraordinary achievement. I say extraordinary because, when the Republicans controlled the Senate in the 1996 session, the last year of President Clinton's first term, they allowed only 17 judges to be confirmed that whole session and they refused to allow any circuit court nominees to be confirmed that entire time. If one Republican Senator objected, it was in effect a filibuster of the whole Republican caucus. They would not allow any circuit court nominees to go through during the 1996 session, not one. I mention that because that was the most recent year, besides this year, in which a President was seeking reelection.

Of course, this year alone, by the end of June, we far exceeded the number of judicial nominees confirmed, including circuit judges, for this President. We

confirmed 28 of President Bush's judicial nominees by the end of June, including 5 to the circuit courts. Again, I note that—notwithstanding the more than 60 judicial nominees who were blocked by the Republican leadership under President Clinton and the fact they allowed only 17 judges during the 1996 session in his reelection year, and not a single circuit court judge—we have so far confirmed 28 judicial nominees of President Bush, including 5 circuit court nominees.

In fact, the Senate has confirmed nearly 200 judicial nominees of President Bush. In this Congress alone, the Senate has confirmed more Federal judges than were confirmed during the 2 full years, 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. We also exceeded the 2-year total at the end of the Clinton administration when Republicans held the Senate majority in 1999 to 2000.

While the Republican-controlled Senate, during its 25 months in the majority, has not confirmed quite as many as the 100 nominees the Democrat-led Senate confirmed in our 17 months, the total of 197 is still the fourth highest 4-year total in American history.

I am actually saying this to compliment the work of my Republican colleagues for this Republican President. During their 25 months in the majority, 97 of the judicial nominees of President Bush have been confirmed. During the 17 months Democrats lead the Senate, we confirmed 100 judicial nominees of President Bush.

In all, we have confirmed more lifetime appointees for this President than were allowed to be confirmed in the most recent 4-year Presidential term, that of President Clinton, from 1997 to 2000. We have actually confirmed more judicial nominees of this President than the first President Bush had confirmed by the Senate from 1989 through 1992, and we have confirmed more of President George W. Bush's judicial nominees than were confirmed during President Reagan's entire first term from 1981 through 1984, when he had a Republican majority in the Senate. One can't help but think that maybe if he had a Democratic majority part of the time he may have had even more confirmations.

I would also note that the five circuit court nominees of President Bush confirmed this year are five more than Republicans allowed to be confirmed during President Clinton's reelection year.

These may seem like just numbers, but I think Democratic Senators did what I said we would do when I became chairman of the committee: that we would work to lower the partisan divide by treating President Bush's judicial nominees more fairly than Republicans treated President Clinton's nominees, by working harder to fill vacancies in the federal courts. Under the leadership of TOM DASCHLE who at that time was the Senate majority leader, we confirmed 100 judicial nominees in 17 months, a much faster pace than the previous period of Republican control of the Senate.

The number of Federal judicial vacancies for the whole country is only 27, the lowest it has been in decades. I mention that because when you look at the period from 1995 to 2001 when the Republicans controlled the Senate with the Democrats in the White House, vacancies on the federal courts reached over 100 and through systematic blocking of nearly two dozen circuit court nominees of President Clinton, circuit vacancies more than doubled. Despite additional retirements since then, after 197 judicial nominees of President Bush have been confirmed there are now little more than two dozen vacant seats left in the federal judiciary.

A second development was the statement of the Democratic leader urging bipartisan communications and cooperation. Senator DASCHLE's proposal to seek a politics of common ground should be commended. It should be built upon by both sides. I think many Republican partisans treated Senator DASCHLE most unfairly during his years as the Democratic leader. It is a measure of that good man and a reflection of his understanding of the Senate that he has sought out common ground. It is a reflection of Senator DASCHLE's understanding and love for our system of Government that he disdains bitterness and rejects retaliation. Instead, he advocates counsel, cooperation, and respect. I commend my friend, the senior Senator from South Dakota, for that.

Many in this Chamber might also recall that one of President Clinton's first acts upon reelection was to bestow the Presidential Medal of Freedom on his political opponent, Senator Bob Dole. I consider myself very fortunate to be one of the Senators who Senator Dole invited to the White House for that ceremony. I remember the grace shown both by Senator Dole and by President Clinton.

We would also do well to remember Senator Bob Dole's address to Members of the Senate as part of the leadership series of speeches in the Old Senate Chamber. In that address, he observed the Senate should proceed through bipartisanship.

Democrats have acted with bipartisanship toward judicial nominations and a record number of this President's judicial nominations have been confirmed. A few have not. Some of the nominations the President has proposed for lifetime seats on the federal bench have been extremely controversial, extremely troubling. Today the Senate is debating President Bush's controversial nomination of J. Leon Holmes to a lifetime position to the Federal court in Arkansas. For some reason, he is finally coming up for a vote today. The Republican leadership could have brought him up at any time in the last 14 months since his nomination was reported out of the Judiciary Committee. The Democratic leadership had no objection to him coming up. Many of us oppose the nomination, but we had no objection to bringing him up. For some reason, the Republican leadership refused to do so for almost 14 months.

As you look at the public record of this nomination, you can almost see why they were embarrassed to bring it up before now. In fact, this controversial nomination was not only denied consideration by the Republican leadership for over a year, but on a remarkable day last spring the Republican-controlled Judiciary Committee didn't even give him a positive recommendation. They voted him out without recommendation. On the few occasions that has happened with lower court nominees in the past, that pretty much determined you would not get a vote on the floor.

Can you imagine how troubling the record must be if the majority were Republicans, the nominee was of a Republican President, and a majority of the Republicans were not willing to vote for him in the Senate Judiciary Committee? So the leadership held him back for over a year.

I think I understand why. I think I understand why some of my friends on the other side of the aisle pay lip service to this nomination and are rather embarrassed by it.

If you look at the record of this nominee, it is quite clear he has made numerous strident, intemperate, and insensitive public statements over the years regarding school desegregation, political emancipation, school prayer, voting rights, women's equal rights, gay rights, the death penalty, the Bill of Rights, and privacy, among other issues.

For example, he has argued in the area of reproductive privacy law that ''concern for rape victims is a red herring because conceptions from rape occur with the same frequency as snow falls in Miami . . . ''

I prosecuted a lot of rape cases when I was a prosecutor, and a lot of child abuse cases where the child was raped—something that is rape under the law of every State in this Union. I find the statement of this nominee on this issue to be insensitive and appalling. Speak to the family of a 13-year-old girl who is pregnant after being raped by her family's best friend, the next-door neighbor, and in some instances by her father, and tell them that pregnancy does not happen from rape. I prosecuted some of those cases. They are the most sickening and appalling things.

But I tell Mr. Holmes, if he is confirmed and cases come before his court, I hope he will open his eyes. I hope he will open his eyes to reality and realize these things do happen—not just in this country. What would he say to the women who are being raped in Sudan for the purpose of forcing them to have babies of a certain hue as part of the genocide that is going on in Sudan? It is genocide. Our administration doesn't want to admit it is, but it is.

Rape is a serious matter. Mr. Holmes called concerns about pregnant rape victims ''trivialities.'' That is his word—''trivialities.'' Ask a pregnant rape victim if they consider this a trivial matter.

By making such remarks, Mr. Holmes has revealed how tightly closed his mind is to seeing the realities of this world. But worse than that, his statements also reveal a callous disregard for the trauma of women who are raped and a disturbingly willful ignorance of the facts.

An interesting matter is that according to the Weather Almanac, it did snow one time in Miami, Florida during a freak cold spell in 1977. But a more disturbing statistic is that, according to the American Journal of Preventive Medicine, there were more than 25,000 pregnancies that resulted from rape in 1998 in our country alone. Not 1, 2, 3, or 4; it was 25,000. And this nominee says such things don't occur. He says that people who express such concerns are focused on trivialities.

Where in heaven's name has he been living? What kind of a mindset would he bring to a Federal bench? Why in heaven's name did the President nominate him?

In fact, according to the medical journals, as many as 22,000 of those pregnancies could have been prevented if the women had received emergency contraceptive treatment. Instead, with more than 300,000 rapes each year in the United States, more than 25,000 women each year find that not only were they violated, but they are pregnant as a result. One can barely imagine the trauma and heartache of such a circumstance.

For many rape victims, the girl is under 18 or the victim of incest. It is hard to imagine the pain and difficult decisions these young women face. But Mr. Holmes has called concerns about these women ''trivialities.''

This type of statement and attitude makes one wonder what kind of judge he would make, and federal judgeships are for life. Can you imagine if such cases were before a judge like this? In my own conscience, I could not reward a lifetime position of power to such a person with power over women and men alike.

I think this sort of judgmental and intemperate approach is opposite of the qualities needed for the Federal bench. Indeed, given Mr. Holmes' strong commitment to various political causes of the right wing over these past two decades, a Republican Senator was moved to ask this nominee: ''Why in the world would you want to serve in a position where you have to exercise restraint and you could not, if you were true to your convictions about what the role of a judge should be, feel like you have done everything you could in order to perhaps achieve justice in any given case?''

Mr. Holmes, for his part, conceded:

I know it is going to be difficult for this Committee to assess that question, and I know it is a very important question.

But for this Senator, a member of that committee, it is a very difficult question, especially with a record like Mr. Holmes'. And it is certainly not a question I would answer by giving somebody a lifetime appointment to a position of such enormous power.

In fact, the question is so difficult that at the Judiciary Committee business meeting, where Democrats were prepared to vote on Mr. Holmes' nomination, Republican Senators asked for more time to review Mr. Holmes' record. I think perhaps that at that meeting some of them heard for the first time some of the statements made by Mr. Holmes in the material he submitted to the Senate Judiciary Committee. Eventually, in May of last year, they reported him out provided they did not have to vote for him, provided they could vote him out without recommendation. That does not happen very often.

The last time I can remember that happening was with Judge Clarence Thomas. His nomination was reported without recommendation in order to allow a vote before the full Senate when he could not achieve a majority in the committee.

Like Justice Thomas, Mr. Holmes has been a proponent of what is known as a ''natural rights'' or ''natural law'' theory of interpreting our Constitution in order to achieve judicial recognition of rights he believes should exist. He has been supportive of reading new and undefined rights into the Constitution based on his personal or political conception of ''justice.'' This sounds to me like the judicial activists the President has said he does not want to see on the bench. I guess if they are very conservative Republican judicial activists, it is OK.

Mr. Holmes has supported efforts to require that the language of the Constitution be trumped by language he prefers in the Declaration of Independence in order to advance a social agenda against choice and against the separation of church and state. This method of interpreting the Constitution, the fundamental charter of our democratic nation, represents an approach which has been advocated by the far right in its effort to erode the longstanding separation of church and state that assures all Americans their first amendment freedoms.

The idea of ''natural law'' is what led to the tyrannical period of judicial activism at the turn of the last century in which the Supreme Court struck down numerous State and Federal laws written to protect the health and safety of working Americans. Those decisions are discussed at length in law school. In the activist Supreme Court decision of Lochner v. New York federal judges found a ''natural right'' to contract in employment decisions that trumped any legislative efforts to end child labor—which in many cases was basically child slavery—sweatshops, and the terribly unsafe workplaces at the beginning of the Industrial Revolution. The Supreme Court's reliance on ''natural rights'' was repudiated in 1937—70 years ago.

Mr. Holmes has been critical of the dissenting opinion in the Lochner decision, and he seemingly embraces the idea that the activism of the Supreme Court almost 100 years ago was justified.

Again, I mention this because President Bush has spoken repeatedly against judicial activism while simultaneously nominating people likely to be judicial activists for his social and political agenda, people such as Mr. Holmes. This approach is one of those: Watch what we say; don't watch what we do. Republicans will say we are against judicial activists with the one hand, and with the other hand quietly nominate judicial activists.

One of the most troubling things Mr. Holmes has written is his criticism of what is known in our law as ''substantive due process.'' As even Mr. Holmes conceded in his answers to my questions, substantive due process is the means by which the rights in the Constitution's Bill of Rights apply to protect individuals from State governments that would deprive them of those rights, such as the right to freedom of religion, freedom of speech, freedom of the press. Mr. Holmes concedes that as a scholar he disagreed with the idea of substantive due process, but now, when he is facing a vote on his nomination in the Senate, he says basically: Oh, by the way, of course now I see it as settled law. He did not see it that way a few short years ago.

That reminds me again of another nomination. These issues rose during the hearings on Clarence Thomas's hearings on his nomination to the Supreme Court. He had given many speeches praising natural law principles, but then disavowed them during his Supreme Court confirmation hearings. For example, he praised Lew Lehrman's article, ''The Declaration of Independence and the Right to Life,'' as ''a splendid example of applying natural law.'' That article looked to the Declaration of Independence as the basis for overturning Roe v. Wade. Then, despite his assurances to the Senate Judiciary Committee that he would follow the law in this area if he was confirmed, of course, Justice Thomas immediately voted to overturn Roe v. Wade—just the opposite of what he said—as soon as he was confirmed. The Senate trusted him, and we saw what happened.

Now, Mr. Holmes wishes to regard this issue as one in which we should just trust him to set aside what he himself calls his ''history of activism.'' He admitted to a reporter that the ''only cause that I have actively campaigned for and really been considered an activist for is the right-to-life issue.'' But then he told the Senate Judiciary Committee that he would not promise to recuse himself from those

cases in which he has a history of activism. What he said was: Just trust me.

Well, I do hope that if the Senate Republicans disagree with me and Mr. Holmes is confirmed, that he will keep his word and he will not impose his political views on others as a judge, especially as he was under oath when he made that promise. But I have seen too many, even though they were under oath, go back on their word as soon as they were confirmed.

This debate is not about his position on right to life issue. We have confirmed numerous judicial nominees of President Bush who have been active in the right-to-life movement or litigation, such as Judge Lavenski Smith, confirmed to the Eighth Circuit; Judge John Roberts, confirmed to the DC Circuit; Judge Michael McConnell, confirmed to the Tenth Circuit; Judge Ron Clark, confirmed to the District Court in Texas; Judge Ralph Erickson, confirmed to the District Court in North Dakota; Judge Kurt Englehart and Judge Jay Zainey, confirmed to the District Court in Louisiana; and Judge Joe Heaton, confirmed to the District Court in Oklahoma—among the 197 judicial nominees of President Bush who have been confirmed.

I have voted for many judges who made it very clear in their public record that they had taken a right-to-life position. In fact, the judges I just mentioned have been at the forefront of efforts to reverse Roe v. Wade as lawyers, and all were confirmed.

So it is unequivocally false to claim that Democrats have employed a pro-choice litmus test in voting on judicial nominees—not with all the ones we have voted for who would fall in that area. But the same, about the litmus test, cannot be said of the choices made by President Bush. It seems he has sought out individuals who share his pro-life views and who have strong pro-life credentials for these lifetime positions as Federal judges. In fact, I cannot think of a single judicial nomination President Bush has made of an individual who has been active on the pro-choice side of this issue. Senate Democrats have shown we do not have a litmus test. The White House has shown it does.

I am also saddened to note Mr. Holmes has attacked efforts to enforce the Supreme Court's decision in Brown v. Board of Education, the landmark case which declared that separate is inherently unequal. As a nation we have just celebrated the 50th anniversary of this unanimous decision of the Supreme Court—a unanimous decision with conservative and liberal justices joining together, but here we have a nominee who has criticized efforts to enforce this decision.

Brown v. Board of Education helped break the shackles of Jim Crow that had bound the Nation's dream of racial equality and the Constitution's promise of the 14th amendment. Instead, Mr. Holmes suggested that the Federal courts should not have the power to order school districts to take actions to remedy segregation that was blatantly unconstitutional. But I would remind him that, fortunately, there were judges who did not take this twisted, I might say, cowardly view of Brown v. Board of Education.

There were countless judges appointed by Republicans and Democrats who had courage in their efforts in the South because they did not believe our federal courts lacked the power to enforce a remedy to the violation of a fundamental constitutional right. Because of their courage, Brown v. Board of Education was enforced. One has to ask, if Mr. Holmes, based on his statement, would have shown that courage.

I respect the legacy of Judge Ronald Davies, who ordered that Little Rock Central High be integrated and had the independence and the strength of character to stand up to Governor Orval Faubus and insist on the enforcement of our Constitution as interpreted by the Supreme Court. We do not honor his legacy—his great, great legacy on this issue—by voting for this nominee.

In fact, Mr. Holmes has suggested that Booker T. Washington was correct to teach that slavery in the United States, which resulted in the inhumane, involuntary servitude and often brutal deaths of millions of African Americans, was part of divine providence. Mr. Holmes who wrote his dissertation on Mr. Washington's controversial ideas, stated that ''what we need to learn from Booker T. Washington is that not everything that parades under such banners as 'liberation' and 'freedom' is genuine.''

My grandparents and great-grandparents came to this country because they believed that the freedom promised by the Constitution in America is genuine. They believed liberation is genuine. They believed that this was a country that guaranteed it. I was sorely disappointed to hear Mr. Holmes' statement.

I do not think Mr. Holmes is simply out of step with reasonable interpretations of liberty, privacy, and equality. He is marching backward in the direction of an era in which individual rights under our Constitution were not fully endorsed by the courts and were often empty promises. While such a narrow approach may once have been in favor among a few, his hostility to modern understandings about civil rights and human rights is eccentric, to say the least. It is the Senate's job under our Constitution to serve as a check on the executive branch in nomination and it is our job to protect the rights of the American people by trying to ensure that we have a fair and an independent Federal judiciary.

Given his views of equality and freedom, it is perhaps not surprising that Mr. Holmes has also been critical of full endorsement of voting rights. For example, he represented the Republican Party of Arkansas before the Arkansas Supreme Court in late 2002 to reverse a lower court order allowing voting hours to extend beyond statutory times set in Pulaski County, in Little Rock. In the Republican Party of Arkansas v. Kilgore, Mr. Holmes was the party's lawyer in its emergency petition to the Arkansas Supreme Court.

