The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER
The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.
Almighty and everlasting God, the center of our joy, give us this day what we need to honor Your Name. Provide us with a steadfastness of purpose that will enable us to accomplish shared objectives. Strengthen us with the willingness to bear burdens and the courage to persevere. Impart to us the wisdom to know what is right and the strength to do it. Empower us to forget our failures and to press toward the prize of becoming more like You.

Give our Senators a faith that will not shrink though pressed by many a foe. As they seek to do Your will, direct their paths. Grant us the vision and the power to transform dark yesterdays into bright tomorrows.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE
The President pro tempore led the Pledge of Allegiance, as follows:

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

RESERVATION OF LEADER TIME
The President pro tempore, under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF JOHN G. ROBERTS, JR., TO BE CHIEF JUSTICE OF THE UNITED STATES—Resumed

The President pro tempore, under the previous order, the Senate will proceed to executive session for the consideration of Calendar No. 317, which the clerk will report.

The legislative clerk read the nomination of John G. Roberts, Jr., of Maryland, to be Chief Justice of the United States.

The President pro tempore. Under the previous order, the time from 10 a.m. until 11 a.m. will be under the control of the majority leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER
The acting majority leader is recognized.

Mr. MCCONNELL. Thank you, Mr. President.

SCHEDULE
Mr. President, shortly, we will resume consideration of John Roberts to be Chief Justice of the United States. Last night, we locked in a consent which provides for the final vote on confirmation. That vote will occur at 11:30 a.m. on Thursday.

Today, we have controlled time to allow Senators to come to the Chamber to give their statements on this extremely important nomination. As usual, we will recess from 12:30 until 2:15 for the weekly policy luncheons.

As mentioned last night, the Appropriations Committee is expected to report the Defense appropriations bill tomorrow. We expect the Senate to begin consideration of that bill on Thursday following the Roberts nomination.

I also remind my colleagues that we need to pass a continuing resolution by the close of business this week.

Finally, I once again alert all Members that we are working under a very compressed schedule. Next week, we will need to accommodate the Rosh Hashanah holiday, and therefore we will be stacking rollcall votes for midweek. Given this schedule, it is extremely important that we use our time wisely, both this week and obviously next week as well. Therefore, Members should anticipate busy sessions Thursday and Friday of this week. Friday will be a working day as we make progress on the Defense appropriations bill. Senators should plan their schedules accordingly.

Mr. President, I suggest the absence of quorum.

The President pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The President pro tempore. The quorum call be dispensed with.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as if in morning business.

The President pro tempore. Without objection, it is so ordered.

Disaster Assistance
Mr. DURBIN. Mr. President, it is very clear from Hurricane Rita and Hurricane Katrina that America is now learning how to be prepared for disasters. Many more positive things happened as a result of the threat of Hurricane Rita than happened just a few weeks before in Louisiana, Mississippi, and Alabama. We now know that it is not a question of pointing the finger of blame, but those of us in leadership in Washington need to get to the bottom of this—not so we can decide who was wrong in days gone by but, frankly, to make sure this doesn’t happen again.

The American people do not want to know who wins the game of “gotcha” here; they want to know if America is ready for the next disaster. We were clearly not prepared for Hurricane Katrina. The scenes we all saw night after night on television about victims in New Orleans and other communities remind us over and over again that the Federal Emergency Management Agency was not prepared for this challenge. We came to that realization when Mr. Brown was asked to leave FEMA. I believe that was the right decision.

This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
but I was stunned to learn that he is still on the payroll. It is hard to imagine that this man who was at FEMA with such a thin résumé and such limited experiences dealing with disasters was asked to leave and be replaced and then asked to run a command center to FEMA. He is going to be scrutinized today by a panel in the House of Representatives that may ask him some questions about what he did. The first thing they should ask him is by what authority is he still on the payroll? Why is he still there? I don’t believe this is the right way to approach a natural disaster or a terrorist disaster. We need to put people in place who understand how to deal with it.

I believe the President was right in removing Mr. Brown and putting in his place Commander Allen from the Coast Guard. I have met with him in New Orleans. He is a man who apparently takes control of the situation and does it very well, and I believe we should give him a chance to lead—to make certain that we handle that past disaster but also that we are prepared for the next one.

Bush is a recurring problem. It isn’t just a question of Michael Brown being replaced by Commander Allen. It is a question of whether there are people in other key spots in this Government who do not have the qualifications as well.

Make no mistake about it: Every President brings in people of their own political persuasion and friendship. This happened from time immemorial. It is important here.

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

[From TIME Magazine, Sep. 25, 2005] HOW MANY MORE MIKE BROWNS ARE OUT THERE?

(By Mark Thompson, Karen Tumulty, and Michael Schaller)

In presidential politics, the victor always gets the spoils, and chief among them is the vast warren of offices that make up the federal bureaucracy. Historically, the U.S. public has hunkered down and the people the President chooses to sit behind those thousands of desks. A benign cronymism is more or less presumed, with old friends and loyal donors getting prominent and impressive titles, with few real consequences for the nation.

But then came Michael Brown. When President Bush’s foremost point man on disasters was discovered to have more expertise about the rules of Arabian horse competition than about the management of a catastrophe, it was a reminder that the competence of government officials who are not household names can have a life or death impact. The Brown debacle has raised pointed questions about whether political connections, not qualifications, have helped an unusually high number of Bush appointees land vitally important jobs in the federal Government.

The Bush Administration didn’t invent cronymism: John F. Kennedy turned the Justice Department over to his brother, while Bill Clinton gave his most ambitious domestic policy initiative to his wife. Jimmy Carter made his old friend Bert Lance his budget director. To see him heralded in front of the Senate to answer questions on his past banking practices in Georgia, and George H.W. Bush deposited so many friends at the Commerce Department that the agency was known internally as “Bush Gardens.”

The difference is that this Bush Administration had a plan from day one for remaking the bureaucracy, and has done so with greater success.

As far back as the Florida recount, soon-to-be Vice President Dick Cheney was poring over a chart in the government with an eye toward stocking it with people sympathetic to the incoming Administration. Clay Johnson III, Bush’s former Yale roommate and the Administration’s chief architect of personnel, recalls preparing for the inner circle’s first trip from Austin, Texas, to Washington: “We were standing there getting ready to get on a plane, looking at each other like: Can you believe what we’re getting ready to do?”