According to his questionnaire, the Democratic Party ''obtained on order at 6:46 p.m. on election night extending the voting hours from 7:30 p.m., the statutory time for concluding voting, to 9:00 p.m. for Pulaski County.''

Subsequently, Mr. Holmes was able to get all 300 ballots cast after 7:30 thrown out, even though many of those people, working people, who voted had been waiting in long lines, waiting for their right to vote. According to press accounts, many of these long lines were in precincts with large numbers of African Americans. I think we should all be concerned when votes are not counted, when the American citizens who exercise their right to vote are disenfranchised. Mr. Holmes does not give much weight to this concern.

During the Bush v. Gore recount litigation, Mr. Holmes wrote a letter to the editor strongly opposing the accurate counting of Presidential ballots. Why? Such a recount would result in more votes to the Democratic candidate. I do not believe that with the record of this nominee that he will be impartial on such issues in Federal court. I would hate to be a Democrat to have to come before his court with views like this, but it appears that this is a case where the White House is saying: We do not want an independent Federal judge. We want somebody who we hope will be an arm of the Republican Party from the bench.

Finally, I note that among the many very troubling things this nominee has said, he has written that he does not think the Constitution was made for people of different views. I believe our Constitution's tolerance and protection for a diversity of views is one of the things that has made our Nation strong. Just look at the first amendment, the beginning of our Bill of Rights. The first amendment says you have the right to practice any religion you want or none if you want. It says very clearly you have a right of free speech. What it says is that we will have diversity because people have freedom of conscience. People have different ideas. Not only does the Constitution inherently value diversity, but also it guarantees that diversity will be protected. Anywhere you have diversity protected, you can have a strong democracy.

I cannot think of anything I have heard by any nominee that goes so much against our vision of America than to say that our Constitution was not for people of different views. Mr. Holmes seems to think the Constitution is meant only for people who share his own views of the world. I cannot imagine a fairminded person suggesting, as this nominee has, that Justice Oliver Wendell Holmes erred when

he wrote that the judicial activism of a century ago was wrong. Justice Holmes stood up against other judges who were substituting their personal, political, and economic views for those of legislators. Justice Holmes observed our Constitution is made for people of different views, but Mr. Holmes specifically objects to that vision of our Nation's charter.

I cannot imagine a fairminded and open-minded person staking out the ground that Mr. Holmes has. Mr. J. Leon Holmes has taken issue with that bedrock principle of our law. It is abundantly clear from the nominee's own writings and record why this nomination has stirred such controversy in the Senate and among the American people. Mr. Holmes might be one of the most intolerant nominees we have had before the Senate for a confirmation vote in the time I have been in the Senate. I can see why, even with a Republican-controlled Judiciary Committee, he could not get a majority vote to support him. He should not get a majority vote in the Senate.

Ask yourselves, men and women of this Senate, can you really vote to give somebody a lifetime appointment when they interpret the laws of this Nation—somebody who says that the laws are not made to protect diversity in America? Tell my Irish grandfather and my Italian grandfather, both of whom were stonecutters in Vermont, that our Constitution should not protect people from diverse backgrounds. I cannot believe that a judicial nominee would take issue with this core value because he wants to impose his own political views on the Constitution.

What we have before us is a very troubling nomination. Here, the President, who campaigned against the idea of judicial activism, has nominated somebody who is unabashedly an activist in a wide range of issues taking a narrow view of individual rights. The President, who has said he wants to respect all views in the country, has nominated somebody who does not believe in such diversity.

I still cannot get out of my mind the comments about rape and pregnancy. I still have nightmares when I think of some of the cases I prosecuted, some of the children I counseled, some of the families who grieved in my office, some of the lives I saw shattered by children who had been raped, became pregnant from that rape, and also were abused.

I will soon yield the floor so others may speak. I will vote against Mr. Holmes. He is not a man who should be on the federal bench with a lifetime post interpreting the rights of others, a man whose mind is so set against women's rights no matter how polite he may be, so set against the idea of protecting diversity, so set against the way our Constitution should be interpreted. His writings are a throwback to darker days in our Nation's approach to the law and the fundamental freedoms promised by our Constitution.

I yield the floor.

Mr. HATCH. Mr. President, I have been here a long time. I sat through the comments of the Senator. I have heard a lot of remarks on the floor of the Senate with regard to judges. In fact, I have heard them for the last 28 years. I have to say that not only do I totally disagree with everything the distinguished Senator from Vermont has said, but I believe he has seriously distorted this man's record. Let me just answer these distortions with maybe a few points.

No. 1, this man has the support of virtually everybody who counts in Arkansas—Democrats and Republicans.

No. 2, he has the support of the leading newspapers in Arkansas, which are not necessarily known for supporting Republicans.

No. 3, this man is an intellectually profound man who earned a Ph.D. from Duke University before he got his law degree. He graduated with honors with his law degree as well.

No. 4, this man has the blessing of the American Bar Association, with the highest rating a person can have.

No. 5, Leon Holmes is a very religious person, and virtually everybody who writes in his favor—virtually everybody I have seen, including many Democrat leaders in Arkansas—state that he is totally capable of putting aside his deeply held personal beliefs in order to act with dispassion and fairness on the bench.

No. 6, a number of Democrat prochoice women lawyers have written in and informed us that he has been their mentor, their advocate to partnership in his law firm; that he has not only been fair, he has been decent, honorable, and he has been their friend, even though they disagree with some of his personal views.

My gosh, if we are going to bring up every case an attorney has tried, because we differ with his particular clients, and paint the attorney as somebody who is not a good person, as has been done here, we would not have very many judges confirmed.

I could go on and on. Let me say that you don't get the well-qualified highest rating from the ABA because you are a jerk, as has been painted here. You don't get the support of Democrats and Republicans in your home State if you are a partisan who won't obey or follow the law. You don't get a Ph.D. from Duke unless you are a very bright person and somebody who has earned the right to a Ph.D. His studies were mainly of three great Black leaders, including DuBois, Washington, and Martin Luther King, Jr.

I could go on and on. I am just saying that I guess we could find a way to decry anybody who has ever tried a case, or at least a controversial case. Attorneys do that. I know the distinguished Senator from Vermont has done that. I have done that. If this body cannot understand why a person, when they are very young, makes some statements they are sorry they made later, then what body can? Many of the statements that have been described today are statements that were made almost 24 years ago, for which Leon Holmes has apologized and has received forgiveness from the people of Arkansas, and especially the two Senators from Arkansas, who know him more than anybody else here. They are both strong advocates for Leon Holmes.

Yet we sit here and hear very inappropriate comments and, in my opinion, highly distorted, about a man who is considered one of the better lawyers in Arkansas, maybe one of the better lawyers in the country. Look, it is time we quit playing these games with judges. Our side should not do it and the other side should not do it. If you disagree with Leon Holmes, vote against him, but you don't have to distort his record. Virtually every legitimate criticism he has had has been answered, and answered substantively. In fact, every legitimate question that has been raised has been answered.

This is a fine man who has the support of his media, which is pretty unusual for a pro-life Republican. He has the support of the bar down there. He has the support of Democratic women, as well as Republican women. He has the support of people who live religious lives. He has the support of his partners, many of whom are Democrats who don't agree with his personal views—although I think many would agree with his personal views. His personal views are legitimate, but there is room to disagree. But I don't know anybody of substance in Arkansas who thinks this man is unworthy to be on the Federal district bench, or thinks he will not obey the law when he gets on the Federal district bench, or thinks he will not uphold the law when he gets on the Federal district bench.

I could go through every argument that has been made and every one is not unanswerable but I think overwhelmingly answerable. It comes down to some statements he made a long time ago for which he has apologized, which he has said were insensitive. He was a young man dedicated to the prolife movement and he made some insensitive statements, as some do on both sides in pro-life or pro-choice contingencies.

This man deserves a vote up or down. I hope he will receive that and I hope he will be confirmed. But those who vote against him, I think, are doing so without the consideration of the high qualities this man offers, and without the recognition of the many Democrats who have written in favor of him. Many pro-choice Democrats have written in favor of him. If we are going to debate, we should debate the facts, not distortions of the facts. He has apologized and made amends. He asked forgiveness for some of his remarks that were insensitive.

I hope around here we are not of the persuasion or opinion that everybody who comes to the Federal bench has to be perfect from the time they graduate from law school on, or even before

that, or because we differ with them on one or two positions that may be very important issues to one side or the other, they do not have a right to serve on the bench, or that there may be people of deeply held religious views who are unwilling to admit, because I think of some of the stereotypes around here, they can do a great job on the bench in spite of their religious views.

In this particular case, this man is a very religious man who has made it more than clear that he will abide by the law even when he differs with it. This is a trial judge position. This is not the Supreme Court. But it is an important position, and I compliment my colleagues on both sides for scrutinizing all of these judgeships. But if they scrutinize fairly this man's record and what he has done, his reputation, his ability in the law, and his honesty and decency, then they are going to have to vote for him. If my colleagues do not do that, then I suppose they can vote against him. If they do so, they really have not looked at the record, have not been fair, and they have allowed buzz issues that have long since been answered to take a precedent position in the arguments that should not be permitted.

Mr. LEAHY. Mr. President. I began this day calling for bipartisanship and civility in this Chamber. It seems that call has fallen on deaf ears with Republicans renewing their baseless charges that Democrats are anti-Catholic. Some Republicans keep recycling these reckless charges even though they are false. They do so in order to play wedge politics, the type of dirty politics preferred by the President's strategist Karl Rove. I have called on the White House to disavow these charges of religious bigotry. After all, President Bush ran for office claiming that he would change the tone in Washington and ''be a uniter, not a divider.'' His repeated actions to the contrary speak louder than his words. I have called on the Republican administration to disavow these anti-Catholic claims. Everyone knows that the President's father's counsel is pushing these false and partisan charges against Democrats. The White House has not stopped these charges. Its allies continue to throw this mud. It is beneath the dignity of this body.

Anyone who reviewed the public submissions of the 197 judicial nominees of President Bush we have confirmed would see that many of these nominees have been active volunteers in their communities, including their parishes and other faith-based organizations. For example, the judges we have confirmed have been active members of their Diocesan Parish Council, the Friends of Cardinal Munich Seminary, the Altar and Rosary Society, the Knights of Columbus, the Archdiocese Catholic Foundation, Catholic Charities, the Archbishop's Community Relief Fund, the Catholic Metropolitan School Board, Serra Club, their Parish and Pastoral Councils, the Homebound Eucharistic Ministers Program, the St. Thomas More Catholic Lawyers Association, the John Carroll Society, the Guild of Catholic Lawyers, the Catholic League for Religious and Civil Rights, and the U.S. Catholic Conference, among other organizations. How dare Republicans come to this floor and claim that Democrats oppose Catholics or others active in their church when the public records of the 197 nominees confirmed absolutely refute these false and hurtful claims.

I stand against the religious McCarthyism being used by some Republicans to smear Senators who dare to vote against this President's most extreme nominees for lifetime positions on the federal courts. We should come together to condemn their injection of religious smears into the judicial nomination process. Partisan political groups have used religious intolerance and bigotry to raise money and to punish and broadcast dishonest ads that falsely accuse Democratic Senators of being anti-Catholic. I cannot think of anything in my 29 years in the Senate that has angered me or upset me so much as this. Earlier this session I recall emerging from mass to learn that one of these advocates had been on C–SPAN at the same time that morning to brand me an anti-Christian bigot.

As an American of Irish and Italian heritage, I remember my parents talking about days I thought were long past, when Irish Catholics were greeted with signs that told them they did not need apply for jobs. Italians were told that Americans did not want them or their religious ways. This is what my parents saw, and a time that they lived to see as long passed. And my parents, rest their souls, though this time was long past, because it was a horrible part of U.S. history, and it mocks the pain—the smears we see today mock the pain and injustice of what so many American Catholics went through at that time. These partisan hate groups rekindle that divisiveness by digging up past intolerances and breathing life into that shameful history, and they do it for short-term political gains. To raise the specter of religious intolerance in order to try to turn our independent federal courts into an arm of the Republican party is an outrage. They want to subvert the very constitutional process designed to protect all Americans from prejudice and injustice. It is shocking that they would cavalierly destroy the independence of our federal courts.

It is sad, and it is an affront to the Senate as well as to so many, when we see senators sit silent when they are invited to disavow these abuses. Where are the fair-mined Republican Senators? Where are the voices of reason of moderate Members of this body? Do they agree with this wedge campaign by the more extreme elements in the Republican party to cause further divide in our nation along religious lines? What has silenced these Senators who otherwise have taken moderate and independent stands in the past? Are they so afraid of the White House that they would allow this religious McCarthyism to take place? Why are they allowing this to go on? The demagoguery, divisive and partisan politics being so cynically used by supporters of the President's most extreme judicial nominees needs to stop.

These smears are lies, and like all lies they depend on the silence of others to live, and to gain root. It is time for the silence to end. The administration has to accept responsibility for the smear campaign; the process starts with the President. We would not see this stark divisiveness if the President would seek to unite, instead of to divide, the American people and the Senate with his choices for the Federal courts.

And those senators who actively join in this kind of a religion smear; they may do it to chill debate on whether Mr. Holmes can be a fair and impartial judge, but they do far more. They hurt the whole country. They hurt Christians and non-Christians. They hurt believers and non-believers. They hurt all of us, because the Constitution requires judges to apply the law, not their political views, and instead they try to subvert the Constitution. And remember, all of us, no matter what our faith—and I am proud of mine—no matter what our faith, we are able to practice it, or none if we want, because of the Constitution. All of us ought to understand that the Constitution is there to protect us, and it is the protection of the Constitution that has seen this country evolve into a tolerant country. And those who would try to put it back, for short-term political gains, subvert the Constitution, and they damage the country.

These baseless and outrageous claims harken back to dark days in our nation's history. I was just a young man growing up in Montpelier, VT when Senator Joseph McCarthy rose to power and ignomy as one of our country's worst demagogues through his spectacular brand of the politics of destruction. Senator McCarthy first claimed to a Republican Party club in West Virginia that he had a list of 205 known communists in the State Department. The next day, in Salt Lake City, he claimed he had a list of 57 ''card-carrying communists'' at the State Department. At other times he claimed there were 81. You see, the facts do not really matter to McCarthyists—so long as the claim is spectacular and causes voters alarm.

I think many Americans believed because they could not imagine why someone would make such false allegations and smear the reputations of innocent people. That is the advantage of the demagogue, but we must be ever vigilant that such a lie does not become the truth through the alchemy of repetition.

Shortly afterward his remarks in Utah, Senator McCarthy came to the floor of the Senate, this floor, and asserted that he had dossiers on federal

employees who were un-American, changing descriptions as he read them. For example where one person was described as ''liberal'' on paper, Senator McCarthy substituted the infammatory ''communistically inclined.'' That year, in 1950, a Senate Committee investigating Senator McCarthy's charges issued a report, known as the Tydings Committee Report after Maryland Senator Millard Tydings who chaired the subcommittee looking into the lies that were being spread. A critical piece of that report from 1950 has relevance today, more than 50 years later so I would like to quote a paragraph in full:

At a time when American blood is again being shed to preserve our dream of freedom, we are constrained fearlessly and frankly to call the charges, and the methods employed to give them ostensible validity, what they truly are: A fraud and a hoax perpetrated on the Senate of the United States and the American people. They represent perhaps the most nefarious campaign of half-truths and untruth in the history of the Republic. For the first time in our history, we have seen the totalitarian technique of the ''big lie'' employed on a sustained basis. The result has been to confuse and divide the American people at a time when they should be strong in their unity, to a degree far beyond the hopes of the Communists whose stock in trade is confusion and division. In such a disillusioning setting, we appreciate as never before our Bill of Rights, a free press, and the heritage of freedom that has made this Nation great.

This quote is from the Report of the Committee on Foreign Relations pursuant to S. Res. 231, a resolution to investigate whether there are employees in the State Department disloyal to the United States, dated July 20, 1950.

The Tydings Report also noted that ''few people, cognizant of the truth in even an elementary way, have, in the absence of political partisanship, placed any credence in the hit-and-run tactics of Senator McCarthy.'' Similarly, the Report sagely observed that ''the oft-repeated and natural reaction of many good people . . . goes something like this—'Well there must be something to the charges, or a United States Senator would never have made them!' The simple truth now is apparent that a conclusion based on this premise, while normally true, is here erroneous. . . .'' Unfortunately, we face a similar situation today.

It was not until 1954 that Senator McCarthy's deceitful campaign earned the censure of the full Senate for conduct unbecoming a Member of the Senate. I do remember that year when one of the greatest Senators of Vermont, Ralph Flanders, stood up on this floor, even though he was a Republican, sort of the quintessential Republican and condemned the tactics of Joe McCarthy on several occasions.

For example, on June 1, 1954, Senator Flanders renewed his deep concerns about the allegations of Senator McCarthy and made some observations that are particularly relevant, unfortunately, to the recnt religious smear of Republicans in 2003. He noted how Senator McCarthy's political agenda involved sowing division and fear among people of different faiths—Jews, Protestants, and Catholics. After instilling fear in Jewish Americans, McCarthyists ''charged the Protestant ministry with being, in effect, the center of Communist influence in this country.'' As Senator Flanders observed, ''the ghost of religious intolerance was not laid'' by the departure of a few close allies of Senator McCarthy who had been rebuked for attacking a majority faith in this country. As Senator Flanders noted, ''Clearer and clearer evidence of the danger of setting church against church, Catholic against Protestant. . . . [Senator McCarthy's] success in dividing his country and his church'' was paralleled only by his divisiveness to the Republican party.