The Office of Personnel Management’s Plum Book, published at the start of each presidential Administration, shows that there are more than 3,000 positions a President can fill without consideration for civil service, and with minimal purchasing experience over $300 billion in spending, until his arrest last week. At the Department of Homeland Security the agency that has resisted, a well-connected White House aide with minimal experience is poised to take over what many consider the single most crucial post in ensuring that terrorists do not enter the country again. And who is acting as watchdog at every federal agency? A corps of inspectors general who may be more important to insulate government executives from the influences of politics and special interests than at the Food and Drug Administration, the agency charged with assuring the safety of everything from new vaccines and dietary supplements to animal feed and hair dye. That is why many within the department, as well as in the broader scientific community, were startled when, in June, Scott Gottlieb was named deputy commissioner for medical and scientific affairs, one of three deputies in the agency’s second-rung at FDA. His official FDA biography notes that Gottlieb, 33, who got his medical degree at Mount Sinai School of Medicine, did a pre-med stint providing policy advice at the agency, as well as at the Centers for Medicare and Medicaid Services, and was a fellow at the American Enterprise Institute, a conservative think tank. What the bio omits is that his most recent job was as editor of a popular Wall Street newsletter, the Forbes/Gottlieb Medical Technology Investor, in which he covered such tech stocks as “Biotronics: Stocks to Buy Now.” In declaring Gottlieb a “noted authority” who had written more than 300 policy and medical articles, the bio neglects the fact that many of those articles criticized the FDA for being too slow to approve new drugs and too quick to issue warning letters when it suspects ones already approved are faulty. The fact is that his most recent job was as editor of a popular Wall Street newsletter, the Forbes/Gottlieb Medical Technology Investor, in which he covered such tech stocks as “Biotronics: Stocks to Buy Now.” In declaring Gottlieb a “noted authority” who had written more than 300 policy and medical articles, the bio neglects the fact that many of those articles criticized the FDA for being too slow to approve new drugs and too quick to issue warning letters when it suspects ones already approved are faulty. The fact is that his most recent job was as editor of a popular Wall Street newsletter, the Forbes/Gottlieb Medical Technology Investor, in which he covered such tech stocks as “Biotronics: Stocks to Buy Now.”
of the journal Science, say Gottlieb breaks the mold of appointees at that level who are generally career FDA scientists or experts well known in their field. “The appointment comes as a surprise. I never would have seen anything like that,” says Kennedy.

Gottlieb’s financial ties to the drug industry, which extend back to his undergraduate days at the Massachusetts Institute of Technology, may raise questions about his impartiality in the matter. Among them are Eli Lilly, Roche and Proctor & Gamble, according to his Aug. 5 “Disqualifying Relationships Regarding Clients,” a copy of which was obtained by TIME. Gottlieb, though, insists that his role at the agency is limited to advising and not speaking directly to clients, and that what he thought would be a routine appointment and Research received copies of an e-mail obtained by TIME. Gottlieb speculated that the complication might have been the result of the disease and not the drug. “It seems very clearly a drug-related event,” was written in the e-mail obtained by TIME, Gottlieb speculated that the complication might have been the result of the disease and not the drug. “It seems very clearly a drug-related event,” was written in the e-mail obtained by TIME. Gottlieb speculated that the complication might have been the result of the disease and not the drug. The agency’s independence has also come under question, most recently with its decision last month to prevent the emergency contraceptive known as Plan B from being sold over the counter.

A law school internship helping the Pentagon buy helicopters was about the extent of it. Yet as administrator of the Office of Federal Procurement Policy, Safavian was placed in charge of the $300 billion the government spends each year on everything from paper clips to nuclear submarines, as well as the $60 billion committed last year in response to Hurricane Katrina recovery efforts. It was his job to ensure that the government got the most for its money and that competition for federal contracts—among companies as well as between government workers and private contractors—was fair. It was his job until he resigned on Sept. 16 and was subsequently arrested late last month on charges of lying and obstructing a criminal investigation into Republican lobbyist Jack Abramoff’s dealings with the Federal Government.

Safavian spent the bulk of his pregovernment career as a lobbyist, and his nomination to a top oversight position for civilian government—his current community. A dozen procurement experts interviewed by TIME said he was the most unqualified person to hold the job since its creation in 1974. Most of those who held the post before Safavian were well-versed in the arcane world of federal contracts. “Safavian is a good example of a person who had great personal credentials,” says Danielle Brian, executive director of the Project on Government Oversight, a nonprofit Washington watchdog group. “It’s one of the most powerful positions in terms of impacting what the government does, and the kind of job—like FEMA director—that needs to be filled by a professional.” Nevertheless, Safavian’s April 2004 confirmation hearing before the Senate Governmental Affairs Committee (attended by only five of the panel’s 17 members) lasted just 67 minutes, and not a single question was asked about his qualifications.

The committee did hold up Safavian’s confirmation for a year, in part because of concerns about the company’s cyber-security consulting firm, Janua-Merritt Strategies, had done that he was required to divulge to the panel but failed to. The firm’s filings showed that it represented two men suspected of links to terrorism (Safavian said one of the men was “erroneously listed,” and the other’s omission was an “inaccuracy as to two suspect African regimes.” Ultimately, the committee and the full Senate unanimously approved Safavian for the post. His political procurement experts say privately, came from his late-1990s lobbying partnership with Grover Norquist, now head of Americans for Tax Reform and a close ally of the Bush Administration. Norquist is an antigay advocate who once famously declared that his goal was to shrink the Federal Government so he could “drain it upside down into the bathtub.” As the U.S. procurement czar, Safavian was pushing in that direction by seeking to shift government work to private contractors. “I’m very skeptical about the motives of some procurement insiders say his relationship with Norquist gave Safavian the edge in snaring the procurement post. But Norquist has “no memory” of an interaction to put Safavian in the post, says an associate speaking on Norquist’s behalf. A White House official said Norquist “didn’t influence the decision.” Clay Johnson, who was designated by the White House to answer all of TIME’s questions about administration appointments, said he could not confirm or deny the procurement post, says Safavian was “by far the most qualified person” for the job. Perhaps not so surprising given that Safavian was indicted last month on unrelated fraud and conspiracy charges. In 2002, Abramoff invited Safavian on a weekend golf outing to Scottsdale, Ariz. “It was interesting to see him,” Abramoff has said. Safavian, who “had done well” in Abramoff’s Washington area. Safavian, who is free without bail, declined to be interviewed for this story, but, according to an associate of Abramoff, said the government is trying to pressure her client to help in its probe of Abramoff. “This is a creative use of the criminal code to secure cooperation,” a lawyer said.

Three days after the Sept. 12 resignation of FEMA’s Michael Brown, Julie Myers, the Bush Administration’s nominee to head Immigration and Customs Enforcement (ICE), came before the Senate Homeland Security and Governmental Affairs Committee. The session did not go well. “I think you would have a meeting with [Homeland Security Secretary] Mike Chertoff,” Ohio Republican George Voinovich told Myers. “I’d really like to see him spend more time calling us personally why he thinks you’re qualified for the job. Because based on the resume, I don’t think you are.” Immigration and Customs Enforcement is one of 22 agencies operating under the umbrella of the Department of Homeland Security, a very high-powered, well-recognized intelligence manager.

Instead the Administration nominated Myers, currently the ICE’s handled several high-profile immigration cases for Bush. She has experience in law enforcement management, including jobs in the White House and the Justice Department, but she barely meets the five-year minimum requirement by law. Her most significant accomplishment, say experts, is handling personnel issues for Bush. She has experience in law enforcement management, including jobs in the White House and the Department of Justice’s Immigration and Customs Enforcement.

Myers may appear short on qualifications, but she has plenty of connections. She
work for Chertoff as his chief of staff at the Justice Department’s criminal division, and two days after her hearing, she married Chertoff’s current chief of staff, John Wood, who is Air Force General Richard Myers, the outgoing Chairman of the Joint Chiefs of Staff. Julie Myers was on her honeymoon last week and was unavailable to talk about the questions raised by the Senate. A representative referred TMB to people who had worked with her, one of whom was Stuart Levy, the Treasury Department’s Under Secretary for Terrorism and Financial Crime. “She was great, and she impressed everyone around her in all these jobs,” he said. “She’s the kind of person who is strong and smart, and I think she’s wonderful.”