Later that summer, Senator Flanders offered resolution of censure condemning the conduct of Senator McCarthy, who had smeared so many innocent people with his false claims and treated some of his colleagues in this body with contempt in his zeal. He noted Senator McCarthy's penchant for breaking rules, ''The Senator [McCarthy] can break rules faster than we can make them.'' When the Senate considered the matter, it censured Senator McCarthy, and rightly so.

History properly condemns him and his cohorts, even though it has become fashionable for right-wing extremists such as Ann Coulter to attempt to rewrite history and call him a brave hero who saved America. The fact is that our Nation and Constitution are lucky to have survived his divisive, destructive and manipulative tactics which were then and remain, the words of Senator Flanders, a blot on the reputation of the Senate. He was a ruthless political opportunist who exploited his position of power in the Senate to smear hundreds of innocent people and win headlines and followers with his false assertions and innuendo, without regard to facts, evidence, rules and human decency.

Senator Flanders of Vermont stood up and fearlessly condemned what Joseph McCarthy was doing. And it stopped. I hope some will stand up and condemn these McCarthyist charges of anti-Catholic bigotry leveled at Catholics and others who are members of he Senate Judiciary Committee and Members of this Senate.

The reality is that not one of the Democratic Senators in Committee who voted against Mr. Holmes did so because he is Catholic. Half of the Democratic Members of the Judiciary Committee are Catholic. We would not vote for him or vote against him because of his religious affiliation. What we cared about was Mr. Holmes long history of statements that he himself admits have been inflammatory and unfortunate. Among the many concerns are his statements that the Constitution, our Constitution, is not meant for people of different views. His intolerance of the views of others is manifest in numerous statements he has made. His insensitivity to rights of others is also apparent, no matter how polite a person he may be.

His statements against efforts to implement the Supreme Court's decision in Brown v. Board of Education, his opposition to Federal law intended to restore basic civil rights rules that had been modified by conservative activist judges, his denigration of political rights for African Americans, his active work to limit people exercising their right to vote or to have their vote counted, and his screeds against women's rights are just too much to overlook. The President has marked the anniversary of the landmark Civil Rights Act of 1964 with public speeches while below the radar screen he has put forward nominee after nominee with records of hostility toward civil rights, toward women's rights, toward environmental protections, and toward human rights. This President knows what he is looking for in the legacy he wants to leave with the lifetime appointees he has put forward. He has nominated more people active in the Federalist Society, such as Leon Holmes, than African Americans, Latinos or Asians combined. He is more committed to ideological purity than to diversity or full enforcement of civil rights.

President Bush has claimed that he wants judges who will interpret the law and not make the law, but in the aftermath of the administration's re-interpretation of the laws against torture that assurance is meaningless. Just look at the torture memo written by Jay Bybee, who was confirmed for a lifetime seat on the Ninth Circuit after stonewalling the Senate on his legal work and views. It is not fair to the American people that this President's judicial nominees be given the benefit of the doubt. Here, in Leon Holmes, we have a nominee whose views are well known. There is little doubt what kind of activist judge he was chosen to be and will be if confirmed.

Senator HATCH has claimed that asking about whether a nominee will follow Supreme Court precedent on privacy and choice is out of bounds because in his view ''the great majority of people who are pro-life come to their positions as a result of their religious convictions. We hold this view as a religious tenet, and this is part and parcel of who we are.'' Under Senator HATCH's view that it is improper to ask judicial nominees about their view of legal issues that may also relate somehow to a religious position. I ask, however, would it be wrong for the Senate to ask a nominee for a lifetime position for their views on racial discrimination? Of course that would be absurd and an abdication of our responsibility to serve as a check on the nominees put forward by this or any President. As Senator DURBIN has mentioned based on the tragic shootings instigated by the racist World Church of the

Creator in Illinois, it would be irresponsible for the Senate in its advice-and-consent role to ignore, for example, questions of racial discrimination if those views can be cloaked in religious garb.

The Senate has considered the views of nominees since the beginning of our Nation, when Justice John Rutledge's nomination to be Chief Justice of the Supreme Court was rejected for a speech he gave expressing his views on a treaty. To assert suddenly that although President Bush and his advisors can consider a judicial candidate's views, such as on race or choice, the Senate is forbidden from doing so is a terrible manipulation of the process. The Constitution gives the Senate an equal role in the decision about who serves on the Federal courts, not a lesser rule and certainly not that of a rubber stamp. With these religious assertions, Republicans may think that they have found a loophole to avoid public questions to and answers by their hand-picked judicial nominees about their views that both Democrats and Republicans actually consider to be significant areas of law. Support for protecting racial discrimination should be allowed no loophole from scrutiny. A nominee's beliefs and views about constitutional rights should not be hidden from public view until after a nominee is confirmed to a lifetime seat on the bench.

The truth is that Mr. Holmes' affiliation with the Catholic Church neither disqualifies him nor qualifies him for the Federal bench. And this is how it should be, how it must be, under our Constitution. Mr. Holmes' record is what causes grave concerns. He has been active and outspoken with rigid and radical views about the meaning of the Constitution, the role of the Federal Government, equality rights and other liberties.

Republicans have falsely claimed that Democrats have an anti-Catholic bias because we oppose the nomination of Leon Holmes for a lifetime job as a Federal judge. The opposition to Mr. Holmes is not based on his religious affiliation. No matter his faith, Mr. Holmes' record does not demonstrate that he will be fair to all people on most legal issues that affect the rights of all Americans. Mr. Holmes' religious affiliation is irrelevant to these serious matters of concern about whether he would be a fair judge. He has no meaningful judicial experience that would demonstrate his ability to set aside his views and apply the law fairly. To suggest otherwise is low and base.

It is also untrue to claim that Democrats have a pro-choice litmus test. Many of the 197 judicial nominees of President Bush have been active in pro-life issues or organizations according to the public record, and most have been confirmed unanimously, such as Ron Clark, a pro-life former Texas State legislator, Ralph Erickson, who was active in pro-life groups in North Dakota, Kurt Englehardt, a former pro-life leader in Louisiana, and Joe Heaton, a pro-life former Oklahoma legislator. The public record shows that it is obviously false to claim that Democrats have employed a pro-choice or anti-Catholic litmus test in voting on judicial nominees.

Why anyone would tell such lies, claiming that Democrats are anti-Catholic or anti-pro-life, and sow such seeds of division and hate. Why, as Senator Tydings asked in regard to McCarthy, why would anyone on the floor of the Senate or in a committee or in a hallway press conference in the Capitol or anywhere make such charges if there were not something to them? Conservative columnist Byron York noted that Republicans are working closely with some organizations to press the debate: '' 'The issue is playing very well in the Catholic press and in Catholic e-mail alerts,' the [unnamed] Republican says. 'You tap into an entire community that has its own press, its own e-mail systems, and that has been tenderized by anti-Catholicism, which they consider to be the last permissible bias in America.' '' This religious McCarthyism of Republican partisans is bad for the Senate. It is bad for the courts. And it is bad for the country.

Mr. President, I suggest the absence of a quorum and ask that the time be divided equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I come to the floor to share my views on this nominee to the Federal district court. I heard our distinguished chairman, a man who I greatly respect and admire, mention he was recommended as well qualified by the American Bar Association, and that he in fact could distance himself from his personal beliefs; that he is a deeply religious man, and the chairman believed he would be able to truly distance himself.

I have a very hard time believing that. If I look at his personal beliefs, they are extraordinary and they are way out of line with the mainstream of American thinking. I want to comment a little bit about them. They are not only outside the mainstream of American thinking, but they are outside the mainstream of American judicial thought as well.

Mr. Holmes has no real judicial experience. That is what makes it difficult, because there is no way we know whether he can distance himself from many of the comments he has made over many years. He is a native of Arkansas. He is a practicing lawyer at a law firm. He has done some teaching at the University of Arkansas and at the Thomas Aquinas College in my State: California.

With the exception of two instances where he served as a special judge on the Arkansas Supreme Court, he has no judicial experience. But that is not my main objection. My main objection is over the past 24 years he has put forward in word and writing philosophies that are far from U.S. mainstream opinion on a whole series of subjects, from women's rights, to choice, to race, and to the separation of church and state. These statements make him a very troubling nominee, and I have never—again, never—before voted ''no'' on a nominee to the district court. This is my first ''no'' vote in the 12 years I have been on the Judiciary Committee.

Let me give you a few examples. Let me take a subject, women's rights. Seven years ago—it is not too long ago—seven years ago he wrote:

> ''The wife is to subordinate herself to her husband,'' and that ''the woman is to place herself under the authority of the man.''

This belief, if sustained, clearly places this nominee in a place apart. But this is not merely my own view, it is the view of the equal protection clause of the 14th Amendment of the Constitution, which I would hope any Federal judge would uphold.

It is also the view of numerous Federal civil rights laws, including the Civil Rights Act of 1964, for which the Nation celebrated its 40th anniversary on July 2. How can I or any other American believe that one who truly believes a woman is subordinate to her spouse can interpret the Constitution fairly? When women are parties to claims of job discrimination, sexual harassment, domestic violence, and a host of other issues involving the role of women in society, how can I be assured they can get a fair hearing from Leon Holmes? What will a plaintiff think when she finds out the judge hearing her case thinks women should subordinate themselves to men?

That is a fairly crisp view. It is a view I have not seen presented, certainly in the last 20 years, in any serious way.

Let's take a woman's right to choose. Again and again over decades, Mr. Holmes has made comments that show he is solidly opposed to a woman's right to choose, even in the case of rape. Let me give an example.

In a letter that he wrote to the Moline Daily Dispatch—this is a letter he writes to a newspaper—Mr. Holmes called rape victims who become pregnant ''trivialities.''

How is a rape victim ever a triviality?

He wrote in that same letter that ''concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami.''

That might be a cute phrase but, in fact, it is grossly incorrect. Snow falls in Miami about once every 100 years, but, according to the American Journal of Obstetrics and Gynecology, each

year in America over 30,000 women become pregnant as a result of rape or incest. This is hardly a trivial matter.

Mr. Holmes' letter wasn't a one-time comment. I can excuse a lot of one-time comments. I understand how they happen. I understand how they can be taken out of context. But he has also been an opponent of a woman's right to choose for decades. Other comments he has made on the very sensitive issue of abortion are equally insensitive. For example, he said:

I think the abortion issue is the simplest issue this country has faced since slavery was made unconstitutional, and it deserves the same response.

In other words, end it. It is a very precise point of view.

Mr. Holmes has stated:

The pro-abortionists counsel us to respond to these problems by abandoning what little morality our society still recognizes. This was attempted by one highly sophisticated, historically Christian nation in our history—Nazi Germany.

In a 1987 article written to the Arkansas Democrat, Mr. Holmes wrote:

[T]he basic purpose of government is to prevent the killing of innocent people, so the government has an obligation to stop abortion.

Seven years later, in a 1995 interview, with the Arkansas Democrat Gazette, Mr. Holmes stated:

I would like to appear before the Supreme Court of the United States, and I would like to have argued Roe v. Wade.

In response to Senator DURBIN's written question asking what Supreme Court cases Mr. Holmes disagrees with, he answered: Dred Scott v. Sanford, Buck v. Bell, and Roe v. Wade.

Dred Scott held that blacks were not people under the Constitution. As you know, Buck v. Bell held that a woman could be sterilized against her will. Those cases were abominations.

To include Roe v. Wade with these two decisions clearly indicates that he holds Roe as a decision to be abolished. This is simply not a mainstream perspective.

These comments don't sound as if they come from a man with an open mind about a most sensitive issue. Rather, they sound as if they come from a man with an agenda to eliminate the constitutional rights of American women to choose.

That is a problem for me because I don't believe someone who has these views can fairly hand out justice. I don't believe such a person should be a Federal judge for the rest of his life.

Mr. Holmes is not merely opposed to a woman's constitutionally protected right to choose. He has also lashed out at contraception, against women generally, and against the rights of gays and lesbians. He wrote in 1997:

It is not coincidental that the feminist movement brought with it artificial contraception and abortion on demand, with recognition of homosexual liaisons soon to follow.

That is emotion-laden language. It is offensive to a whole host of a number of people. It is extraordinary language. It certainly is not a line of thinking with which I can agree. These are all areas where the Federal courts play a vital role.

He has also made some shocking statements about race in America. Specifically, in a 1981 article, he wrote for a journal called Christianity Today about Booker T. Washington. This is what he wrote:

He taught that God had placed the Negro in America so it could teach the white race by example what it means to be Christlike. Moreover, he believed that God could use the Negroes' situation to uplift the white race spiritually.

Mr. Holmes first wrote those words 23 years ago. But he still stands by them. In April of last year, Leon Holmes wrote to Senator LINCOLN:

My article combines [Washington's] view of providence—that God brings good out of evil—with his view that we are all called to love one another. This teaching can be criticized only if it is misunderstood.

Are these the words of a man who should be confirmed to interpret the equal protection clause of our Constitution without prejudice, to interpret the due process clause, to interpret Federal civil rights statutes?

In my view, Mr. Holmes' statements also indicate that he can't separate his own religious views from the Federal law he will be charged with interpreting. This is a trait that is particularly dangerous, given the strong views he has taken.

On religion, in a speech he delivered 2 years ago in Anne Arbor, MI, he stated:

Christianity, unlike the pagan religions, transcends the political order.

That is really food for thought.

He continues:

Christianity, in principle, cannot accept subordination to the political authorities, for the end to which it directs men is higher than the end of the political order; the source of its authority is higher than the political authority.

I guess one could say that all depends on what he means by the political order. The political order produces the law and the court interprets the law.

If he is saying the political order which produces the law is subservient to Christianity, how can we feel this is going to be an open-minded judge?

He also stated in the same speech that he was ''left with some unease about this notion that Christianity and the political order should be assigned to separate spheres, in part because it seems unavoidably ambiguous.''

I have no desire to cause Mr. Holmes any additional ''unease.'' But if he is confirmed today, that is what he will have, whenever a question about the separation of church and state comes before him. The First Amendment in reality is not ''ambiguous.'' It clearly states that there shall be ''no law respecting an establishment of religion.''

My concerns go further than First Amendment cases. If Mr. Holmes becomes a U.S. district court judge, how can we be sure he will separate his faith from the law? How will the parties before him know he is basing his rulings on the U.S. Constitution rather than on his spiritual faith?

This is not a statement on belief. I respect Mr. Holmes' right to his own faith, and I generally believe that a strong and abiding faith is a positive, not a negative, factor in reviewing an individual for public service. But here, where a nominee has himself said that faith must trump the law, it would be troubling at best to grant that nominee a lifetime seat on a Federal bench where law must trump all else, if our system of justice is to work.

Mr. Holmes' disconcerting views about the Constitution go beyond what he thinks about a particular area of law. He has expressed support for the concept of natural law, which holds there are laws that trump the law of the Constitution.

Natural law, simply put, holds that the Constitution is not the supreme law of the land. Rather, those who believe in natural law would subordinate the Constitution to some higher law. This concept is starkly at odds with the role of a Federal judge, who must swear to uphold the Constitution. But Mr. Holmes says that natural law trumps, as I understand it, the Constitution which he takes an oath to uphold.

In an article three years ago, in 2001, he wrote:

[T]he Constitution was intended to reflect the principles of natural law.

In response to a written question from Senator DURBIN, Mr. Holmes wrote:

[M]y view of natural rights derives from the Declaration of Independence.

Now the Declaration of Independence, which all Americans joyfully celebrated this past weekend, is the source of our Nation's liberation. The Constitution is the source of our Government and our laws. So they are separate and distinct from one another. This is a critical distinction, and I am not sure Mr. Holmes appreciates that. If he reads natural law into the Constitution, then he is not reading the same Constitution as the rest of America.

There is one final issue I would like to address. At the end of last month, on June 24, we confirmed six judges in a single day. Since the accommodation of the White House, the Senate has confirmed 24 of the 25 judges to which we agreed to proceed to floor votes. We have confirmed 28 nominations this year alone, including 5 circuit court nominations. And the Senate has confirmed 197 judges since President Bush was elected as our President.

I have always maintained my own counsel when it comes to the confirmation of judicial nominees. I do not use my blue slip. I do not make a decision until after the individual has a hearing and generally until after he or she has answered the written questions. I have always tried to see the potential for

good in the nominees who come to us. When the President nominates a person to the Senate, it is my feeling we should do everything we can to respect the President's choices, while still taking with the utmost seriousness our own constitutional obligation to advise and consent.

To that end, as I said before, I have never before opposed a nominee to a U.S. district court. I have also supported nominees to the Court of Federal Claims—Susan Braden, Charles Lettow, and Victor Wolski—whom other Democrats opposed.

Even at the level of the U.S. Court of Appeals, I have supported nominees whom others have opposed. I supported the nomination of Jeffrey Sutton to the Sixth Circuit, and I was the only Democrat on the Judiciary Committee to do so. I supported the nomination of John Roberts to the DC Circuit, even though three Democrats on the Judiciary Committee opposed him. I supported the nomination of Deborah Cook, also to the Sixth Circuit, when many of my colleagues voted against her.

In all of these instances, I had confidence the nominees would interpret the Constitution and the Nation's laws fairly and without bias. And that is all I ask. I would expect these nominees to be conservative, and that is not a problem, as long as their views are not contrary to what a majority of Americans believe and the judicial thinking of a majority of mainstream judges. But I do not feel that way about Mr. Holmes.

I have no doubt he is a man of deep and sincere beliefs, and in this great Nation he is entitled to those beliefs. I commend him for his faith. But how can I entrust protection of separation of church and state, protection of the civil rights laws, protection of a woman's right to choose—all of the major values which come before a Federal court judge—with the comments he has made? Because these comments are robustly extraordinary. I would never dream of these comments being made by someone who aspires to be on a Federal court of law. And if you have no judicial experience by which to evaluate whether he can in fact separate himself from his views, it is a very difficult nomination to swallow.

As a woman, how can I possibly vote for someone to go on to a Federal district court who believes women should be subordinate to men, when that judge is going to have to look at employment discrimination, sexual harassment cases, who in the modern day and age, as a practical tenet of public thinking, believes—and believes strongly enough to write about it and say it to the world—that women should be subordinate to men and a wife should be subordinate to her husband, and expect any woman who comes before that judge is going to have fair and even treatment?

For over 20 years, Mr. Holmes has been making extremist statements on women, on race, on abortion, on the role of religion in society. His statements in each individual area, as I have said, are startling. Taken together, he has given us more than enough reason to fear he will continue to make radical statements when his words have the force of law. And that is a risk I, for one, do not want to take.

So I urge my colleagues today to join me in opposing this confirmation and voting no. It will be my first one in 12 years.

I yield the floor.

Mr. SESSIONS. Mr. President, I believe the Senator from New Mexico is to be next.

Mr. DOMENICI. Mr. President, I inquire, how much time does the Senator have remaining on the subject matter at hand?

The PRESIDING OFFICER. The Senator from Alabama has 83½ minutes, almost 84 minutes, under his control; and the opposition has about 31½ minutes.

Mr. DOMENICI. Mr. President, I ask the Senator if he will yield me up to 10 minutes.

Mr. SESSIONS. Mr. President, I am delighted to yield the Senator from New Mexico up to 10 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to speak for 10 minutes as in morning business.

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

(The remarks of Mr. DOMENICI are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I yield myself up to 10 minutes off the side of Senator LEAHY.

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

Mrs. HUTCHISON. Mr. President, I rise to discuss Leon Holmes' nomination to the bench of the U.S. District Court for the Eastern District of Arkansas. Article II, section 2 of the Constitution imposes profound responsibility on the U.S. Senate to advise and consent on appointments of individuals to lifetime positions.

I rarely voted against a judicial nominee or even opposed one under President Clinton. I have never opposed one under President Bush. On the rare occasion when I did oppose a judicial candidate, it was because a nominee had failed to show proper judicial temperament, or if questions about judicial philosophy arose, and there was no judicial record on which to base a vote of confidence.

I take very seriously the responsibility of confirming an individual for a lifetime appointment. These Federal judges do not answer to anyone after they take office. So when someone's views raise a question or concern and there is no record as a judge to show he or she can set personal views aside, I believe caution is warranted. For my vote, such is the case with Leon Holmes.

Dr. Holmes is a gifted man and a capable attorney. He has had a strong career and demonstrated commitment to his community. His rich spiritual conviction and work ethic are traits for which he is commended. I have listened to Dr. Holmes' supporters. I read statements in support of his candidacy presented by the Department of Justice. I know his distinguished career. I have read carefully his writings and public statements, including those for which he has subsequently clarified or apologized. I met Dr. Holmes to talk about his nomination.

Mr. President, we have made mistakes like this in the past. Last month a judge on the Second U.S. Circuit Court of Appeals, a judge who was confirmed unanimously by the Senate in 1994 with my vote, made a disturbing public speech. In it, he compared President Bush's election in 2000 to the rise of power of Mussolini. The judge has, of course, apologized. We have all made remarks we wish we had not made. But in this case, coming from a judge, the blatant partisanship and political bias revealed by this remark, reduced the value of the subsequent apology. Now, it is a fair question, if a Republican-oriented litigant comes to the Second Circuit, can he or she be assured of an impartial justice by that judge?

In 1980, Leon Holmes wrote:

> The concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami.

I differ with him absolutely on this issue.

If one rape victim is pregnant, she deserves protections and rights. She is a victim our society must acknowledge. What of the 14-year-old pregnant girl—a victim of incest from her father? Should she be cast aside as inconsequential? If you talk to any person who has served on a grand jury, in any urban area of our country, they have seen such a case. It happens. Thousands of rape victims in our country become pregnant every year. The Houston Chronicle recently reported that the American Journal of Preventive Medicine estimates 25,000 rape-related pregnancies occur annually. Are these victims to be ignored by our laws and society?

To his credit, Dr. Holmes has acknowledged that these comments were insensitive, but in conjunction with his other writings, that isn't enough for a lifetime appointment to a federal judgeship.

My vote will not be in any way related to his views on abortion or his personal religious beliefs. It is based on his body of statements over a 25-year period that lead me to conclude he does not have a fundamental commitment to the total equality of women in our society.

I have supported all of President Bush's previous nominees. In each instance, if there has been a controversy, I have tried to make an independent judgment without employing a litmus

test, and without employing my own discrimination based on the nominee's personal practices or ideologies. In each case, I felt the candidate met the requirements. But I have a constitutional role that I must, in good conscience, uphold as I see it. I believe in the overwhelming majority of cases, the President should be granted his appointments to the bench. The role given to the Senate was to allow all possible information about a nominee to come forward to assure that a person is fit. Personally, I doubt that the writings of this nominee were known to the Administration when the appointment was made. But since his statements have come to the attention of the Senate, we must use our judgment about the overall ability of this nominee to give impartial justice in all cases.

I conclude that I cannot provide my consent for Leon Holmes.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I want to share some thoughts about the Holmes nomination. I feel very deeply about it. I respect so much my friend, the Senator from Texas, and her service in this body. I will say that she and I have talked about it before. I think we are missing something here. I urge her to reconsider the position she has taken, although I know she has taken it carefully and I doubt that is likely. But I urge her and others to consider what we are doing here, about how we vote on judges.

Let me just say that Americans and people around the world have various beliefs, and to some people different beliefs are viewed as strange. Those with religious beliefs may have different views on some issues than those who don't have religious beliefs. There is quite a lot of that. We don't all agree. We have different views about whether there is a Trinity, or what do you think about the virgin birth, and issues of all kinds. We have a lot of differences of opinion.

We have a view in this country that there cannot be a religious test for a judge or any other position in Government. There cannot be a religious test that you can put on them, saying you have to have a certain religion or certain belief before you can be an official in this Government. No, that is not true. We should not do that.

I guess what I will first say—and I hope I can be clear about this—we differ in our religious principles. It has been suggested that Mr. Holmes' religious principles are extreme. I say to you that his principles are consistent with the Catholic Church's principles. What he has said in every writing I have seen, and as I understand it, they are perfectly consistent—in fact, he defended classic Catholic doctrine. He defended classic Catholic doctrine. Regardless of whether he had a personal view that was somewhat unusual about his religious faith, that is not the test we have here. The question is, Will his personal religious beliefs he may adhere to strongly interfere with his ability to be a good judge?

He and his wife wrote a letter to a church in a church newspaper to discuss how they have ordered their marriage, and they have ordered it in the classical terms of Christianity. As a matter of fact, I think the Baptist Church recently affirmed a similar position in their denomination. It is the second largest denomination in the U.S.—second to the Catholic Church. That is not an extreme view. Whether you agree with it, it is scriptural, it is Christian doctrine. He defended and explained and wrote about that.

Isn't it good that we have a nominee for the Federal bench who is active in his church, who thinks about the issues facing his country and writes about them and talks about them? That is a healthy thing. The question is—and it is legitimate for those who are concerned about those views—if they don't agree with his view on abortion or on how marriage is arranged, to inquire of the nominee whether those views are so strong they would affect his or her opinions from the bench. That is the test. If we get away from that, we have a problem.

What is going to happen when we have a Muslim who has been nominated here or an Orthodox Jew, or any other denomination that doesn't agree with us on religious beliefs? Are we going to demand that they come before the Senate Judiciary Committee and renounce their faith as a price to be paid before they can be a Federal judge? No, sir, that is wrong. This is big-time stuff; this is not a little iddy-biddy matter, Mr. President. We should not be in that position. Yes, inquire if the person's views are so strongly held that they would impair his ability to be a Federal judge. Yes, ask whether they are a good lawyer, or do they have a good reputation among the bar, or do people respect their integrity, do they have good judgment, do people like and admire them. Ask those things. Ask whether the person has lack of judgment. But don't say: I don't agree with your theology on marriage; I don't agree with your church's view on abortion; therefore, I am not going to vote for you. That is a dangerous thing. It should not be done. It is a mistake for us to head down that direction. I cannot emphasize that too much.

This is wrong. We should not do this. It is not the right way to evaluate Federal judges. I understand when somebody says: I just feel strongly about this deal on marriage that he and his wife wrote. I feel, feel, feel. We need to stop thinking like that and not be so much worried about how we feel, and we better think about the consequences of our actions and our votes.

This is a dangerous precedent. I respect Judge Holmes. He is a man who has reached out to the poor, helped women lawyers to an extraordinary degree, helped them become partners in his firm. He has a wonderful wife who respects him and defended him in a real hot letter in response to the criticism of the article that she and Judge Holmes wrote. I think we ought to look at that.

We have confirmed people to the bench that have made big mistakes in my judgement—we have confirmed people to the bench that have used drugs, yet, we are now debating keeping this man off the bench for his religious writings. Would Mr. Holmes be in a better position with members of this body if he had smoked dope instead of written religious articles? That should not be so.

Let's look at his basic background and reputation for excellence. Of course, we know the two Democratic Senators from his home State of Arkansas support his nomination. So he has home State support.

We know the American Bar Association rated him their highest rating, ''well-qualified.''

We know he is probably the finest appellate lawyer in the State of Arkansas.

We know the Arkansas Supreme Court, when at various times they need a lawyer to sit on that court, they have called him two or three times to sit on the court.

He is one of the most respected lawyers in the State of Arkansas.

He was Phi Beta Kappa at Duke University. I think he was No. 1 in his class in law school.

This is a man of integrity, of religious faith and conviction, who is active in his church, who has reached out to the poor all his life, tried to do the right thing, and he is the one who comes up here and gets beaten up.

This is what his hometown newspaper, the Arkansas Democrat Gazette, said. These are the kinds of comments from the people who know him:

> What distinguishes Mr. Holmes is a rare blend of qualities he brings to the law—intellect, scholarship, conviction, detachment, a reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge. He would not only bring distinction to the bench, but promise. In choosing Leon Holmes, the President could bequeath a promise of greatness.

I think that is high praise. That is a beautiful comment. I suggest that is something anyone would be proud to have said about them.

He has practiced commercial litigation at the trial and appellate level in State and Federal courts. He has acquired significant courtroom experience. He is currently a partner at Quattlebaum, Grooms, Tull & Burrow in Little Rock. He was rated ''well-qualified'' by the ABA.

He knows the value of hard work. He came from humble roots and is the only one of his seven siblings to attend college. He worked his way through college, finished law school at night while working a full-time job to support his family.

He is an accomplished scholar. As I said, he finished at the top of his class, was inducted into Phi Beta Kappa while a doctoral student at Duke University. He was named outstanding political science student upon graduation from the college. That is pretty good. Duke University is a pretty fine university.

During the academic years of 1990 to 1992, he taught a variety of courses at Thomas Aquinas College in California. He taught law at the University of Arkansas during the year he clerked for Justice Holt of the Arkansas Supreme Court. One does not get selected to be a law clerk for a supreme court judge if one is not good. He displayed wide-ranging academic interest. His doctoral dissertation discussed the political philosophies of W.E.B. Debois and Booker T. Washington. It analyzed the efforts of Martin Luther King, Jr., and has made efforts to reconcile their views. He has written substantial essays dealing with the subjects of political philosophy, law, and theology. He has been active in the bar in Arkansas. He taught continuing legal education courses on numerous occasions. He has been awarded the State bar's best CLE award four times. He sits on the board of advisers of the Arkansas Bar Association. He chaired the editorial board for the bar's education for handling appeals in Arkansas.

That is pretty good. The Arkansas Bar does a publication on how to handle appeals in Arkansas. He was chosen to chair the editorial board for that publication. I submit to my colleagues that his peers think he is a good lawyer.

He sits on the judicial nominations committee for the Arkansas State courts which recommends attorneys to the Governor for judicial appointment in supreme court cases where one or more justices recuse themselves. He is one of a top handful of appellate lawyers in Arkansas, and in 2001, the Arkansas Bar Association bestowed its writing excellence award on Mr. Holmes.

On two occasions Leon Holmes has been appointed to serve as a special Arkansas Supreme Court judge, which is a real honor for a practicing attorney. The judges have praised his service in those cases, and more than one has urged him to run for a seat on the Arkansas Supreme Court. So he is well respected by the plaintiffs bar in Arkansas.

Mr. Holmes is currently defending on appeal the largest jury verdict ever awarded in Arkansas history. It is the case of a nursing home resident who allegedly died from neglect. He is representing the plaintiffs side on appeal.

If you are a plaintiff lawyer and you won in trial the largest civil judgment in Arkansas history, and it is on appeal and you want a lawyer to represent you, you want the best lawyer you can get, and you have the money to get that lawyer, you have a verdict worth millions, probably hundreds of millions of dollars—I do not know. Who did they choose out of the whole State of Arkansas? Leon Holmes. What does that say? They put their money on him. Their case was put on his shoulders.

Look, he has given back to the community. This is not a man who is selfish as a practicing lawyer just to see how much money he can make. He was a habeas counsel for death row inmate Ricky Ray Rector, the mentally retarded man who was attempting to avoid execution. It came before then-Arkansas Governor Bill Clinton. He refused at that time to commute the death sentence. But Holmes helped prepare the case for the evidentiary hearing in Federal court after habeas had already been filed.

Not many big-time civil lawyers give their time to represent poor people, or mentally retarded people on death row. Holmes represented a Laotian immigrant woman suffering from terminal liver disease when Medicaid refused to cover treatment for a liver transplant. Do my colleagues think he made a bunch of money off that case? He did it because he thought it was the right thing to do. He helps people who are weak and do not have fair access to the courts.

He represented a woman who lost custody of her children to her ex-husband, who could not afford counsel on appeal. He represented an indigent man with a methamphetamine felony history in connection with traffic misdemeanors.

He has given back to his community outside the law, also. He was a house parent for the Elan Home for Children while a graduate student in North Carolina. He served as director of the Florence Critten Home of Little Rock, helping young women cope with pregnancy.

He is partner with Philip Anderson, a former president of the American Bar Association who does not share Judge Holmes' views on a lot of issues politically, but he strongly supports him as an excellent judge, as do a large number of women.

Let me read some of the people who know him. This is what his history shows. Some say, well, we do not know. He has these religious beliefs. What do we know about him in practice? Will he get on the bench and do all of these horrible things? It is not his record to do that kind of thing.

Female colleagues from the Arkansas bar who know him support him strongly. This is what one said:

> During my 7 years at Williams & Anderson, I worked very close with Leon. We were in contact on a daily basis and handled many cases together. I toiled many long hours under stressful circumstances with Leon and always found him to be respectful, courteous and supportive. I was the first female associate to be named as a partner at Williams & Anderson. Leon was a strong proponent of my election to the partnership and, subsequently, encouraged and supported my career advancement, as well as the advancement of other women within the firm.

So they say, well, he and his wife wrote this article quoting St. Paul and we think he does not like women. What about him being a strong supporter of this woman being the first female partner at his law firm?

Continuing to quote from the letter:

> . . . Leon treated me in an equitable and respectful manner. I always have found him to be supportive of my career . . . Leon and I have different political views; however, I know him to be a fair and just person and have complete trust in his ability to put aside any personal or political views and apply the law in a thoughtful and equitable manner.

That is Jeanne Seewald in a letter to Chairman HATCH and Senators LEAHY and SCHUMER dated April 8 of last year when this issue came up. So this lady does not share his political views, or I assume his views maybe on abortion or other issues, but she knows he will be a fair and good judge.

Here is another letter:

> Leon has trained me in the practice of law and now, as my partner, works with me on several matters. His office has been next to mine at the firm approximately two years. During that time, I worked with Leon as an expectant mother and now work with him as a new mother. Leon's daughters babysit my 11-month-old son.
>
> I value Leon's input, not only on work-related matters but also on personal matters. I have sought him out for advice on a number of issues. Although Leon and I do not always see eye-to-eye, I respect him and trust his judgment. Above all, he is fair.
>
> While working with Leon, I have observed him interact with various people. He treats all people, regardless of gender, station in life, or circumstance, with the same respect and dignity. He has always been supportive of me in my law practice, as well as supportive of the other women in our firm. Gender has never been an issue in any decision in the firm.

That is a letter from Kristine Baker, April 8, to Senators HATCH, SCHUMER, and LEAHY.

Another female attorney in Little Rock, AR, Eileen Woods Harrison, states:

> I am a life-long Democrat and also pro-choice. I commend Mr. Holmes to you. He is a brilliant man, a great lawyer and a fine person.

That was a letter sent to Senators HATCH, SCHUMER, and LEAHY.

Another one states:

> I heartily recommend Mr. Holmes to you. He is an outstanding lawyer and a fine person. While he and I differ dramatically on the pro-choice, pro-life issue, I am fully confident he will do his duty as the law and facts of a given case require.

One more—well, let me ask right there, has there been any instance shown where he has failed to comply with the law in his practice, in any way shown disrespect to the court, or in any way said a judge or a lawyer should not obey the law and follow the law? No, and these letters say that.

Beth Deere, in a letter dated March 24, 2003, to Senators HATCH and LEAHY, states:

> I support Leon Holmes because he is not only a bright legal mind, but also because he is a good person who believes that our nation will be judged by the care it affords the least

and the littlest in our society. I am not troubled that he is personally opposed to abortion. Mr. Holmes is shot through with integrity. He will, I believe, uphold and apply the law with the utmost care and diligence.

Well, I do not know what else can be said. The only thing I can see is that people do not like his views on abortion, they do not like the views on family he and his wife have, and they are holding him up for that. His views are not extreme. His views are consistent with the faith of his church, not only his church, but the majority of Christendom.

Now does that make someone unqualified to be a Federal judge? Is the rule that no true believers in Catholic doctrine need apply for a Federal judgeship? They say that is not it; they say that they are not anti-Catholic. I am not saying anybody is anti-Catholic. I am saying a lot of people do not agree with the doctrine of a lot of Christian churches and that should not affect how they vote on a nominee if the nominee is proven to be committed to following the law.