To critics, Myers’ appointment is a symptom of deeper ills in the Homeland Security Department, a huge new bureaucracy that the Bush Administration resists creating. Among those problems, they say, is a tendency on the part of the Administration’s political appointees to discard in-house expertise, particularly when it could lead to additional government regulation of industry. For instance, when Congress passed the intelligence reform bill last year, it gave the Transportation Security Administration (TSA) until April 1, 2006, to come up with plans to assess the threat to various forms of shipping and transportation—including rail, mass transit, highways and pipelines—specifying potential physical and other security measures strengthening security. Two former high-ranking Homeland Security officials tell TMB that the plans were nearly complete and had been turned in to Homeland Security April for final review when Deputy Secretary Michael Jackson abruptly reassigned that responsibility to the Transportation agency’s political appointee, Steven Leopold. Jackson, who was worried that presenting Congress with such detailed proposals would force him to delay an audit of the Florida pension system at the request of the President’s brother, Governor Jeb Bush of Florida, and the unauthorized gun she kept in her office. She resigned in June 2003 ahead of the report. Three weeks ago, however, Joseph Schmitz supplanted his former Republican predecessor, F. Lee Williams, as the new IG. Schmitz, who worked as an aide to former Reagan Administration Attorney General Edwin Meese and whose father John was a Republican Congressman from Orange County, Calif., quit his post at the Pentagon following complaints from Senate Finance Committee chairman Charles Grassley, Republican of Iowa. In particular, Grassley questioned Schmitz’s acceptance of a trip to South Korea, paid for in part by a former lobbyist’s client, according to Senate staff. Schmitz had not disclosed until late September that a judge had ordered him to return to the role of IG. Schmitz’s use of eight tickets to a Washington Nationals baseball game. But those issues aren’t the ones that led to questions about Myers and the White House. Those concerns came to light after Schmitz chose to show the White House his department’s final report on a multyear investigation into the Air Force’s plan to lease air-refueling tankers from Boeing for much more than it would have cost to buy them. After two weeks of talks with the Administration, Schmitz revealed the names of senior White House officials who appeared to have played a role in pushing and approving what turned out to be a contracting arrangement that would have cost the government more than $20 million. Schmitz then went on to refer the matter to Congress, which will reach that goal—under an independent, nonpartisan commission, not a commission created by Republicans, or Democrats of their own Members, nor an investigation initiated by the administration to look at wrongdoing that it might have committed itself, but an independent, nonpartisan commission. Some have argued against it, saying we waited a year for the 9/11 Commission. Why shouldn’t we wait a year to look into the problems of Katrina? We waited a year because the White House opposed

White House, Mr. Safavian, was arrested. He was the top man in the White House when it came to procurement and contracts. Because of some misrepresentations that he apparently made—it has been alleged that he made these misrepresentations—he has been asked to step down from this spot in the White House.

But we have to ask about the contracts that are being let now for Hurricane Katrina. The Senate and House approved some $60 billion in emergency aid. So far, 80 percent of the contracts that FEMA has let are no-bid contracts. They have just awarded them to companies without any competitive bidding whatsoever.

The New York Times on September 26 said as follows:

More than 80 percent of the $1.5 billion of contracts signed by FEMA alone were awarded without bidding, or with limited competition, government records show, provoking concerns among auditors and government officials about the potential for favoritism and abuse. Already questions have been asked about the political connection of major contracts.

And the article goes on:

Questions are being raised as to whether this money is actually going to the victims and actually helping the victims. It raises a question of compensation, not just to make certain these victims and communities get back on their feet as quickly as possible but to make certain we are prepared for the next disaster that may face the United States. We have seen and read of serious problems which have occurred with Hurricane Katrina. Some of those occurred yesterday in New Orleans.

In Texas, in Express News on September 26, it is written that:

Jefferson County Texas Judge Carl Griffith said the county has encountered problems gaining access to troops, equipment and supplies needed to help rebuild the storm-battered region. The judge said local authorities weren’t able to use about 50 generators the State had prepositioned at an entertainment complex late Sunday night because no clearance had been given to release them. Mr. Johnson, Jefferson County Administrator, said he had asked for generators to support the hospital in the flooded town but was told there were none available. Then he said, “I had to show the FEMA representatives the generators were sitting in the parking lot.”

So there clearly is a need for us to increase the level of competency and performance when it comes to dealing with these disasters.

The bottom line is this: If we want to fix this, we need to sit down and learn how to avoid it in the future, there is one thing that we can do and do now as a Congress which will reach that goal—under an independent, nonpartisan commission, not a commission created by Republicans or Democrats of their own Members, nor an investigation initiated by the administration to look at wrongdoing that it might have committed itself, but an independent, nonpartisan commission. Some have argued against it, saying we waited a year for the 9/11 Commission. Why shouldn’t we wait a year to look into the problems of Katrina? We waited a year because the White House opposed...
the creation of that Commission. Ultimately, it was created and did a great service to this country.

The force that kept the 9/11 Commission moving—this independent, nonpartisan commission—was the families who were victims of 9/11. That same force, that same determination must be applied forward here. The victims of Hurricane Katrina and Hurricane Rita should be the moving force for the creation of an independent, nonpartisan commission.

The Republican leadership in Congress and the Democratic leadership in Congress should acknowledge the obvious: If we are going to get clear answers as to what went wrong so those mistakes will not be made again, we need an independent, nonpartisan commission. We shouldn’t be fearful of them. If they point a finger of blame at Congress, so be it. If they point a finger of blame at State and local leaders, so be it. The important thing is not who was wrong before, the important thing is let us make certain that America is safe in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, what is the purpose of the allocation?

The PRESIDING OFFICER. The time between 10 a.m. and 11 a.m. is under the control of the majority leader or his designee.

Mr. HATCH. Thank you.

Mr. President, I rise once again to speak in favor of the nomination of John Roberts. I urge all of my colleagues in the Senate to vote to make John Roberts the next Chief Justice of the United States.

The central focus this week is properly on the nomination of Judge Roberts. In addition, the manner in which the Senate acts on this nomination will also be subject to public scrutiny. In this regard, I join those who have commended Senator Specter and Senator Leahy and other members of the Judiciary Committee for working together to plan and carry out a fair series of hearings on the Roberts nomination.

This week, the full Senate faces the challenge of debating the merits of John Roberts to serve as our Nation’s 17th Chief Justice. A widely respected journalist, David Broder, observed about the Roberts nomination:

He is so obviously ridiculously well equipped to lead government’s third branch that it is hard to imagine how any Democrat can justify a vote against his confirmation.

To put a fine point on it, if Democrats do not vote for John Roberts, is it fair to ask whether some Democrats will ever receive a fair shake to any Republican Supreme Court nominee?

I recognize that many leftwing special interest groups are putting a lot of pressure on Democratic Senators to vote against this extraordinarily qualified candidate. For example, on Wednesday, September 21, 2005, the newspaper Rollcall contained an article with the headline “Liberal Groups Lecture Democrats on Roberts.” Let me read a portion of this article:

... Sens. Dick Durbin and Charles Schumer received a sharp rebuke at a weekend meeting in Los Angeles from wealthy activists such as television personality Norma Lear over Roberts’ glide path to confirmation.

At an event on behalf of People for the American Way, the first of the major liberal interest groups to announce opposition to Roberts, Lear lashed out at the Democrats for not mounting more determined resistance to the nomination, according to several sources familiar with the event. Schumer, chairman of the Democratic Senatorial Campaign Committee, confirmed that the event included a “frank discussion” between activists.

That says it all, the pressure on our colleagues on the other side: lectures, sharp rebukes, frank discussions. It sounds as if there may be some dissenion in “All in the Family.” One can only wonder if “the Meathead” took part in this harangue against the Senators. I have no doubt that pressure from some liberal groups was substantial.