It is all right, of course, for a person to have a religious faith; everybody says that. We would never discriminate against anybody who has religious faith. But if their faith calls on them to actually believe something and they have to make choices and those choices are not popular or politically correct at a given time, but they adhere to them because they believe in them, it is part of the tenets of their faith and the church to which they belong—and I would note parenthetically no church spends more time studying carefully the theology of its church and the doctrines of its church than the Catholic church—if they are consistent with that church's beliefs, they now no longer can be confirmed as a Federal judge?

It is all right if one goes along and does not ever do anything to actually affirm aggressively the doctrine of their church. In other words, if one goes to mass and never says anything about the question of abortion or family or other issues outside of the church doors, then they are all right, but if someone actually writes an article somewhere and says, I believe in this, they risk being punished. Actually, in this case it was an article written from one Catholic couple to other Catholics discussing in depth some of the doctrines of the church and how they believed in them. So the Holmes shared their thoughts within their church family about how the church's views ought to be interpreted and expressed their personal views about how it ought to be, does that disqualify them from being a Federal judge? No. I think this is a bad policy.

The question should simply be this: Will he follow the law of the U.S. Supreme Court on abortion even if he does not agree with it? And the answer is, yes. He has already stated that unequivocally. His record shows that.

The lawyers who practice with him who are pro-choice, women lawyers who affirm him so beautifully and so strongly, say he is going to follow the law. The American Bar Association, which is pro-choice and to the left of America on a host of issues, gave him their highest rating of well qualified.

The Arkansas Supreme Court has asked him to sit on their court at various times because they respected him. In 2001, he wrote the best legal writing in the State.

Some say they are worried because he has never been a judge. So he has not sat on the bench before. I do not think that is a matter that disqualifies him. Most people who become judges have not been a judge before on the district bench.

So what do we do to assess how he will act as a Judge? We talk to the lawyers, talk to the American Bar Association, talk to other judges in the State, and ask: What is this person like?

They all say he is first rate. Both Democratic Senators from Arkansas, who know this man, known lawyers who know this man and are familiar with his reputation, support him.

As one of our Members said earlier, in criticizing him, they asked: How can I vote for someone who believes women should be subordinated to men in this modern age?

That is not the gist of the Pauline doctrine in Ephesians. Mrs. Holmes wrote to tell us that she is not subordinate and she believes in equality and that their joint article did not mean anything other than that.

The Catholic Church does believe in ordination of only males. Some may disagree with that. I am a Methodist. We, I am pleased to say, ordain women. There are many women ministers in our church. But I want to ask again, if a person agrees with the doctrine of his church, which has been discussed and considered by the finest theologians for hundreds of years, and he agrees with that, and we don't agree with that, we don't think that is right, do we now think we should vote against that person because we don't agree with his religious beliefs? It is very dangerous to do that. We should not do it.

I ask again, what about other denominations and other faiths that have different views from ours? We may find them far more offensive than this. Are we going to refuse to vote for them? Are we going to insist that those people renounce the doctrines of the church to which they belong as a price to be paid before they can become a Federal judge? I hope not. I think we are making a mistake.

If there was something which would show that Judge Holmes could not follow the law, was not a first-rate attorney, did not have the respect of his colleagues, did not have the respect of the American Bar Association, had women lawyers who thought he was a sexist and unfair in the treatment of them and they came forward and said so, OK, I might be convinced. But none of that occurs here. That is not what we have. We have nothing but his personal beliefs that are consistent with the faith of his church. Some people don't agree with his views regarding his faith and tell us that they are going to vote against him because of that. That is not a good idea; that is not a good principle for us in this body to follow.

This is what his wife wrote. The first thing I will just note in here, she said, ''The article is a product of my''—she italicized ''my''—''my Bible study over many years of my marriage.''

But it was a joint article. She says this:

> I am incredulous that some apparently believe my husband views men and women as unequal when the article states explicitly that men and women are equal. The women who have worked with my husband, women family members, women friends, can all attest to the fact that he treats men and women with equal respect and dignity. I can attest to that in a special way as his wife.

She noted this was an article from a Catholic couple to Catholic laypeople. ''It has no application to anyone who is not attempting to follow the Catholic Christian faith.'' She also notes that Leon cooks his share of meals, washes the dishes, does laundry, and has changed innumerable diapers, and she has worked many years outside the home, although right now she does not.

I would like to have printed in the RECORD an article from the Mobile Press-Register of the State of Alabama. It notes the similarity to the treatment given to Alabama's attorney general, Bill Pryor, when he was nominated to the Federal court of appeals, a man who also is a thoughtful, intelligent, committed Christian Catholic. This is what the Mobile Press-Register says:

> The example of Bill Pryor should be illustrative in the case of Leon Holmes as well. When a nominee enjoys strong bipartisan support from the home-state folks who know him best, and from some of the top non-partisan legal officers in the country, that support should weigh far more heavily than should the out-of-context criticisms from ideological pressure groups whose fund-raising prowess depends on how much havoc they wreak on the nomination process.

I know Attorney General Bill Pryor was asked about his personal religious views on issues such as abortion. He answered honestly and truthfully and consistently with his faith, a faith that he studied carefully. People didn't like it: Well, I don't agree with you on abortion, they say.

So what. We don't have to agree on abortion to support somebody for a Federal judgeship. He affirmed and had demonstrated that he would follow any Supreme Court rulings and could demonstrate as attorney general of Alabama he followed those rulings. That wasn't enough for them. They weren't satisfied.

I ask unanimous consent this article dated July 5, 2004, be printed in the RECORD.

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

[From al.com, July 5, 2004]

PRYOR'S EXAMPLE BEARS ON HOLMES CONTROVERSY

U.S. Senators considering how to vote Tuesday in a new judicial nomination battle should reflect on a lesson provided by a decision just written by Judge William Pryor of the 11th U.S. Circuit Court of Appeals.

Judge Pryor, of course, is the Mobile native and former Alabama attorney general whose own nomination to the bench was long blocked by smear tactics employed against him by liberal opponents. When Senate Democrats used a questionable filibuster to deny Mr. Pryor the ordinary lifelong term as a judge, President George W. Bush gave him a special ''recess appointment'' to the bench that lasts only through the end of 2005.

One of the many cheap shots launched at Mr. Pryor during the confirmation battle was the charge that he was insensitive to women's rights. The allegation, based on a legal brief he filed on one technical aspect of a federal law, ignored the overwhelming bulk of his legal and volunteer work to secure protections for women.

One of Mr. Pryor's first decisions as a federal judge, released last Wednesday, proves again the illegitimacy of the original charge against him. The case involved a woman in Delray Beach, Fla., who claimed she was the victim of two counts of sex discrimination by her former employer. The district court had thrown out both of her claims on ''summary judgment,'' meaning it found so little legal merit to her allegations that the case wasn't even worth a full trial.

On appeal, however, Mr. Pryor reinstated one of the woman's claims and ordered it back to trial at the district level. His willingness—on well-reasoned legal grounds, we might add—to force the woman's case to be heard provides yet more evidence refuting the allegation that he somehow is hostile to women's rights.

HOLMES IS LIKE PRYOR

As it happens, another Bush nominee is facing similar, and similarly baseless, allegations. Arkansas lawyer and scholar Leon Holmes is due for a Senate vote on Tuesday. While no filibuster is planned against him, opponents hope to defeat him on a straight up-or-down vote by highlighting past statements of his that supposedly touch on women's rights.

The parallels to the Pryor nomination battle are striking, both because opponents are taking the nominee's statements out of context and because much of the opposition stems from factors emanating from the nominee's Catholic faith.

In the most prominent controversy, Mr. Holmes and his wife together wrote an article for a Catholic magazine that touched on Catholic theological teachings concerning marriage and gender roles in the clergy. Included was an explication of the famous lines in St. Paul's letter to the Ephesians that say, ''Wives, submit to your husbands as to the Lord.''

Aha! Sen. Dianne Feinstein of California asserted that this passage makes Mr. Holmes antagonistic towards women's rights. Never mind that in the very same article, the Holmes couple wrote: ''The distinction between male and female in ordination has nothing to do with the dignity or worth of male compared to female,'' and ''Men and women are equal in their dignity and value.''

Never mind that Mr. Homes has elsewhere written that ''Christianity and the political order are assigned separate spheres, separate jurisdictions.'' Never mind that a host of pro-choice, liberal women from Arkansas have written in favor of Mr. Holmes' nomination, nor that the Arkansas Democrat-Gazette has praised the ''rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment.''

And so on and so forth: For every out-of-context allegation against Mr. Holmes, there is a perfectly good answer.

BIPARTISAN SUPPORT

Philip Anderson, a recent president of the American Bar Association and a long-time law partner of Leon Holmes, endorsed Mr. Holmes: ''I believe that Leon Holmes is superbly qualified for the position for which he has been nominated. He is a scholar first, and he has had broad experience in federal court. He is a person of rock-solid integrity and sterling character. He is compassionate and even-handed. He has an innate sense of fairness.''

Finally, in what in less contentious times would end all questions about Mr. Holmes' fitness, both senators from his home state, Blanche Lincoln and Mark Pryor (no relation to Bill), have endorsed his nomination—even though he and President Bush are Republicans, while both of them are Democrats.

It would be virtually unprecedented for the Senate to turn down a candidate nominated by one party and supported by both of his home-state senators from the other party.

The example of Bill Pryor should be illustrative in the case of Leon Holmes as well: When a nominee enjoys strong bipartisan support from the home-state folks who know him bests, and from some of the top non-partisan legal officers in the country, that support should weigh far more heavily than should the out-of-context criticisms from ideological pressure groups whose fund-raising prowess depends on how much havoc they wreak on the nomination process.

Leon Holmes is no more antagonistic to women's rights than is Bill Pryor—who, it should be mentioned, is in the Hall of Fame of Penelope House, a prominent local women's shelter.

Mr. Holmes ought to be confirmed, and the character assassination must come to an end.

Mr. SESSIONS. Mr. President, I think we will soon be voting—at 5:30. I urge my colleagues to remember this. You do not have to agree with a nominee's personal religious views to support him or her as judge. The fact that you do not share a person's personal religious views on a host of different matters is not a basis to vote no. The question is, Will that person follow the law?

That is the right test. That is the classical test we have always had. We are getting away from it. We have Members I respect in this body who say we just ought to consider ideology, we just ought to consider their politics, just put it out on the table. Let's not pretend anymore that these things are not what some of my colleagues base their judicial votes on, let's put it out there.

But I say to you that is a dangerous philosophy because it suggests that judges are politicians, that judges are people who are empowered to make political decisions; therefore, we ought to elect judges who agree with our politics. It is contrary to the Anglo-American rule of law through our whole belief system in which judges are given lifetime appointments so they can be expected to resist politics and to adhere to the law as it is written and as defined by the Supreme Court of the United States. That is what it is all about. That is what we need to adhere to here. If we move away from that idea, if we suggest we no longer believe or expect judges to follow the law and not to be politicians, we have undermined law in this country to an extraordinary degree. The American people will not put up with it.

The American people will accept rulings even if they don't like them if they believe the court is following the law, if they believe the court is honestly declaring the Constitution. But if they believe our Supreme Court has ceased to do that, or any other judges in this country have ceased to do that, and they are then imposing their personal views—even though they have not been elected to office, don't have to stand for election for office, hold their office for life and they are unaccountable—they will not accept that.

There is a danger in America at this point in time. What President Bush is doing, day after day, week after week, is simply sending up judges who believe the law ought to be followed and they ought not to impose their political views from the bench.

How can we be afraid of that? Our liberties are not at risk by these judges, as one wise lawyer said at a hearing of the Judiciary Committee, of which I am a member. He said: I don't see that our liberties are at great risk from judges who show restraint. Our liberties are at risk from those who impose their political views from the bench.

I think Justice Holmes has demonstrated a career of commitment to the law. He has won the respect of both of the Democratic Senators from Arkansas. He has won the respect of the Supreme Court of Arkansas. He has won the respect of the American Bar Association, fellow women lawyers who worked with him, year after year after year. He is the kind of person we want on the bench, a person who truly believes in something more than making a dollar, who has represented the poor and dispossessed, who has spoken out on issues that are important to him, who is active in his church. That is what we need more of on the bench. I urge the Senate to confirm Leon Holmes.

I yield the floor.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the quorum call be charged equally to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I understand that we are under time control. I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I strongly oppose the nomination of Leon Holmes to a lifetime appointment to the U.S. District Court for the Eastern District of Arkansas. His record gives us no confidence that he will be fair in the wide range of cases that come before him, particularly in cases involving the rights of women, gay rights, and the right to choose. His record contains example after example of extreme views of the law that suggest he will not follow established precedent.

Every nominee who comes before us promises to follow the law, including laws in cases with which they disagree. Mr. Holmes is no exception. But the Senate's constitutional role of advise and consent gives each of us the duty to evaluate these claims carefully. It is clear from his record that Mr. Holmes has not shown the dedication to upholding constitutional principles and the judgment necessary for a Federal judge.

Mr. Holmes has expressed extraordinary hostility to equal rights for women. In 1997 he wrote that it is a woman's obligation to ''subordinate herself to her husband.'' He also wrote that a woman must ''place herself under the authority of the man.'' It doesn't get much more extreme than that.

In fact, Mr. Holmes has blamed feminism for the erosion of morality. He has written that ''to the extent that we adopt the feminist principle that the distinction between the sexes is of no consequence . . . we are contributing to the culture of death.'' Are we really expected to believe that someone with such medieval views will dispense 21st century justice?

This nomination is an insult to working women. It is an insult to all Americans who believe in fairness and equality.

Just last week we celebrated the 40th anniversary of the Civil Rights Act of 1964 which gave women equal opportunity in the workplace. Democrats and Republicans alike joined in celebrating that important law. If that celebration is to be more than lip service, we cannot approve this nomination.

Judges appointed to lifetime positions on the Federal court must have a clear commitment to the principles of equality in our basic civil rights laws. Mr. Holmes' view that a woman must ''place herself under the authority of the man'' does not demonstrate such a commitment.

I ask unanimous consent to be printed in the RECORD Mr. Holmes' article containing these statements.

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

GENDER NEUTRAL LANGUAGE—DESTROYING AN ESSENTIAL ELEMENT OF OUR FAITH

(By Leon and Susan Holmes)

Our whole life as husband and wife, as father and mother to our children; and as Catholic Christians, is based on the historic Catholic teaching regarding the relation between male and female.

So when that teaching is rejected, the rejection pierces the heart of who we are as persons, as family, and as Catholic Christians. Nothing causes us greater grief than the fact that the historic and scriptural teaching on the relationship between male and female is widely unpopular in the Church today. We have studied these teachings, prayed about them, and struggled to live them for the largest part of the almost 25 years we have been married; and we ask your indulgence and patience as we attempt to share the fruits of our reflection and struggle with you.

The historic teachings of the Catholic Church are grand, elegant, and beautiful. When they are unpopular amount Catholics, it is usually because they are not understood; and so it is; we think with respect to the teaching of the Church regarding the relationship between male and female. The passages of Scripture that call Christians ''sons of God'' and ''brothers'' are offensive only if they are misunderstood. The teaching that only males can be ordained to be the priesthood and the diaconate is offensive only if it is misunderstood. Far from being offensive, these teachings are elegant and beautiful; and true for this age, as for every age, because truth is eternal.

Catholic theology is essentially sacramental, which is to say that its teaching is permeated by and flows from the notion that there is an unseen reality that is symbolized by visible, external signs. We believe, for instance, that Christ was incarnate as a male because His masculinity is the most fitting sign of the unseen reality of His place in the Holy Trinity, who is revealed to us as Father, Son, and Holy Spirit. Our relationship to God is a part of this unseen reality, and it is twofold. In one aspect, we are related to God as individuals; in another aspect, we are related to God as a community. Individually, we are adopted into the same relationship to the God the Father as Christ enjoys,which is to say; we are all sons of God the Father and brothers of Christ. All of us, male and female, are equally sons of God and therefore brothers of one another. The equality of our relationship is destroyed when some of us are called sons but others are called daughters, some are called brothers but others are called sisters. Daughters have not the same relationship to their father as sons have. Daughters cannot be like their father to the same extent as can sons. Sisters have not the same relationship to brothers as brothers have to one another. Sisters cannot be like brothers to same extent as brothers can be like one another. Hence Scripture refers to all Christians—Jew and Greek, male and female, slave and free—as sons of God (Gal. 3:26) and brothers of one another to signify the equality, the sameness of our spiritual relationship in its unseen reality to God.

As a community, as a Church, we also have a relationship to God as the bride of Christ. This relationship is an unseen reality that is signified in the visible world by the relationship between male and female and especially by the relationship between husband and wife. Hence, the husband is to love his wife as Christ loves the Church; and as the Church subordinates herself to Christ, in that manner the wife is to subordinate herself to her husband. The verb used in Ephesians 5:24 is hypotassetai, which means to place one's self under. The Church is to place herself under the protection of Christ and ipso facto place herself under His authority. Likewise, the woman is to place herself under the authority of the man and ipso facto place herself under his authority. Both the man and the woman are to live so that their relationship is a visible sign of an unseen reality, the relationship between Christ and the Church. Distorting the relationship between male and female is as sacrilegious as profaning any of the other sacraments that by which God symbolizes a divine, unseen reality through tangible symbols.

The use of male and female to symbolize the relationship between Christ and the Church is pervasive in Scripture. In Leviticus, for instance, whenever a sacrificial animal was to stand for Christ, a priest, or a leader, the animal was required to be male; whereas, whenever a sacrificial animal was to stand for the common man or for the community, the animal was required to be a female. In the Gospels, Christ always forgave and never condemned women, though he sometimes condemned men. Women were always forgiven because the Church will always be forgiven. Men could be condemned for their sins because Christ was condemned for our sins. If we were to use ''gender neutral'' language to describe the relationship between Christ and the Church, we would destroy an essential element of our faith. To be true to the reality of the relationship, we must recognize Christ as the groom and the Church as the bride. Christ cannot be the bride, the Church cannot be the groom; nor can Christ and the Church both be groom or both be bride.