There are compelling reasons why the health of both the Senate and Judiciary require that this vote be about, and only about, Judge John Roberts’ qualification to serve as Chief Justice. Some leftwing special interest groups seem to be urging a “no” vote on this highly qualified nominee in large part to somehow send a message to President Bush as he deliberates on how to fill the remaining vacancy on the Supreme Court. If that is the case, it is a garbled, misguided message.

I understand the political fact of life that some outside interest groups normally affiliated with the Republican side of the aisle might have preferred that Republican Senators would have voted against the Supreme Court nominees of President Clinton. But I also respect the political reality that he who wins the White House has the right under the Constitution to nominate judicial nominees, including filling Supreme Court vacancies.

In undertaking our advice and consent role, the Senate, due to the Constitution, prudence, and tradition, owes a degree of deference to Presidential nominees. This helps explain why the two Supreme Court nominations made by President Clinton were given broad bipartisan support by the Senate once they were found to possess the intellect, character, and mainstream judicial philosophy necessary to serve on the Court. When the votes were counted for these two Clinton nominees, both of whom were known as socially liberal, Justice Breyer was confirmed by 87 to 9, and Justice Ruth Bader Ginsburg was approved by a 96-to-3 vote. Given the already stated opposition of both the minority leader and the assistant minority leader and many other Democratic Senators, it does not appear likely that Judge Roberts will receive the same level of support from Democratic Senators as Republican Senators provided for the last two Democrat nominees.

This is unfortunate, unjustified, and unfair. Comity must be a two-way street.

At least during the debate of this extremely well-qualified nominee the distinguished Senator from Massachusetts and the distinguished Senator from New York—who apparently put aside any personal political agenda in the interest of justice—clearly articulated their respective decisions to support Judge Roberts.

I commend the growing number of Democrats, including the ranking Democrat member of the Senate Judiciary Committee, Senator Leahy, for their decisions to support Judge Roberts. I hope many others across the aisle will join them.

I also commend President Bush for consulting closely with the Senate and for sending a truly outstanding nominee in John Roberts. By all accounts, the President is continuing his practice of consulting widely with the Senate in filling the remaining vacancy on the Court.

Turning to the merits of this nomination, I take a few moments to briefly discuss John Roberts’ education and experience to help explain why so many think so highly of this nominee. Too often in this debate, Judge Roberts’ brilliance and qualifications before launching into a series of speculative ifs, and’s, or but’s that somehow justify a vote against the confirmation in their eyes.

The American public realizes John Roberts has the right stuff. John Roberts graduated from Harvard College summa cum laude in 3 years. He went on to Harvard Law School where he graduated magna cum laude and was managing editor of the Harvard Law Review.

Judge Roberts began his career by clerking for two leading Federal appellate judges, Judge Henry Friendly and Justice William Rehnquist. Judge Roberts began his career in the executive branch by serving as a Special Assistant to Attorney General William French Smith. Next, he was Associate Counsel in the White House Counsel’s Office.

Under the administration of President George H.W. Bush, John Roberts served as Principal Deputy Solicitor General of the Department of Justice. Upon departing Government and moving back into private practice, he was justifiably recognized as one of the leading appellate lawyers in the country. He has argued an almost astounding number of 39 cases before the Supreme Court.

John Roberts has represented a diverse group of clients, including environmental, consumer, and civil rights litigants. He has zealously fulfilled his obligation to provide voluntary legal services to the poor, including criminal defendants.
Just 2 years ago, John Roberts was confirmed in the Senate without objection; not one Senator raised an objection to his nomination for a seat on the U.S. Court of Appeals for the District of Columbia Circuit. The American Bar Association evaluated Judge Roberts four times in the last 4 years, and each time he earned the highest ABA rating of “well-qualified.” And four times in a row this “well-qualified” rating was unanimous. This must be some kind of a record. For the things.

John Roberts has the temperament, integrity, intelligence, judgment and judicial philosophy to lead the Supreme Court and Federal Judiciary well into the 21st century.

The Senate and the American public heard directly from John Roberts as he testified for over 20 hours before the Judiciary Committee. Most of us liked what we saw and heard. Judge Roberts told us he would bring back to the Supreme Court—judicial—political, personal, or otherwise. He told us he would consider each case based solely on the merits of the relevant facts and the applicable laws. With Judge Roberts, all litigants will continue to receive the high integrity, intelligence, judgment, and judicial restraint. Judge Roberts' long and distinguished record as an advocate and judge over the past 25 years, buttressed by his recent confirmation hearing testimony, demonstrates he is a bright, careful, and thoughtful legal professional of the highest integrity and character. He is an ideological lifeline to, or bent on, high court mischief. I think it likely one day historians will conclude that in making John Roberts our 17th Chief Justice, the President and Senate made a wise choice that helped maintain and advance the rule of law for all present and future citizens of the United States.

Mr. President, I will vote aye to confirm Judge Roberts and I hope the vast majority of Senators will do likewise. With that, I yield the floor.

Mr. STEVENS. Mr. President, I ask unanimous consent that I be allowed to speak for a minute as in morning business.

Mr. President, I will vote aye to confirm Judge Roberts and hope the vast majority of Senators will do likewise. With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent that I be allowed to speak for a minute as in morning business.

Mr. President, I will vote aye to confirm Judge Roberts and I hope the vast majority of Senators will do likewise. With that, I yield the floor.

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

The remarks of Mr. STEVENS are printed in today’s RECORD under “Morning Business.”

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

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

Mr. GRAHAM. Mr. President, I would like to be recognized to speak on behalf of Judge Roberts.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GRAHAM. Mr. President, as Senator HATCH indicated, I do not think we are going to have a “no” vote at all to vote for this uniquely qualified man. It is not about whether he gets confirmed. He will be confirmed in the Senate by the close of business on Thursday, unless something major happens that no one anticipates now. Judge Roberts will then become the 17th Chief Justice of the U.S. Supreme Court, and his confirmation will receive somewhere in the range of 70-plus votes probably. So his nomination is not in doubt.

But the whole process will be viewed by scholars of the Court and those who follow the confirmation process, in the Senate particularly, in a very serious way because the vote totals do matter. He will get well over 50 votes, but the reasons being offered to vote that way suggest a change in standard from the historical point of view of how the Senate approaches a nominee.

One of the things I think they will look at in the Roberts confirmation process is: What is the standard? If it is an objective standard of qualifications, character, integrity, has the person lived their life in such a way as to be able to judge fairly, not to be ideologically driven to a point where they cannot see the merits of the case, then Judge Roberts should get 100 votes. The reason I say that, is not too long ago in the history of our country President Clinton had two Supreme Court vacancies occur on his watch. One was Justice Kennedy, who sits on the Court now. I believe she received 96 votes. The other was Justice Breyer, who sits on the Court now, who received well over 90 votes. Shortly before that, under President Bush’s watch, Justice Scalia—a very well-known conservative—received 98 votes.

What is the difference between then and now? I think that is a very important point for the country to spend some time talking about. If he receives 70 or 75 votes, then, obviously, there has been a substantial change in the vote total for someone who I think is obviously qualified. But in terms of qualifications, I am going to read some excerpts from what some Senators have said about Judge Roberts.

Sen. HARRIS: Incredible. Probably one of the most schooled appellate lawyers . . . at least in his generation.


Sen. DURBIN: A judge [who] will be loyal and faithful to the process of law, to the rule of law. A great legal mind.


Sen. LANDRIEU: Very well credentialed.