This unseen reality is signified once again by an outward sign within the Church, which ordains only males to those positions in the Church that represent Christ among us, the priesthood and the diaconate. Ignoring the distinction between male and female in ordination is like ignoring the distinction between male and female in marriage. It has nothing to do with dignity or worth of male compared to female. When a woman chooses to marry a man, it is not because she thinks men have more dignity or value than women. The suggestion that male-only ordination implies a devaluation of women is as silly as the suggestion that a woman devalues women when she looks exclusively among men for a husband. The assertion that males and females both should be ordained without regard to their sex is akin to the assertion that same-sex relationships should be regarded as having equal legitimacy with heterosexual marriage.

The demand of some women to be ordained is prefigured in the Old Testament when Korah and 250 ''well-known men'' claimed the right to offer sacrifice equally with Moses and Aaron because ''all the congregation are holy, every one of them, and the Lord is among them'' (Nm. 16:3). It is true that all the congregation are holy and the Lord is among them; but it does not follow that all are entitled to offer sacrifice. By the same token, it is true that men and women are equal in their dignity and value, but it does not follow that all are entitled to be ordained. Ordination does not signify the intrinsic worth or holiness of the one ordained; it signifies that the one ordained is to be another other Christ to the Church, which is to say another groom to the bride. A woman cannot be ordained, not because she is inferior in dignity to a man, but because she cannot be a husband to the Church, which is the bride of Christ.

In a way that we cannot understand, the relationship between the unseen reality and the visible signs is reciprocal. St. Paul says he was made a minister to make all men see what is the plan of the mystery hidden for ages in God who created all things, that through the church the manifold wisdom of God might now be made known to the principalities and powers in the heavenly places (Eph 3:10). He also says the apostles have been made a spectacle ''to the world, to angels and to me'' (1 Cor. 4:9). In the same vein,

he says a woman should have a veil on her head (as a sign of authority) ''because of the angels.'' It is an awesome thought that what we do somehow signifies the reality of the unseen world; but it is even a more awesome thought, that God calls us to make known the reality of the unseen world to the unseen world.

In the biological sphere, life depends on the relationship between male and female. In this respect, the biological sphere is a visible sign of the unseen reality of the spiritual realm in which life depends on the relationship of Christ and the Church. Sexuality is a ''great mystery . . . in reference to Christ and the Church'' (Eph. 5:32).

All of this is why denominations whose theology is not essentially sacramental have been quick to endorse artificial contraception, divorce and the ordination of women; and it is why they are much more open to the legitimation of homosexual relationships. Churches whose theology is essentially sacramental, which is to say the Catholic Church and the Orthodox Churches, cannot accommodate the spirit of the age with respect to these matters no matter how overwhelming the society pressure. To do so would be to repudiate the essence (in the strictest Thomistic sense of the word) of our whole theology. Apart from sacramental theology sexuality is just another physical function and the distinction between the sexes is no more significant than the distinction between right-handed persons and left-handed ones. When we treat the distinction between the sexes as of no consequence, we are parting from sacramental theology, which is to say we are parting form Catholicism, which is to say we are parting from Christianity.

It is not coincidental that this culture of death in which we live is a culture that seeks to eliminate the distinctions between male and female. It is not coincidental that the feminist movement brought with it artificial contraception and abortion on demand, with recognition of homosexual liaisons soon to follow. The project of eliminating the distinctions between the sexes is inimical to the transmission of life, which is the raison d'etre of that distinction in both the biological and spiritual realms. No matter how often we condemn abortion, to the extent we adopt the feminist principle that the distinction between the sexes is of no consequence and should be disregarded in the organization of society and the Church, we are contributing to the culture of death.

As Church, we are the bride of Christ. We are to submit to Him. This means in part that we are to take on the mind of Christ rather than adopt whatever paradigm prevails in the age in which we live. As Bishop McDonald said last January when talking about abortion, ''I do not want a Church that is right when the world is right, I want a Church that is right when the whole world is wrong.''

We write in a spirit of friendship, not of animosity. We have brought all five of our children into the Catholic Church. It is no exaggeration to say we have bet their eternal lives on the Church. At the same time, we have built our whole family life on the traditional and now unpopular teachings about the relationship between male and female. What are we to do when we see these pillars of our life start to separate and pull apart? How do we stand on both? How can we stand on only one?

Mr. KENNEDY. Mr. President, Mr. Holmes has expressed opinions that cast doubt on his fairness on other civil rights issues as well. He has criticized remedies to enforce the requirements of school desegregation under Brown v. Board of Education. He has written that Federal court orders requiring assignment of students to desegregate public schools are part of ''a cultural and constitutional revolution in the past 20 years . . . for which the Nation has never voted.'' He has called such remedies authoritarian and argued that it is an ''injustice,'' that overturning them would require a change in the Constitution.

I ask unanimous consent that Mr. Holmes' letters on this subject also been printed in the RECORD.

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

[From the Christian Science Monitor, Dec. 23, 1980]

Nina Totenberg asks in ''Did America vote for this, too?'' whether the people of the United States voted for ''a cultural and constitutional revolution.'' The truth is that the United States has undergone a cultural and constitutional revolution in the past 20 years, and the revolution is one for which the nation has never voted.

Seven years ago, seven members of the Supreme Court held that the abortion laws in all 50 states violate the 14th Amendment, despite the fact that virtually every state that ratified the amendment had a restrictive abortion law at the time. Eight years ago the Supreme Court held the death penalty laws in virtually every state to be in violation of the 14th Amendment, despite the fact that the very wording of the amendment acknowledges the authority of states to take life when done according to due process. Nine years ago the Supreme Court held that the 14th amendment grants to federal courts the power to order schools to bus students to achieve racial balance. Nineteen years ago the Supreme Court held that public schools are not allowed to authorize prayer as a part of their activities.

Combined, these rulings constitute a significant cultural and constitutional revolution. This revolution, not the conservative reaction to it, is the novelty on the American political scene. This revolution has been accomplished by authoritarian means, despite the charges that its opponents are authoritarians.

If we now submit these issues to the electorate or the legislative process, the only injustice will be that the opponents of the recent revolution will bear the burden of mustering a two-thirds majority in Congress and majorities in 38 states in order to restore the Constitution.

LEON HOLMES,
Augustana College, Rock Island, IL.

[From Daily Dispatch, December 24, 1980]

ABORTION ISSUE

TO THE EDITOR: In response to the misrepresentations of Murray Bishoff's recent letter, I make the following comments:

First, the HLA explicitly permits ''those medical procedures required to prevent the death of the mother'' Second, nothing in the HLA would affect the birth control pill or prevent anyone from buying and using contraception. Mr. Bishoff simply misstates the effect of the HLA on these issues. third, it seems to me that the language of the HLA neither explicitly allows nor explicitly prohibits the IUD and the morning after pill. Bishoff's concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami. Fourth, it is silly to say that such trivialities are the principal concern of either HLA proponents of opponents.

If Bishoff really is not ''anti-life'' and if he sincerely believes the HLA to be overly broad, he and others like him should propose a ''complex response'' to these ''complex issues.'' In the absence of an alternative proposal, I cannot help but think their criticism a dishonest effort to perpetuate the status quo, with some 1.8 million abortions per year performed, including 160,000 in the 6th, 7th and 8th months of pre-natal life. In light of these facts, it simply cannot be true that ''The reality is that no one likes abortion.''

Bishoff's letter contrasts ''a fetus'' with ''people.'' But the word ''fetus means, simply, a person developing in the womb. To continue our present policy is to give those persons in the womb no rights at all, not even the most minimal right, the right to life. I think that the abortion issue is the simplest issue this country has faced since slavery was made unconstitutional. And it deserves the same response.

LEON HOLMES,
Ass't Prof. of Political Science,
Augustana College, Rock Island.

Mr. KENNEDY. Mr. President, he opposed the Civil Rights Restoration Act of 1987, an act approved by a broad, bipartisan majority to restore the original meaning of title VI and title IX of the Civil Rights Act which prohibit discrimination in federally funded activities.

Mr. Holmes has also expressed views hostile to gay rights. At one point he even said he opposed the feminist movement because he feared it would bring ''recognition of homosexual liaisons.''

Mr. Holmes' record also indicates that he is intensely opposed to a woman's constitutional right to choose. In his answers to questions, however, he said that he disagrees with the Supreme Court's decision in Roe v. Wade, but he would not try to undermine Roe if he became a Federal judge. But merely repeating the mantra that he will ''follow the law'' does not make it credible that he will do so.

Regardless of the assurances he made after he was nominated for a Federal judgeship, no one looking at his record can avoid the conclusion Mr. Holmes has dedicated much of his career to opposing Roe v. Wade. It defies reason to believe he will abandon that position if he becomes a Federal judge.

In fact, he has demonstrated a clear commitment to using a variety of political and legal means to take away a woman's right to choose. His statements opposing it are among the most extreme we have seen.

He has said the concern expressed by supporters of choice for ''rape victims is a red herring because conceptions from rape occur with the same frequency as snow in Miami.'' According to the American Journal of Preventive Medicine, at least 25,000 pregnancies resulted from rape in 1998 alone.

Mr. Holmes has likened abortion to slavery and the Holocaust.

In the mid-1980s, Mr. Holmes helped write an amendment to the Arkansas Constitution to ban the use of any public funds for abortion, even in cases of rape or incest, and even if abortion was necessary to safeguard a woman's health.

In 1995, he stated the ''only cause that I have actively campaigned for

and really been considered an activist is the right to life issue.''

In 2000, he wrote an article expressing his approval of ''natural law,'' the idea that people have inalienable rights that precede the Constitution. That great phrase is part of the Declaration of Independence. But then Mr. Holmes went on to state any recognition of a right to privacy in cases such as Roe v. Wade is illegitimate and inconsistent with natural law. Supporters of Mr. Holmes' nomination say his statements do not show he will fail to enforce the law if he becomes a Federal judge. It is true that after he was pressed by several Senators, Mr. Holmes admitted his statement that pregnancies from rape occur as frequently as snow in Miami was too inflammatory. But this was more than an isolated statement—it came in the context of an extensive pattern of strident, anti-choice statements, writings, and actions over the past two decades. His cavalier dismissal of the problems facing rape and incest victims is consistent with his repeated attempts to repeal or severely limit the right to choose, even in cases of rape or incest.

Supporters of the nomination suggest many intemperate statements he has made say nothing about how he will interpret the law. But that defies common sense. Mr. Holmes is a self-proclaimed activist against a fundamental constitutional right. Why should we approve a nominee who has made such strong and intemperate statements against rights established in the Constitution? Why should we confirm a nominee who has stated women must be subservient to men? Even if we assume those strong opinions will somehow not affect how he interprets the law, they clearly do not reflect the judgment and temperament we expect from a Federal judge.

I respect the views of my colleagues from Arkansas who support Mr. Holmes' nomination. But too much is at stake. Once nominees are confirmed for the Federal courts, they serve for life, and will influence the law for years to come.

We all know the values Americans respect the most: the commitment to fairness, equality, opportunity for all, and adherence to the rule of law. The American people expect us to honor these values in evaluating nominees to the Federal courts, and our consciences demand it. Mr. Holmes has every right to advocate his deeply held beliefs, but his record and his many extreme statements—especially about women's role in our modern society—raise too many grave doubts to justify his confirmation, and I urge my colleagues to oppose his nomination.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I want to respond to a few of the comments that have been made earlier today.

One of the complaints that has been made is that Leon Holmes, in a letter, said pregnancies from rape were as rare as snowstorms in Miami. I think there is a literary device called exaggeration for effect. I am sure he did not intend that literally. As a matter of fact, some of the studies at that time showed pregnancies as a result of rape to be very rare indeed. I think since then numbers have come out to show a larger number have resulted from rape.

Mr. Holmes apologized, not recently but a number of years ago, for that statement and, in fact, has written a nice letter in which he dealt with that explicitly and said that was not appropriate and noted he had matured over the years. I point out he wrote that letter before he became a lawyer in the early 1980s, or earlier, as a young man debating as a free American citizen an issue that was important to him.

So that is what he said. That is how that came about. He has apologized for it. I do not think it was malicious. I do not think he intended anything bad by it. I think he was trying to make the point that based on the evidence he had at the time not that many abortions occurred as a result of rape. But he has admitted that was wrong and he should not have used that kind of language. He has apologized to everybody he can apologize to. But it will not make much difference, I am sure, to some people.

I see the chairman of the Judiciary Committee in the Chamber, Senator HATCH.

I remember we had a young man who had gone off to college, I guess in his early twenties, and had used a college credit card to purchase illegal property for himself, and they found it in the dorm room. He went off to the Army and did well and went to law school and did well, and we considered that and sat down, and we felt this was not disqualifying.

So they say that as a young man he made this one statement and this is going to disqualify him from sitting on the bench? It was 24 years ago. Well, as if there is something bad about this man, his comment was on the only thing he has politically ever really been engaged with—the pro-life issue. His pro-life views are his religious belief. It is consistent with his church's belief. It is his personal belief. He believes it is a bad thing to abort human life. And he has been active out there as a private citizen—not as a judge, as a private citizen—advocating. But the complaints they had about him on this issue were over 20 years ago before he even got his law degree. So I think they are not persuasive in this debate.

He has also been attacked about the question of ''natural law.'' And he answered the questions of the Senate Judiciary Committee, by Democratic members, about when they asked him about it. He said:

> In my scholarly capacity, I wrote in my ''Comment on Shankman'' that there are no other provisions that open the door to natural law.

He was asked whether he said that you couldn't alter the Constitution on a natural law basis on a specific case. I believe one of the members of the committee asked him, what about any other case? And he said no.

He was asked another question:

> During his Supreme Court confirmation hearings, Clarence Thomas testified that he did not ''see a role for the use of natural law in constitutional adjudication.'' Do you disagree or agree? Please explain why or why not?

Mr. Holmes replied:

> As I have stated above, I do not believe that the courts are empowered by the Constitution to appeal to natural law as a basis for their decisions. The courts are given whatever authority they have by the Constitution. The Constitution does not authorize the courts to use natural law as a basis for overruling acts of Congress or acts of state legislatures.

The comment that he believes natural law overrides the Constitution is contrary to his personal religious views but proves that he will be a fair judge.

He was attacked viciously for the article he and his wife wrote about marriage. I will just note that he and his wife together were quoting the Pauline doctrine of marriage out of the book of Ephesians in the New Testament. It was written in a Catholic magazine for Catholic readership. It assumed certain background knowledge by the readers of the article on Catholic doctrine. It did not attempt to explicate Catholic theology for readers of other faiths who would lack that background and have difficulty understanding. Moreover, the main thrust of the article was to explain why gender-neutral language was inappropriate in the liturgy of a church. It did not focus on Catholic doctrine on marriage.

In a letter to Senator BLANCHE LINCOLN, a fine Senator from Arkansas who supports him and a Democratic Senator, he wrote this in explaining what he and his wife meant:

> The Catholic faith is pervaded with the view that the visible things symbolize aspects of the spiritual realm. This pervasive element of the faith is manifest in the teaching that the marital relationship symbolizes the relationship between Christ and the Church. My wife and I believe that this teaching ennobles and dignifies marriage and both partners in it. We do not believe that this teaching demeans either the husband or the wife but that it elevates both. It involves a mutual self-giving and self-forgetting, a reciprocal gift of self. This teaching is not inconsistent with the equality of all persons, male and female, and, in fact, in that column we say: ''[a]ll of us, male and female, are equally sons of God and therefore brothers of one another.'' This aspect of my faith—the teaching that male and female have equal dignity and are equal in the sight of God—has been manifest, I believe in my dealings with my female colleagues in our firm and in the profession as a whole.

Indeed, many of them support him quite strongly. I reserve the remainder of the time and yield the floor.

Mr. KYL. Mr. President, I rise today to respond briefly to the comments made by Members on the other side of the aisle about the nomination of J. Leon Holmes to be a District Court Judge for the Eastern District of Arkansas.

Mr. Holmes has been criticized for a number of comments—some of which are more than two decades old. Yet his opponents ignore the best evidence about Mr. Holmes: the people who have known him well throughout the past two decades of his legal career. As Senator LINCOLN of Arkansas recently noted in reaffirming her support for Mr. Holmes, letters of support from:

> the legal community in Arkansas, many of whom share different views than Mr. Holmes . . . describe him as ''fair,'' ''compassionate,'' ''even-handed,'' and ''disciplined.'' His colleagues hold him in high esteem.

That is from a press release of Senator BLANCHE LINCOLN, April 11, 2003. The other home State Senator, Senator PRYOR also, of course, a Democrat—supports Mr. Holmes.

Additionally, the strong support of Mr. Holmes' colleagues in the legal community caused the American Bar Association to give him its highest rating of ''well-qualified.'' Finally, the Arkansas Democrat-Gazette, Holmes' hometown paper, is intimately familiar with his record and strongly supports him. The paper, writing while Mr. Holmes was being considered, indicated that Mr. Holmes was a well qualified, mainstream nominee:

> What distinguishes Mr. Holmes is the rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment. A reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge . . . . He would not only bring distinction to the bench but promise. . . . In choosing Leon Holmes, [the President] could bequeath a promise of greatness.

That is from an editorial, Name on a List in a Field of Seven, One Stands Out, Arkansas Democrat Gazette, Dec. 1, 2002, at 86.