There is more, and I will read those later. I would hope half that could be said about me in any job I pursued. The reason those testimonials were offered is, it is obvious to anyone who has been watching the hearings and paid any attention to what has gone on here in the last week and serious that we have in the midst one of the most well-qualified people in the history of our Nation to sit on the Supreme Court—probably the greatest legal mind of his generation or maybe of any other generation.

I think when history records President Bush’s selection of Judge Roberts, it will be seen historically as one of the best picks in the history of this country.

The man is a genius. I was there in his presence a whole week. He never took notes during the confirmation process. He never asked anybody how to say something or what to say, or get any advice from anyone as to how to answer a question. He had almost complete total recall of memos from 20-some years in the past. Not only did he understand every case he was questioned upon without notes, he understood how the dissenting opinions did not reconcile themselves. I have been around a lot of smart people. I have never been around anyone as capable as Justice Roberts.

Now, why would he not get 96 or 98 or 100 votes? Well, some people have said all these glowing things but said that is not enough. There comes the problem. If him being intelligent, brilliant, a superb lawyer, the greatest legal mind of our generation, and well qualified is not enough, what is? What are some of the reasons that have been offered in terms of why anyone could not support this eminently qualified man?

Most of the reasons I think have to do with the fact that the nominee that apparently was not used before. Because if a conservative went down the road of something other than qualifications, character, and integrity, I doubt if a conservative could have voted for Justice Ginsburg or Justice Breyer, if you wanted to use some subjective test as to how they might vote on a particular case or if you had a philosophical test in place of a qualifications test. I will talk about that a bit later.

One of the reasons people have offered for a “no” vote is that during the questioning period he would not give complete answers to constitutional issues facing the country. I think Senator KERRY said: He is a superb, brilliant lawyer, but I can’t vote for him because I don’t know how he will come out on the great constitutional issues of our time.

Well, I would say that is good. You are not supposed to know how he is going to decide the great constitutional questions of our time because that is done in a courtroom with litigation going on. So if the hearing were in a confirmation process where you have to tell people before you go on the Court how you are going to rule.

At least one Senator has said: I can’t vote for this man because he won’t tell me if he will buy into the right of privacy and uphold Roe v. Wade. If that becomes the standard, the hearing could be limited to one question: Will you uphold Roe v. Wade, yes or no? And that is the end of the deal.

I would argue if we go down that road as a nation, using one case, an allegiance to one line of legal reasoning, or a particular case, whether you uphold it or whether you will reverse it, then you have done a great disservice to the judiciary because we are not looking for judges to validate our pet peevses as Senators in terms of law. We are looking for judges to sit in judgment of our fellow citizens who will wait until the case is being litigated, listen to the arguments, read the briefs, and then decide.

That is not unknown to the Senate. The idea that Court nominees in the past would refuse to give specific answers to specific cases is not unknown at all.

Mr. President, I have excerpts from past nominees and questions that were asked.

I will read some of these excerpts.

This is an abortion question by Senator Metzenbaum to Justice Ginsburg: After the Casey decision, some have questioned whether the right to choose the procedure is fundamental Constitutional right?

That is a very direct question: Do you buy into the precepts of Roe v. Wade?

Ginsburg: What regulations will be permitted is certainly a matter likely to be before the Court. Answers depend in part, Senator, on the kind of record presented to the Court. It would not be appropriate for me to go beyond the Court’s recent reaffirmation that abortion is a woman’s right guaranteed by
the 14th amendment. It is part of the liberty guaranteed by the 14th amendment.

She recited the current law and said: There will be lines of attack on the right to privacy. I am going to wait until the record is established.

Good answer.

Voting rights. Senator Moseley-Braun: I guess my concern in Presley really is a matter of your view of the language of the statute, the specific language of section 5 of the Voting Rights Act, and given the facts of that case whether or not the Court gave too narrow an interpretation of the language in such a way that essentially frustrated the meaning of the statute as a whole.

That is a topic before the Senate now.

Ginsburg: I avoided commenting on Supreme Court decisions when other Senators raised that question, so I must adhere to that position.

The death penalty. Senator SPECTER: Let me ask you a question articulated the way we ask jurors, whether you have any conscientious scruple against the imposition of the death penalty.

Ginsburg: My own view of the death penalty I think is not relevant to any question I would be asked to decide as a judge. I will be scrupulous in applying the law on the basis of the Constitution, legislation, and precedent.

What would you do?

Ginsburg: As I said in my opening remarks, my own views and what I would do if I were sitting in the legislature are not relevant to the job for which you are considering me, which is the job of a judge.

A very good answer.

Ginsburg: So I would not like to answer that question any more than I would like to answer the question of what choice I would make for myself, what reproductive choice I would make for myself, as was not relevant to what I will decide as a judge.

Now, within that answer she does two things that I think are important. She refuses to give a personal view of the death penalty based on the idea that: My personal views are not going to decide how I will judge a particular case. And for me to start commenting in that fashion will compromise my integrity as a judge. She also said: I am not going to play the role of being a legislator because that is not what judges do.

So I would argue not only did she give the right answers, but that is all Judge Roberts has done. When he is advising the President of the United States about conservative policies initiated by the Reagan administration, he is doing so as a lawyer, advising a client. He several times indicated that his personal views about matters are not going to dictate how he decides the case. What will dictate how he decides the case is the fact presented, the law in question, and the record.

All right, more about the death penalty.

Senator HATCH: But do you agree with all the current sitting members that it is constitutional, it is within the Constitution? Again, talking about the death penalty. This is Senator HATCH trying to get Judge Roberts to comment on sitting members of the Court.

Ginsburg: I can tell you that I agree that what you have stated is the precedent and clearly has been the precedent since 1976. I cannot line that point and hope you will respect what I have tried to tell you, that I am aware of the precedent and equally aware of the principle of stare decisis.

Now, who does that sound like? That sounds like Roberts on Roe v. Wade, but she is talking about the death penalty.

HATCH: It isn’t a tough question. I mean I am not asking—

Ginsburg: My own view of the death penalty is it is not constitutional, and I am not going to pledge, get on the Court to tip my hand there.

HATCH: But that is not what I asked you. I asked you, is it in the Constitution, is it constitutional? Again, he was talking about the death penalty.

Ginsburg: I can tell you the fifth amendment reads, no person shall be held to answer for a capital or otherwise infamous crime unless, and the Court said: If you are going to try a person, you cannot go on the Court to tip my hand there.

HATCH: That is a tough question. I guess I would not like to answer that question any more than I would like to answer the question of what choice I would make for myself, what reproductive choice I would make for myself, as was not relevant to what I will decide as a judge.

That was his job.
proportional representation which is basically an electoral quota. You look at a district based on race, and you come to the conclusion that the elected officials within that district have to mirror the population. In other words, you will have a racial quota. If 40 percent of the district is of a particular race, then 40 percent of the people have to be of that race. I don’t think most Americans want that. What we want is people to have a chance to run for office, be successful and vote their conscience and have the right to vote in an election, and without bad forces standing in the way. I don’t think most Americans want to decide the election based on race before you cast any ballot.

That was the debate in the 1960s. The Reagan administration was against proportionality. They were standing for the Civil Rights Act as written in the 1960s. Then you had the Supreme Court case that interjected a new concept. Judge Rehnquist, the solicitor general in the Reagan administration, was advising that the current law was the intent test. The Reagan administration was supporting the Supreme Court’s intent test. How that has been twisted to show or promote the argument that John Roberts is insensitive to people’s ability to vote and has stood in the way of people having their fair day at the ballot box, to me is a complete, absolute distortion of who he is and the position he took.

At the end of the day, here is what happened. There was a legislative compromise. The Supreme Court intent test was replaced by a totality of the circumstances test which is somewhere between the effects and intent test. I know this is a bit hard to follow, but the bottom line is, there was a compromise legislatively dealing with a Supreme Court decision. John Roberts’ legal advice to the Reagan administration was very much in the mainstream of where America is, very much in the mainstream of the Reagan position. To say his legal memos arguing that proportionality is inappropriate under an intent test was based on sound legal reasoning, to somehow go from that legal reasoning to the idea that the man, the person, is insensitive to people’s voting rights, again, is quite shameful.

He said in the hearing, it is the right of which everything else revolves around, the ability to go to the ballot box and express yourself. The reason is, this has to do with Judge Pickering, and it is going to happen to the next nominee. I will put the Senate on record from my point of view, coming from the South, there have been plenty of sins where I live in the South. The Voting Rights Act has cured the sins. But one of the things we should not lay on John Roberts is the idea that because he represented the Reagan administration, arguing that the Supreme Court was right, somehow he, as a person, is insensitive to minority rights.

The reason that is a bogus argument is because there is not one person who came before the Senate Judiciary Committee or otherwise to say John Roberts has ever lived his life in a way that would suggest he is insensitive to people’s rights based on race. As a matter of fact, one of the witnesses before the committee analyzed the cases before the Supreme Court dealing with civil rights. They found out he won 71 percent of his cases dealing with civil rights issues. That says not only does he understand civil rights law well, he is arguing cases that way. When he looked at the cases at how Justices agreed or disagreed with him, apparently Thurgood Marshall agreed with John Roberts, the advocate, over 60 something percent of the time. So if you look at the way he has lived his life, the way he has argued the law and who he has represented, there is not one ounce of evidence to suggest John Roberts the man is in any way insensitive to people’s ability to vote based on race.

Tomorrow we will go back and we will look at the other reasons to say no to this fine man. I think we are getting into a dicey area, if we are going to play this game of voting no based on “you won’t tell me how you will vote on a particular case or that we take some other person’s legal advice and use the client’s position against that person, that you are going to sit as a standard that will chill out a lot of people wanting to be members of the Court. There are other things being said about this fine man that we are dangerous if the Senate adopted as the test in the future. I will talk next time about how the sitting Justices would not fare so well. The bottom line is there is a reason that Scalia, Ginsberg, and Breyer received well over 90 votes apiece. They were well qualified. They were people of good character and good integrity.

If this man, John Roberts, after all that has been said about him in terms of his qualifications, doesn’t get 90-plus votes, the Senate has done self-evaluation because we have gone down the wrong road.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me associate myself with the remarks of the Senator from South Carolina. He so clearly lays out the foundational basis by which we ought to be reviewing nominees to our highest Court. At the same time, he brings a lot of valid criticism to those who would choose to be tremendously selective not by character but by philosophy of those who are sent to us to consider.

Like many colleagues engaged in the confirmation process of John Roberts to the position of the Chief Justice of the Supreme Court, I have been here before. Maybe that is one way of saying it. The last time John Roberts came before the Senate, he was confirmed in his position by unanimous consent. He was placed on the District of Columbia’s Circuit Court of Appeals, the second highest in the land as it relates to our judicial system. However, unlike most of our colleagues, I was a member of the Senate Committee on the Judiciary at that time, and his was one of the first confirmations before the committee that I participated in. That only reinforced the sense of duty to thoroughly review his fitness for a lifetime appointment to the court.

Undoubtedly, one of the most serious duties of a Senator is the constitutional obligation and opportunity to confirm the President’s judicial nominees. At that time I was satisfied that John Roberts was a superior candidate for the job. A review of his record for the past 20 months only proves that decision to have been the correct one. Not a single question has been raised as to his competence or his character during that time serving on the DC Circuit. Furthermore, in his time on the court, John Roberts has shown he does not bring an agenda to work with him in the morning. Rather, he takes an intellectual approach to each case, basing his rulings on the facts and the law, not any personal bias.

The extent then has been debate over the nomination, it has not been about Judge Roberts’ qualifications to sit on the Supreme Court. Rather, he has been subject to an ideological litmus test.

I submit that this is not the job of the Senate. We are not social engineers, even though some of my colleagues might like to be, and it is not our role to pack the courts with members of certain ideologies. Judge Roberts did not point out that he is not standing for election, and appropriately so. I agree with this critical distinction. We are not here to debate his politics or whether we agree with them. Our duty is to give advice and consent to our President’s nominations.

To politicize this duty of supreme importance, I think is fundamentally wrong, but it is occurring with this nomination. For the last 2 weeks, we have been subjected to some of that rhetoric coming out of the Judiciary Committee which is purely political and an attempt to politicize the process. Politicizing the confirmation hearings runs contrary to the idea of an unbiased judiciary. As Judge Roberts himself has suggested, it undermines the integrity of that judicial process.

That being the case, we must ask whose vision would be contrary to the idea of an unbiased judiciary. In other words, they want a bias in the Court to fit their political beliefs instead of the unbiased
Court that our Founding Fathers envisioned.

While some seem bound and determined to inject politics into the Court and have applied intense pressure to secure his assistance in that effort, Judge Roberts stood by his commitment to the rule of law, and that is what a judge should do. This speaks highly of his integrity, but again his integrity is not in question. No one had brought forth any evidence that he is not a person of high moral character. In fact, many of the Members who say they will vote against his confirmation say that he appears to be a very fine fellow—smart, witty, thoughtful. So where are they going and what are they attempting to dredge up? His judicial demeanor is also not in question.

The overwhelming assessment of Judge Roberts’ performance before the Senate Committee on the Judiciary is that he did an outstanding job. He remained thoughtful, impartial, and unshaken. In a word, he was judicial.

I said during my tenure on that committee and during confirmation processes, while I may agree or disagree, what I amforemost is the character of the individual, the judicial demeanor: How would he or she perform on the court? Would they bring integrity to the court in those kinds of rulings to which they would be subjecting their colleagues and their constituents?

Some believe that all documents related to Judge Roberts during his service as Deputy Solicitor General should be disclosed even though this would violate attorney-client and deliberative process privileges. He will not infringe upon past employers’ rights and privileges. He knows this would discourage consultation and new ideas and reduce the effectiveness of the Office of Solicitor General. This is a man who truly exemplifies integrity. Although he is criticized for not releasing some documents, it is his integrity that will not allow that to happen. If it were not unethical to disclose these documents, I am sure the judge would release them. In fact, those that would not infringe upon his integrity have been released.

We have reviewed some 76,000 pages of documents, including documents for more than 95 percent of the cases he worked on in the Solicitor General’s Office. That is a mere 16 out of 327 cases. Finding Judge Roberts unfit to be Chief Justice on the grounds of undisclosed privileged internal deliberations is not only unfair, I believe it is illegal and, at any test, it is ludicrous.

Judge Roberts’ competence is not being called into question, not in any sense by any Senator. It would be very difficult to find a better candidate anywhere to serve as Chief Justice. He seems to have done extremely well in whatever cases undertaken. Graduating summa cum laude says that this man is bright. Managing editor of the Harvard Law Review—that only comes to the top of the class. Later, he clerked for Judge Friendly of the U.S. court of appeals in Manhattan and for Supreme Court Justice William Rehnquist. He has tried 39 cases before the Supreme Court, both as a private litigant and as a Government litigant against the U.S. Attorney General. Judge Roberts now serves, as I mentioned, on the U.S. Court of Appeals for the DC Circuit.