It is easy to use out-of-context comments to paint an incomplete and inaccurate picture of a person. By looking at the entire context of Mr. Holmes' career, it is clear that he is held in high regard by those who know him and his work. This includes those who hold views contrary to those of Mr. Holmes, such as Stephen Engstrom, who on March 24, 2003 wrote to Chairman HATCH and Senator LEAHY:

> I heartily commend Mr. Holmes to you. He is an outstanding lawyer and a man of excellent character. Leon Holmes and I differ on political and personal issues such as prochoice/anti-abortion. I am a past board member of our local Planned Parenthood chapter and have been a trial lawyer in Arkansas for over twenty-five years. Regardless of our personal differences on some issues, I am confident that Leon Holmes will do his duty as the law and facts of any given case require.

Letters like this, from people who have known Mr. Holmes well in the context in which he would serve, are the best evidence regarding Mr. Holmes. It is always appropriate to consider questions raised about comments that a nominee has made in the past, and there certainly has been controversy about some of Mr. Holmes' statements. In this situation, I defer to those who know the nominee, and who are in the best position to put his statements into context. In this case, Mr. Holmes has overwhelming bipartisan support from those in his home State, especially those in the legal community, who have known him over the past two decades. Based on this evidence, I will support Mr. Holmes' confirmation to the Federal bench.

Ms. COLLINS. Mr. President, I rise today to speak on the nomination of Leon Holmes to be a district court judge for the U.S. District Court of Arkansas.

The ''advice and consent'' role given to the Senate in the U.S. Constitution is one of the Senate's most solemn duties, and one to which I give the utmost care. Since Federal judges serve for lifetime terms, I carefully review every nominee to ensure that he or she is well-qualified and possesses the proper professional competence and integrity. Although, naturally, I apply no litmus test with respect to a nominee's personal beliefs, a commitment to following the law and applying it soundly is critical.

Perhaps the most important factor in evaluating a nominee is whether the person has the proper ''judicial temperament.'' There are two elements that must be considered when making this determination. The first involves what we would commonly understand the characteristics of good temperament to entail: would the nominee show courtesy and respect toward the practitioners and parties in his courtroom, while at the same time remaining confident and firm. From all I have heard about Mr. Holmes, he has a fine reputation for being both civil and professional, and I have no concerns about his nomination in this regard.

The second element of judicial temperament is more troubling in this case. It involves the deliberative mindset that is so valued in our jurists—the ability to separate emotion and personal views while applying the laws in a neutral and impartial manner. A judge must be able to transcend personal views in ruling on the matters before the court. It is for this reason that I am concerned about whether Mr. Holmes has the proper judicial temperament to receive a lifetime appointment to the federal bench.

After a careful review of the Judiciary Committee proceedings and Mr. Holmes' record, I have come to the conclusion that Mr. Holmes has not demonstrated the requisite ability to put aside his personal views and follow settled law. Over many years, Mr. Holmes has made a number of public statements, many in letters to the editor or in published articles, that raise serious questions about his ability to set aside his deeply held beliefs in order to impartially apply laws with which he disagrees. In fact, Mr. Holmes himself has characterized some of his previous comments as ''strident and harsh rhetoric.'' These statements were not made in the midst of casual conversation; they were largely written pieces that reflected the thoughts of Mr. Holmes on these matters.

In one extremely troubling instance, Mr. Holmes wrote that ''concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami.'' This appalling statement was not a chance comment, instantly regretted. Rather, Mr. Holmes included this statement in a letter he submitted for publication in The Daily Dispatch. In addition to the insensitivity and inaccuracy demonstrated by this comment, I believe it demonstrates that Mr. Holmes lacks the measured approach that is critical for sound judicial decision-making and the ability to set aside his personal views to apply settled principles of law.

In an April 11, 2004 letter to Senator LINCOLN, Mr. Holmes stated, ''I do not propose to defend that sentence, and I would not expect you or anyone else to do so.'' While in this same letter Mr. Holmes went on to apologize for this remark, he also acknowledged that his comment ''reflects an insensitivity for which there is no excuse.'' I agree with Mr. Holmes that there is no excuse for this statement, and his belated apology came only after he was nominated for the Federal bench.

Unfortunately, this type of comment is not an isolated one, but one in a series of unsettling statements Mr. Holmes has made in his writings over many years. For example, Mr. Holmes authored an article in 1997 in which he wrote that ''the wife is to subordinate herself to her husband,'' and ''the woman is to place herself under the authority of the man.'' In 1982, Mr. Holmes authored another letter for the Arkansas Gazette, entitled ''The Scary New Argument for Abortion,'' in which he compared certain arguments justifying abortion to arguments used to justify the actions of Nazi Regime. In 2001, he authored a comment for another publication in which he criticized both Roe and Casey as ''constitutionaliz[ing] the theory of moral relativism.''

Mr. President, let me be clear that I respect Mr. Holmes' personal views on abortion rights and am not opposing his nomination on those grounds. In fact, I have voted for many judicial nominees whose personal views were different from mine on the right to choose, among other issues. Nor do I believe that a nominee should be required to indicate how he would decide issues of substantive law that may arise in future cases. That is not the issue. The issue is whether Mr. Holmes

can put aside his personal views and follow settled law. Unfortunately, his strident statements about a woman's right to choose raise doubts about his commitment to following settled law, including Roe v. Wade.

I note that the Judiciary Committee reported Mr. Holmes' nomination ''without recommendation.'' It is extremely rare for a nominee to be passed from the Judiciary Committee in this manner. In fact, according to the Congressional Research Service, a district court nominee has never been reported out of Committee to the floor without recommendation. It is my belief that the Judiciary Committee's unusual action in this regard represents more than an historical quirk. In fact, it underscores the concerns about this nomination.

Because of the concerns raised by the many writings and comments of Mr. Holmes, of which I have cited only a few examples, I am unable to support his nomination. Our legal system depends on having judges who put an allegiance to following settled law above any personal beliefs. Mr. Holmes' history of inflammatory statements could cause the parties before him to question whether his strong personal beliefs would allow him to follow settled law and apply it in a fair and unbiased way. Mr. President, in light of these concerns, I will oppose this nomination.

Mr. SPECTER. Mr. President, after careful consideration, I am voting to confirm Mr. J. Leon Holmes for the United States District Court for the Eastern District of Arkansas.

I am concerned about certain of his writings/statements where he said: ''. . . concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami . . .'', ''the wife is to subordinate herself to her husband'' and analogies of prochoice advocates to Nazis and abortion to slavery.

Mr. Holmes subsequently acknowledged ''using strident and harsh rhetoric'' on abortion and wrote to Senator Blanche Lincoln that ''I am a good bit older now and I hope more mature than I was at that time,'' blaming immaturity for his past harsh statements.

After discussing these issues with Mr. Holmes and noting that they were written some time ago, in 1980 and 1997 respectively, I do not believe that they reflect a fixed state of mind demonstrating a pre-disposition on judicial issues to come before his Court. I am also mindful that, as a District Court Judge, his decisions will be subject to review by the Court of Appeals. There would be a substantially different consideration if he were a Circuit Court Judge where he could cast the decisive vote on a three-judge panel where it would be unlikely to be reviewed by the U.S. Supreme Court since certiorari is granted in such a small number of cases.

Mr. Holmes has a very impressive academic record, graduating first in his law school class at the University of Arkansas, holds a Ph.D. in Political Science from Duke University and an M.A. degree from Northern Illinois University and is a member of Phi Beta Kappa.

In voting for confirmation of Mr. Holmes, I also noted that he has the support of both of his home State senators. In their floor statements, Senator BLANCHE LINCOLN and Senator MARK PRYOR noted that Mr. Holmes has broad support among pro-choice advocates from Arkansas, and both Senators concluded that he should be confirmed based on their knowledge of his legal skills, temperament and character and based on his reputation in their community among others who know him. In addition to their floor statements, I talked individually to Senators LINCOLN and PRYOR who amplified to me their solid support for Mr. Holmes.

For these reasons, I am voting to confirm Mr. J. Leon Holmes.

Mr. DASCHLE. Mr. President, I would like to discuss the nomination of James Leon Holmes to be a federal court judge in the district court of Arkansas. Before I address Mr. Holmes' record and qualifications, however, I think it is important to remind my colleagues of where we are in confirming President Bush's judicial nominees and how the Senate's record stands in historical context.

Thanks to bipartisan cooperation, the Senate has confirmed nearly 200 of President Bush's judicial nominees. This is more confirmations than in President Reagan's entire first term, President George H.W. Bush's presidency, or in President Clinton's last term. There are now only 27 vacant seats in the Federal courts, the lowest level of vacancies since the Reagan administration. In fact, more than 96 percent of Federal judicial seats are filled.

With 28 judicial confirmations in this year alone, this Senate is well ahead of 1996, the last time a President was running for re-election, and when Republicans allowed not one single judge to be confirmed until July. In 1996, Republicans allowed only 17 of President Clinton's judicial nominees to be confirmed, none of which were for the circuit courts. The Senate has confirmed five circuit court nominees this year. In total, the Senate has confirmed 35 circuit court nominees, which is more than President Reagan and President Clinton saw confirmed in each of their first terms.

There have been limited occasions where a nomination raises such significant concerns that members choose to oppose granting that nominee a lifetime appointment on the Federal bench. However, these cases have been few. Democrats have allowed 98 percent of President Bush's nominees to be confirmed. In addition, Democrats recently reached an agreement with Republican leadership and the White House to ensure that 25 judicial nominees, including Mr. Holmes, receive an up or down vote on the Senate floor. Any objective look at the record shows that Democrats have been willing to work with the White House to confirm President Bush's nominees to the Federal bench.

While Democrats have worked with Republicans to provide James Leon Holmes an up or down vote, I must oppose this nomination. I have great respect for my esteemed colleagues from Arkansas, who are supporting his nomination. However, my review of the nominee's record raises serious concerns about Mr. Holmes' ability to put his personal beliefs aside and decide cases based on the law. The Federal judiciary is too important to allow the appointment of any individual whose personal views interfere with his ability to interpret and adjudicate the laws of the United States impartially.

This controversial nomination has been pending for a vote on the Senate floor for more than a year. His nomination was reported out of the Judiciary Committee last year without recommendation, a rarely used procedure. Mr. Holmes has been a lawyer for 20 years, and has made countless insensitive and extreme statements over the years. In just one troubling example, Mr. Holmes described slavery as divine providence intended to teach whites to be more Christlike.

During his hearing before the Judiciary Committee, Mr. Holmes admitted that some of his remarks have been ''unduly strident and inflammatory,'' however, he also refused to promise to recuse himself in cases involving issues on which he already holds a committed position.

In fact, during his hearing one Republican Senator on the Judiciary Committee asked Mr. Holmes, ''why in the world would you want to serve in a position where you have to exercise restraint and you could not, if you were true to your convictions about what that role as a judge should be, how you could feel like you have done everything you could in order to perhaps achieve justice in any given case.'' Rather than assuring the Committee of his ability to separate his personal beliefs from his role as a judge, Mr. Holmes simply conceded that ''I know it is going to be difficult for this Committee to assess that question, and I know it is a very important question.''

Another example of why this concern was raised, in October 200, Mr. Holmes delivered a speech in which he stated that, ''Christianity, in principle, cannot accept subordination to the political authorities, for the end to which it directs men is higher than the end of the political order.''

Mr. Holmes is entitled to these beliefs. And one of the magnificent aspects of our country is that every American can hold such beliefs and advance them in the national discourse. But our country was founded on the separation of church and state and the administration and adjudication of our laws must remain free from the influence of any one religious perspective.

That separation has been one of the linchpins of American liberty. Because of the unique role of the federal judiciary in preserving our liberties, the Senate needs to be vigilant and ensure that no judge is able to impose his or her religious views on the rest of our country.

Mr. Holmes's actions and statements raise profound, and unanswered, questions about his willingness to set aside his personal beliefs when interpreting the law. Each member of the Senate has taken an oath to uphold and defend the Constitution and I believe that in good conscience we should not support the appointment of a judicial candidate who will not be able to do the same.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the vote on the nomination of J. Leon Holmes occur at 5:45 p.m. today and the time be equally divided. I further ask that when the Senate begins consideration of the class action bill this evening, it be for debate only.

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

The Senator from Nevada.

Mr. REID. Mr. President, how much time remains on the minority side?

The PRESIDING OFFICER. There is 15 minutes.

Mr. REID. We have Senator SCHUMER and Senator DURBIN here to speak. We can divide that time between the two of them, so 7½ to each Senator, with Senator SCHUMER first.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I am not sure I will take my entire 7½ minutes, but I do wish to speak for a minute regarding this nomination.

Let me say before we begin that judging a potential judge is not an easy question. The question many of us grapple with is, Would this judge follow the law or would this judge impose his or her own views instead of the law? That is a difficult question for most nominees. I think both sides of the aisle think that way.

Senator HATCH said a few years ago:

> I believe the Senate can and should do what it can to ascertain the jurisprudential views of a nominee, that a nominee will bring to the bench, in order to prevent the confirmation of those who are likely to become judicial activists.

Activists go both ways. You can be an activist and want to move the clock way ahead or you can be an activist and want to move the clock way back. If you want to move the body politic further to the left or further to the right, then jurisprudence would dictate. In my judgment, if you use that standard, it is not very difficult to come to the conclusion that Mr. Holmes does not deserve to be on the Federal bench.

It is true that when we evaluate candidacies of judges—at least some of us on this side; I for one—the fact they are district court nominees rather than court of appeals nominees means I give them a little extra room because they have less say and it is not an appellate court. But I think that Holmes is so far over, one of the most far over we have seen, that even though he is a district court judge, he did not deserve nomination, and he does not deserve approval by this body.

Mr. Holmes clearly has been an ardent and passionate advocate for causes in which he genuinely believes. I respect that advocacy. But some of the rhetoric he has used, some of the arguments he has advanced should give one real pause—they sure give me real pause—as to who cares about the impartial enforcement of the rule of law.

Mr. Holmes said that our Nation's record on abortion is comparable to our Nation's record on slavery. Perhaps even more disturbingly on this count, he said that rape leads to pregnancy about as often as snow falls on Miami. That last comment isn't about choice or abortion. It is offensive, it is disturbing, and it shows a pattern of thought. If it were a total aberration, then one might say, well, it is a mistake. But it wasn't.

According to the weather almanacs we have consulted, it snowed once in Miami in the last 100 years. According to a study published by the American Journal of Obstetrics and Gynecology, over 32,000 women a year become pregnant as a result of rape or incest. I would say to Mr. Holmes, those 32,000 women a year are not a myth. If you were looking at the facts, not what you want to believe because of your deeply held views but the facts, you wouldn't have said that. And certainly you wouldn't have said it casually without doing some research. These 32,000 women are not red herrings. They are real women in real pain, making traumatic decisions about whether to give birth to their tormentor's child.

Unfortunately, that remark may be the most egregious but it is hardly isolated. He said that it is a woman's duty to subordinate herself to her husband and to place herself under the authority of the man. You can see, I hope, why we might be concerned that he is insufficiently attuned to women's rights.

I know the President is going to go tomorrow to Michigan to speak on the issue of judicial nominees. I would like him to tell all the women in the audience what his nominee said about women and their rights. Let's see if he will talk about that tomorrow.

My guess is that 99 percent of the women would be aghast that he said that—whether they are Democrats, Republicans, liberals, or conservatives. I asked Mr. Holmes in written questions whether he was concerned that, for example, a woman advancing a battered woman's defense against her husband would lack confidence in his impartiality. He said he doesn't see why anything he has written would justify any concern that he could not be impartial.

Not only does Mr. Holmes not disavow his assertion that women are bound to subordinate themselves to men, he doesn't see why women should be troubled by this. To paraphrase Sir Arthur Conan Doyle, ''It is elementary, Mr. Holmes.'' It is pretty basic stuff. This is not a great epistemological argument. It is very simple why women could be offended. If you cannot see it, you should not be on the bench. If I were a woman in a dispute with a man, and my case was assigned to Mr. Holmes, I would be worried that Mr. Holmes could not even see why I had these concerns. That is troubling.

There is a lot more to be worried about when it comes to the Holmes nomination. In his comments, which have already been printed in the RECORD, just over and over again he defended and endorsed Booker T. Washington's view that slavery was a consequence of divine providence, designed to teach white people how to be more Christ-like. Is the President going to mention that when he goes to Michigan? See what people think of that one. He said of all the cases in history, he would want to have argued the creation case. It is right at the top of the list. I don't know why he said that, since John Scopes was convicted. I guess Mr. Holmes thinks he could have done a better job teaching the evolutionary theory in the public schools. More egregious, in not any of these instances, with maybe the exception of the first, has he disavowed them; he stands behind them. These are not slips of the tongue. This is a man caught, when you look at his writing, in almost a time warp. This man probably doesn't even want to turn the clock back to the 1930s or 1890s but somewhere way back in the 1600s.

Holmes said he believes he possesses sufficient self-transcendence—his words—to be able to set aside his views and judge cases impartially. I don't think it is enough to get up and just say: I will follow the law.

I don't mean to be flip, but it is just not that easy.

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

Mr. SCHUMER. In conclusion, if moderation is a criteria in choosing judges—and it is one of mine—Mr. Holmes abjectly fails the test. I urge that he be defeated.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I rise in opposition to the nomination of J. Leon Holmes. There is a reason this nomination has been sitting on the calendar for over a year. There is a reason the Republican Senators are breaking ranks to vote against this nominee because, frankly, the nomination of J. Leon Holmes really speaks volumes about the message being sent by this White House to the American people.

Is this the kind of person they want to give a lifetime appointment on the Federal bench? The things he said—his own words—condemn him. He has written that ''the wife is to subordinate herself to her husband'' and ''the

woman is to place herself under the authority of the man and ipso facto place herself under his authority.''

He wrote that abortion should not be available for rape victims ''because conceptions from rape occur with the same frequency as snow in Miami.'' Does that sound like the kind of statement you want to hear from a man who is going to stand in judgment of cases brought before him, cases that involve the rights of women, the rights of victims of rape?