His credentials are impeccable. This man deserves a unanimous vote, as I received 95 percent of the votes for a Supreme Court nomination. But that will not be the case today because some have chosen to inject politics into this process. Thank goodness Judge Roberts has stood unwaveringly not allowing that to happen when it comes to himself. His integrity is not in question. That is why he was nominated by the President of the United States to serve as the Chief Justice of our highest Court.

He deserves my vote. He will get my vote. He deserves the vote of every Senator serving in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

SENATOR BILL FRIST. Mr. President, I first met Bill Frist 11 years ago when he was a world-renown heart transplant surgeon from the neighboring State of Tennessee. He was considering a career change to public service in the Senate. Then, as now, I believe he was one of the most gifted, hard-working, and honest people I had ever met. He is a bit of a rarity in this town. He has more talent and less ego than almost anyone I can think of.

There has been this question raised about the sale of some stock. Of course, a bit lost in this dustup is the simple fact that the Senate Ethics Committee preapproved the sale. However, this is Washington, and sometimes even honest actions are questioned.

I have absolute no doubt that the facts will demonstrate that Senator Frist acted in the most professional and the most ethical manner, as he has throughout his distinguished medical and Senate career.

Senator Frist has been clear that he welcomes the opportunity to meet with the appropriate authorities and put this situation in its proper context as a completely—appropriately completely.

Furthermore, Senator Frist has my full and unconditional support. He is a great majority leader. I find myself agreeing with my good friend from Nevada, the Democratic leader, Harry Reid, who said he knew Senator Frist would not do anything wrong. Senator Reid has it right.

Finally, I think there are few settled facts in this contentious capital of ours, but there is one fact of which I am completely certain: Bill Frist is a decent, honest, hard-working man who puts public service before private gain.

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

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

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the roll be suspended.

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

Mr. LEAHY. Mr. President, we have had several people on the Senate floor this morning speaking of the Roberts nomination. I understand that we have several Senators on this side of the aisle who are going to speak in a few minutes, and I will yield the floor when they arrive.

I hope the American people will listen to this discussion. The outcome is sort of foreordained because we know the number of people who are going to vote for Judge Roberts, as am I. The reason it is important to hear all the different voices is that we are a nation of 280 million Americans. Can we be absolutely sure in our vote of exactly who the Chief Justice might be as a person, somebody who will probably serve long after most of us are gone, certainly longer than the President is alive and actually long after several Presidents will be gone? No. We have to make our best judgment. I have announced how I am going to vote. With me, it is a matter of conscience.

I see the distinguished Senator from Colorado. I know he wishes to speak, and I will be speaking later about this issue. I will yield the floor to the distinguished Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I thank my wonderful friend from Vermont for his great leadership in the Senate Judiciary Committee, along with Senator Specter.

I rise today concerning the nomination of Judge John Roberts to be Chief Justice of the U.S. Supreme Court. I have interviewed and recommended the appointment of many men and women who serve as State and Federal judges in the State of Colorado.

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among equals among the nine Justices who make these decisions. The Chief Justice’s ability to run the Court’s conferences and to assign opinions gives the Chief Justice important influence on the directions taken by the Court. The Chief Justice molds and defines the cohesiveness of the Court in the sense that he or she can lead efforts to reduce separate and complicated opinions and to make the opinions of the Court clear and understandable. This is an especially important influence to reduce confusion in the law.

Finally, the Chief Justice sits at the very pinnacle of our Federal judicial branch. The Chief Justice leads the judges and the rest of the 21,000 employees of the Federal court system. The Chief Justice is responsible for making sure the Federal courts run effectively and efficiently. The administrative tasks, and all matters of the Chief Justice are important for another reason. The Chief Justice can lead the judicial branch to become a place of inclusion, a place where women are as welcome as men, and where people work together who are black, brown, yellow, white, and every other color of human skin.

The Chief Justice can make the judicial branch a shining example of diversity and inclusiveness. This is not an abstraction. When people of any background come to the Court they should be looking in the mirror. The faces of the Court should be the same as the faces of those who come before the Court. In this view, this is an essential aspect of justice.

I commend the Senate Judiciary Committee for its fair, serious, and dignified hearings on the Roberts nomination. Chairman Specter, Ranking Member Durbin, and all members of the committee have earned our gratitude. They have performed a very valuable service for our country. These Senators gave us a wonderful example worthy of repetition in the Senate of how the Senate functions in the interest of the people of our Nation. They did their work with courtesy, civility, and in the spirit of the parties working together in good faith to discuss their differing views. Our Nation is better for their efforts.

I also want to take a minute to thank Democratic Leader Reid. I have been surprised and taken aback by the attacks on him from some people in this debate. I see the machinations of Washington insiders. Senator Reid is somehow guilty of not uniting Democrats, and at the same time not being too beholden to Democratic interest groups. As is the usual case in the debate in Washington, the truth can be found elsewhere.

Senator Reid made very clear to this Senator and to the entire caucus that this is a vote of conscience. To suggest otherwise is unfair and dishonest. Our leader, a man of unshakeable faith and conviction, helped ensure that this Senate lived up to its constitutional obligation of advice and consent.

I want to speak briefly about the history of America and our Constitution concerning equality under the law and the key role of the U.S. Supreme Court. The history of equal protection is a reminder of the most painful and at the same time most promising moments of our Supreme Court and our Nation. We must not forget that history and its lessons, for to do so would undo our progress as a nation.

In retracing our history, the inevitable conclusion is that we have made major progress over four centuries. That history includes 250 years of slavery in this country, 100 years of legal segregation of the races, and the struggle in the new and recent times to achieve another age and celebrate the age of diversity.

We must look back at that history so that we do not forget its painful lessons. We must never forget that for the first time in the history of our Nation, writing for a unanimous Supreme Court, Justice Harlan was a beacon of wisdom when he dissented in Plessy v. Ferguson against the doctrine of separate but equal. In the Dred Scott decision, in 1857, the U.S. Supreme Court, in a terrible moment for our Nation, reasoned that Blacks were inferior to Whites and therefore the system of slavery was somehow justified.

At that point, the U.S. Supreme Court was endorsing the untenable proposition that one person could own another person as property simply because of their race. But the march toward freedom and equality would not be stopped by the U.S. Supreme Court in the Dred Scott decision.

The Civil War ensued. Let us never forget that the Civil War became the bloodiest war in American history, with over 500,000 Americans killed in battle. In the end, the 13th, 14th and 15th amendments to the U.S. Constitution ended the system of slavery and ushered in a new era of equal protection under the laws. Yet even with the end of slavery and the civil rights amendments to the Constitution, equal protection under the laws for the next 100 years would still require the segregation of the races.

The law of the land in many States and cities required the separation of the races in our Nation’s schools, theaters, restaurants, and public accommodations. It was not until 1954 that the U.S. Supreme Court marked the end of legal segregation by the Government in its historic decision of Brown v. Board of Education for the first time.

In that decision, Chief Justice Warren, writing for a unanimous Supreme Court, stated that in the field of public education the doctrine of separate but equal has no place. The Brown decision marked an historic milestone for the U.S. Supreme Court and our Nation about the relationships between groups.