Words count in life and in law. The words of a judge determine the outcome of a trial and the rights of the parties in the courtroom. The words of J. Leon Holmes convict him of insensitivity to some of the most basic issues in modern America.

I know Mr. Holmes and I disagree on some critical issues, but that is not the basis for my opposition. We have already confirmed 197 of President Bush's nominees to the Federal bench. Trust me, the majority of them disagree with my positions on many issues, and I voted overwhelmingly because the President has his right to choose his nominees. But of all of the attorneys in Arkansas, and of all of the Republican attorneys in the State of Arkansas, of all of the conservative Republican attorneys in the State of Arkansas, is this the best the White House can do? A man who cannot really distinguish the role of women in a modern society? A man who so cavalierly dismisses the plight of a rape victim? This is a man who needs a lifetime appointment to stand in judgment of others?

I asked him in a written question about whether he would recuse himself in cases as a Federal district court judge if any of the anti-abortion organizations that he has represented or founded came into his court. He said no; he was going to stand in judgment of the same organizations that he founded and those that paid him. He would not recuse himself.

I also asked him a basic question that we ask of all nominees. I asked:

Mr. Holmes, name 3 Supreme Court cases with which you disagree.

He said:

As a citizen, I am troubled by the Supreme Court decisions in Dred Scott v. Sandford, Buck v. Bell, and Roe v. Wade, because in my view each of those decisions failed to respect the dignity and worth of the human person.

How could a person make that statement in response to that question and say he will uphold the decision in Roe v. Wade, which is a basic right of privacy for women in America? That is what Mr. Holmes said. In fairness to Mr. Holmes, though, he has apologized for his statement about rape victims that ''conceptions from rape occur with the same frequency as snow in Miami.'' When I asked about his statement, he wrote back and said:

Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

I think it is important that that apology is on the record. Where is the apology for his statement about the subordination of women to men? No statement of explanation or apology was forthcoming. Some have come to the floor on the other side and said: Listen, these happen to be his religious views. If you say you will not support him because of that, then you are discriminating against his religion.

That is an upside down view of the world. Whether Mr. Holmes' views are based on religious beliefs, personal beliefs, cultural upbringing, or his life experiences, that is irrelevant. The basis for his beliefs is not important. What is relevant is whether his beliefs and his reasoning will guide his decisions as a Federal judge, his values that influence his judicial philosophy. The real question is, Are those beliefs reasonable, mainstream, commonsense beliefs?

How can you read what this man has said about the issues of race and gender and say that these are mainstream views and he should have a lifetime appointment to instill those views into the decisions of the United States of America through its judicial system?

Those on the other side say this is all about religion. It is not. It is about a candidate, a nominee for a judicial lifetime appointment. Our Constitution only refers to religion in a few particular areas: First, it says there will be no religious test to qualify to any office of public trust in the United States. Of course, in the first amendment it says that Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof. Mr. Holmes is entitled to his religious beliefs, as I am, as Senator HATCH is, as every Member of the Senate is. But when his religious beliefs reach a point where they call into question whether he will be fair and balanced in his judicial capacity, that is an important public policy issue. We must face it. To say that his beliefs, whether generated by religion or otherwise, are inconsistent with mainstream thinking in America is not antireligious. He is entitled to his religious beliefs. It is a statement that we do not want to perpetuate those beliefs in the findings of a judge with a lifetime appointment. Mr. Holmes' statements, I am afraid, give us fair warning of what he will do as a judge.

Of all of the conservative Republican attorneys in Arkansas, why did it come down to this man? I don't think it is an accident. I think it is a test. This White House is testing this Senate to see how far we can go, how far they can push us to put someone on the bench who is clearly out of the mainstream of American thinking.

I yield the floor.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. Fifteen minutes.

The Senator from Utah.

Mr. HATCH. Mr. President, I know the Senator from Illinois asked the question, Is this the best the White House can do? In all honesty, I think the people of Arkansas believe it is. The Democrat Gazette newspaper thinks it is. A lot of Democratic women who are law partners with this man think it is. I personally think it is a great nomination.

His record has been visibly distorted on the floor today. Let me take a few minutes to rebut some of the charges and arguments made by those opposing Mr. Holmes' nomination. Many of these were addressed in the morning in my opening statement and by others.

I refer my colleagues to the excellent statement made by the Senator who knows him best, our colleague from Arkansas—in fact, both colleagues from Arkansas, Senators PRYOR and LINCOLN. Senator PRYOR worked with him and associated with him. Both he and Senator LINCOLN support Mr. Holmes' confirmation.

It seems kind of specious to make the argument that nobody in their right mind would support this man. There is no doubt Mr. Holmes has taken a public stance on many issues while in private life. He had a right to do so as an American citizen. We encourage citizens to play a role in the democratic process. That is what Mr. Holmes has done.

We all can recognize abortion is a very divisive issue in this body about which many persons feel strongly. The issue today is not whether one view is right or wrong, but whether Mr. Holmes is able to set aside his personal views, whatever they may be, and act as a judge should act.

The American Bar Association says, by giving him the highest rating possible, that he is able to do that. His friends in Arkansas say he is. The newspapers say he is. The two Senators from Arkansas, both Democrats, say he is. Let me make a few points in this regard.

Some of the statements Mr. Holmes has made in the course of his activism are, without doubt, inflammatory. They were made 24 years ago when he was 27 years of age. To his credit, Mr. Holmes has apologized for his remark about rape which he made 24 years ago in the heat of the moment.

In response to a written question from Senator DURBIN, he wrote:

I have to acknowledge that my own rhetoric, particularly when I first became involved in the issue [of abortion] in 1980 and perhaps some years thereafter, sometimes has been unduly strident and inflammatory. The sentence about rape victims which was made in a letter to an editor in 1980 is particularly troublesome to me from a distance of 23 years later.

It was a year ago he wrote this answer.

Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

He was 27 years old. He was an activist in the pro-life cause. He has apologized over and over. Can we not as adults accept his apology, or do we require everybody to be perfect from 27 years old or before and on?

In an April 11, 2002, letter to Senator LINCOLN, Mr. Holmes explained in a similar manner.

In the 1980s I wrote letters to the editor and newspaper columns regarding the abortion issue using strident and harsh rhetoric. I am a good bit older now and, I hope, more mature as I was at the time. As the years passed, I came to realize that one cannot convey a message about the dignity of the human person, which is the message I intended to convey, using that kind of rhetoric in public discussion.

Referring directly to his 1980 ''snow in Miami'' remark—which has been more than plastered all over this place today in spite of the case we made that the remark was made years ago when he was a young man, and he has more than prostrated himself in asking for forgiveness—he said:

I do not propose to defend that sentence—

The sentence about ''snow in Miami''—

and I would not expect you or anyone else to do so.

Based upon this letter and the level of support Mr. Holmes enjoys in Arkansas, Senator LINCOLN reaffirmed her belief that Mr. Holmes will be a fair judge, and so do the people of Arkansas and anybody who knows him.

I share Senator LINCOLN's views. The fact that Mr. Holmes recognizes his words in the past were sometimes strident and insensitive suggests to me he has undergone a maturation process for which he is given no credit by the perfect people here in the Senate who are so willing to sit in judgment on statements made by 27-year-olds. I wonder how they would fare if all of their 27-year-old statements were used to determine whether they could sit in the Senate.

Mr. Holmes was questioned by my Democratic colleagues on many of the issues they raised today. I thought his answers were very responsive, and I want to review them today so there is no further distortion of his record, because we have had plenty of that today.

In response to another question by Senator DURBIN, which was whether Mr. Holmes, as a judge, would restrict the rights granted by Roe v. Wade, Mr. Holmes responded:

The judge is an instrument of the court and hence the law. Thus, the judge's personal views are irrelevant. Roe v. Wade is the law of the land. As a judge, I would be bound by oath to follow that law. I do not see how a judge could follow the law but restrict the rights established by that law.

I do not know what more he has to say to show good faith, but he surely said it there. In response to the question, ''Do you believe in and support a constitutional right to privacy?'' Mr. Holmes responded:

I recognize the binding force of the court's holding in Griswold and Eisenstadt recognizing a right to privacy. I have never engaged in political activity directed toward overturning the result obtained in Griswold or Eisenstadt. If I am confirmed by the Senate, I would follow the rulings of the Supreme Court.

What do my colleagues need? Senator LEAHY implied Leon Holmes has had some kind of confirmation conversion. That is the usual bullcorn that happens on the floor from time to time, especially with regard to judicial nominees.

I note that the overwhelming evidence, based on his own actions and letters of support, is Mr. Holmes is a man who respects the rule of law and is a man of integrity and will follow the law. His colleagues say that. His women colleagues say that. People who differ with him personally on his views say that. They say he will respect the law and follow it.

Mr. Holmes is not nominated to the Supreme Court where the Justices, such as Justice Thomas, Justice O'Connor, or other Justices, are required to review and sometimes vote to overturn previous decisions. Mr. Holmes, as a district court judge, is bound by the Supreme Court and the appellate court determinations and precedents.

I also heard some criticism that was raised by Senator FEINSTEIN from California that Mr. Holmes placed the Roe v. Wade decision in the same category as Dred Scott and Buck v. Bell, as Supreme Court decisions with which he disagrees. If he has, he has millions of Americans who also disagree with those three decisions, and I am one of them myself.

Let me give the full and complete answer of Mr. Holmes on this issue. He stated:

In my view, each of these decisions failed to respect the dignity and worth of the human person. As a judge, I would follow every decision of the Supreme Court that has not been subsequently overruled.

Even though he disagrees with Roe v. Wade, he will uphold it. I do not know when this business of not believing people on this issue started to take place, but it started back around the time of Justice Rehnquist's nomination, and it has been coming every year. And they say they do not have a litmus test. Give me a break.

One can disagree with Mr. Holmes' personal views, but one cannot credibly argue that he does not respect the supremacy of the laws laid down by the Supreme Court. Everything the man stands for says that.

Let me quickly turn to a few other issues raised today. I have already addressed the issue regarding the charge that Mr. Holmes is antiwomen. The article he wrote with his wife—both of them wrote it—was to discuss their fervent belief in Catholic teachings regarding relationships. It was written for his religious peers in the Catholic faith, published in a religious document. It was not a statement of his legal views.

A fair reading of the article would show a support for the equality of women. I have read it a number of times. And by the way, if it comes down to a choice between St. Paul and my distinguished friend from Massachusetts, Senator KENNEDY, or my distinguished friend from Illinois, Senator DURBIN, I think I will take St. Paul every time, and I think most everybody else in the country would, too. He and his wife were quoting St. Paul.

We have even had some indications that St. Paul was out of whack. According to the Bible, in which I think most of us claim to believe. I will choose St. Paul every time. By the way, the article is why only males in the Catholic Church hold the priesthood. If one reads it fairly, that is what he was driving home. If one reads it fairly, one will find he was very fair to women and treated them equally, as his partners. Democratic women in his law firm whom he mentored and tutored and helped and worked with and works with today have testified through letters to us that they trust him, believe in him. Even though they differ with his views in some matters, they know he will follow the law because they know he is devoted to the law.

We ought to be able to give some credibility to people of that quality who get the highest possible rating by the American Bar Association. That is not always totally dispositive, I have to admit, but it certainly adds to the belief of those of us who support this man and the Democrat people down there who also support him. Mr. Holmes enjoys the support of numerous women in Arkansas, including coworkers and colleagues who know him best.

There is a charge against Mr. Holmes. Holmes does not have the temperament to be a Federal judge, some have said. He has said that rape occurs with the same frequency as snow in Miami and compared abortion to the Holocaust.

He has openly apologized for his 27-year-old rhetoric:

The sentence about rape victims which was made in a letter to an editor in 1980 is particularly troublesome to me from a distance of 23 years later.

He goes on to say:

Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

That is a written response to Senator DURBIN. We cannot take his word for that? He was 27 years old, a fervent believer in the pro-life cause. Arkansans holding strong pro-choice views uniformly attest that Holmes will set aside any personal beliefs and follow the law while on the bench.

Holmes' ''well-qualified'' rating shows he is at the top of the legal profession in his legal community. He has outstanding legal ability, but listening to the arguments today, one would think he is a total malcontent who does not believe in the law. He has a breadth of experience and the highest reputation for integrity. He has demonstrated or exhibited the capacity for judicial temperament.

There is a charge that Holmes does not believe in the separation of church and State. He said this:

Christianity in principle cannot accept subordination to the political authorities,

for the end to which it directs men is higher than the end of the political order.

That is what they say. He quoted him, so he must not believe in the separation of church and State. But what did he say? Holmes was contrasting Christianity with the pagan religions about which Aristotle wrote in which religious activities are political concerns. The speech makes the point that Christianity looks to an ultimate source of authority beyond Earthly authority, and that is God.

I mean, give him a break.

Holmes notes that the model of assigning religious and political matters to separate spheres is favored by modern liberalism, including John Locke, Thomas Jefferson, and Alexis de Tocqueville, and the modern Catholic Church. He urges us not to miss the strengths of de Tocqueville's argument that the church is stronger when separate from the State. Holmes offers his own theological grounds for the separation of church and State, and yet one would think he was not.

Another charge is that Holmes is unwilling to recuse himself from cases involving anti-abortion organizations or abortion matters. He has pledged that:

In any case in which litigants were concerned about my fairness and impartiality, or the appearance of impropriety, I would take those concerns seriously. I would follow 28 U.S.C. Section 455 and the Code of Conduct for United States Judges when making recusal decisions.

He would follow the law. He will abide by the same standards of conduct that govern every Federal judge.

Since the issue of natural law has been raised in discussing Mr. Holmes' nomination, I want to set the record straight.

Some have expressed concern that Mr. Holmes seems to be a believer in natural law and will allow those beliefs to influence his rulings on the bench. The facts show otherwise.

When asked if he believes that the Declaration of Independence establishes or references rights not listed or interpreted by the Supreme Court to be in the Constitution, Mr. Holmes wrote:

I do not believe the Declaration of Independence establishes judicially enforceable rights.

Instead, he wrote:

The Constitution as a whole is aimed at securing the rights described as unalienable by the Declaration of Independence.

Mr. Holmes noted that:

Working all together, the entire system of government should . . . result in a free country, a country without tyranny, which, in the terms that the founders used, is equivalent to saying a country in which natural rights generally are respected.

Mr. Holmes, however, cautions:

[T]here is no constitutional authority for the courts to use the Declaration of Independence to overrule the Constitution. The authority of the courts is granted by the Constitution, not the Declaration.

He also wrote:

No one branch of government can appeal to natural rights as a basis for exceeding or altering its authority under the Constitution.

Rather, he writes:

[w]hen citizens believe that natural rights are not safeguarded adequately by the present system of government, they may express that view in the electoral process, or they may seek to amend the Constitution pursuant to Article V.

Mr. Holmes has demonstrated, and his record demonstrates, that once he dons the robes of a judge, he will set aside those beliefs and follow the law as it is stated. Mr. Holmes understands key differences between an advocate and a judge, and that personal views play no role in the duty of a judge to abide by stare decisis and apply the precedent of the Supreme Court and Eighth Circuit. For those reasons, I believe that Mr. Holmes will make an outstanding Federal district judge.

I close by yielding my last few minutes to Senator PRYOR, a Member of the Senate who knows Mr. Holmes the best. I believe we ought to listen to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 1 minute.

Mr. PRYOR. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. There is 58 seconds remaining.

Mr. PRYOR. I will be brief.

Earlier today, I read from 23 different letters of people from Arkansas, lawyers who practice with him, who support him. Many of these statements are inflammatory. I admit that. He admits that. He has apologized. Many of these were done 15, 20, in one case 24 years ago.

I hope we will tone down the rhetoric. If Senators vote for Leon Holmes, they are not antiwoman. If Senators vote against him, certainly they are not anti-Catholic. Let us have a straight up-or-down vote.

I encourage all of my colleagues to vote for Leon Holmes. Over and over, people in Arkansas who know him, who repeatedly say they do not agree with him on many of these issues, think he will be a fair, impartial, and an excellent member of the bench.

I ask my colleagues for their consideration.

The PRESIDING OFFICER. All time has expired.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of J. Leon Holmes, of Arkansas, to be United States District Judge for the Eastern District of Arkansas?

The clerk will call the roll. The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI), is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 51, nays 46, as follows:

[Rollcall Vote No. 153 Ex.]

YEAS—51

Alexander	Dole	McCain
Allard	Domenici	McConnell
Allen	Ensign	Miller
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Roberts
Bunning	Grassley	Santorum
Burns	Gregg	Sessions
Campbell	Hagel	Shelby
Chambliss	Hatch	Smith
Cochran	Inhofe	Specter
Coleman	Kyl	Stevens
Cornyn	Landrieu	Sununu
Craig	Lincoln	Talent
Crapo	Lott	Thomas
DeWine	Lugar	Voinovich

NAYS—46

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham (FL)	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Rockefeller
Carper	Hutchison	Sarbanes
Chafee	Inouye	Schumer
Clinton	Jeffords	Snowe
Collins	Johnson	Stabenow
Conrad	Kennedy	Warner
Corzine	Kohl	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

NOT VOTING—3

Edwards	Kerry	Murkowski

The nomination was confirmed.

Mr. GRASSLEY. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

CLASS ACTION FAIRNESS ACT OF 2004

The PRESIDING OFFICER. The clerk will report S. 2062.

The legislative clerk read as follows:

A bill (S. 2062) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to express my strong support for the Class Action Fairness Act of 2004, which is now renumbered S. 2062, to accommodate the bipartisan compromise we reached last November with Senators DODD, SCHUMER, and LANDRIEU. This improved bill embodies a carefully balanced legislative solution that responds to some of the most outrageous abuses of the class action litigation device in some of our State courts.

As anyone who has read the bill knows, it restores fairness to the class