Over the next decade, the U.S. Supreme Court struck down laws that required segregation on golf courses, parks, theaters, swimming pools, and numerous other facilities. These changes were met with intense controversy, marked by marches, protests, riots, and assassinations. Because of the leadership of Dr. Martin Luther King, Presidents Kennedy and Johnson, Robert Kennedy, and thousands of civil rights activists, Congress ushered in the sweeping civil rights reforms of the 1960s.

We, as an American society, began to understand that the doctrine of separate but equal truly had no place in America and that the age of diversity truly was upon us. But the age of diversity has been marked by significant and continuing tension. A part of that debate was put to rest only recently with the majority opinion authored by Justice Sandra Day O’Connor in the University of Michigan Law School case.

There, Justice O’Connor said:

Today, we hold that the Law School has a compelling interest in attaining a diverse student body.

Justice O’Connor continued:

The Law School’s claim of a compelling interest is further bolstered by its amicus, who point to the educational benefits that flow from student body diversity.

She explained further:

These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in an increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints.

What is more, high-ranking retired officers and civilian leaders of the U.S. military assert that, and she quotes:

[B]ased on [their] decades of experience, a highly qualified, racially diverse officer corps . . . is essential to the military’s ability to fulfill its principal mission to provide national security.

She continued:

To fulfill its mission, the military must be selective in admissions for training and education for the officer corps, and it must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting.

We agree that it requires only a small step from this analysis to conclude that our country’s other most selective institutions must remain both diverse and selective.

I believe Justice Sandra Day O’Connor was a beacon of wisdom at this moment in our Nation’s history. We know we have had beacons of wisdom in our past to help guide us in our future. I am hopeful that Judge Roberts will be that kind of Chief Justice.

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race hate to be planted under the sanction of law. I do not know exactly how judge Roberts will provide us with that beacon of wisdom for the 21st century, but the doctrine of inclusion is somehow at the heart of the answer, and I expect and implore Judge Roberts to follow that doctrine.

That doctrine means that we should be inclusive of all, and that doctrine means that there is something wrong when we look around and we see no diversity in the people who surround us, when we look around and we see no diversity for the 21st century, but the doctrine of inclusion is somehow at the heart of the answer, and I expect and implore Judge Roberts to follow that doctrine.

Mr. LIEBERMAN. Mr. President, I rise to speak on the President’s nomination of John Roberts to be Chief Justice of the United States. I wish Judge Roberts the very best as he assumes his new responsibilities. His technical legal skills are given this difficult decision the careful deliberation it deserves. I have reviewed his writings. I have read his cases. I have reviewed his testimony to the Judiciary Committee. I have met twice with Judge Roberts, the second time last Friday, Roberts has convinced me that he understands the constitutional need for judicial independence. He believes in the bedrock principle that decisions of the Supreme Court must be carefully based on the facts of the case and the law. He believes that all cases must be decided on their specific merits by a judge with an open and fair mind. These concepts lie at the heart of our judicial system. They differentiate the courts from other institutions of government. They are critical to our freedom.

I am favorably impressed by Judge Roberts’ statement to do his best to heal the gaping fractures in the opinions of the Supreme Court in recent years. When the Court issues three or five or nine opinions in a single case, it is a recipe for confusion and uncertainty for judges, lawyers, and litigants. This is bad for the law.

I believe Judge Roberts has a clear understanding of the jolts to the system that disrupt the country when the Court overturns settled law, and he is equally understanding and determined to avoid these jolts. I lived through that type of difficult and expensive disruption as Connecticut’s attorney general, when the Supreme Court changed long-settled expectations about sentencing by judges in criminal cases. The criminal justice system in Colorado and across the Nation was thrown into turmoil. It still has not recovered.

I believe Judge Roberts has an understanding of the Supreme Court’s role to guide the lower courts, lawyers, and litigants. I have been particularly interested in Judge Roberts’ views on diversity and inclusion of all people, women as well as men, in our country. I have lived my life by the bedrock principle that people of all backgrounds and genders should be included in all aspects of our society. This is very important to me. So I have asked Judge Roberts directly and personally about his commitment to diversity and inclusiveness in our country. He has assured me of his commitment to this principle.

Finally, Judge Roberts passes a simple test that I will apply to judicial candidates for as long as I am a Senator. I do not believe he is an ideologue. He is not a judge—like some—for whom anyone can predict the outcome of a case before the case is briefed and argued. The ideologue’s approach to the law makes a mockery of judicial independence, and it is the opposite of being fair and impartial.

In conclusion, I have reached my decision to vote for Judge Roberts based upon his word that, first, he will stand up and fight for an independent judiciary and defend the judiciary from unwarranted attacks on its independence; second, he will not roll back the clock of progress for civil rights and recognizes that the equal protection provided under the Constitution extends to all Americans, including women and racial and ethnic minorities; third, he will respect the rule of law and the precedents of the U.S. Supreme Court, including the most important decisions of the last century; fourth, he understands the importance of the freedom of religion and religious pluralism as a cornerstone of our Nation; and, five, he will work to create a Federal judicial system that embraces diversity and has a face that reflects the diverse population of America.

I will vote to confirm Judge Roberts to be the Chief Justice of the United States. I wish Judge Roberts the very best as he assumes his new responsibilities on behalf of our Nation.

I yield the floor to my wonderful and good friend from the State of Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I thank my friend from Colorado for his very thoughtful and eloquent statement. I rise to speak on the President’s nomination of John Roberts of Maryland to be Chief Justice of the United States. During my 17 years as a Member of the Senate, I have had the honor to participate in occasions for the President to consider nominees to the Supreme Court—two from the first President Bush and two from President Clinton.

On three of those occasions—Justices Souter, Ginsburg and Breyer—I carried out my constitutional responsibility by giving not only advice but consent. On the fourth, Justice Thomas, I withheld my consent.

I must say that on each of those preceding four occasions, I was struck, as I am again now in considering President Bush’s nomination of John Roberts, by the wisdom of the Founders and Framers of our Constitution and by the perplexing position they put the Senate in when they consider a nominee to the U.S. Supreme Court.

As we know, our Founders declared their independence and formed their new government to secure the inalienable rights and freedoms which they believed are the endowment of our Creator to every person. But from their knowledge of history and humanity, and from their own experiences with the English monarch, they understood that governments had a historic tendency to stifle, not secure, the rights and freedoms of their citizens. So in constructing their new government, they invested power and then they limited it, time and time again. Theirs was to be a government of checks and balances, except for one institution which is, generally speaking, unchecked and unlimited, and that is the Supreme Court.

I understand that Congress can reenact a statute that has been struck down by the Court as inconsistent with the Constitution, but I also know that the Court can nullify the new statute. I understand that the people may amend the Constitution to overturn a Supreme Court decision with which they disagree, but that is difficult and cumbersome and therefore rare in American history. So the Supreme Court almost always has the last word in our Government. It can be, and has been, a momentous last word, with great consequences for our national and personal lives.

In constructing the Supreme Court, did our Nation’s Founders vary from their system of limited government, of checks and balances? I believe one reason is that they were wise enough to know that to be orderly, to function, a system must have a final credible point where dispute and uncertainty end and from which the work of society and government proceeds. But there was a larger reason, I am convinced, consistent with their best values. From their understanding, again from their knowledge of history and humanity, that freedom can just as easily be taken by a mob of citizens as it can by a tyrannical leader. So they created a Supreme Court that proceeded from the political passions of the moment and that would base its decisions not only on transitory public opinion but on the eternal values of our founding documents—the Declaration, the Constitution, the Bill of Rights—and the rule of law.

They did this, these Founders and Framers, not just by giving the Court...
such enormous power but also by giving its individual members life tenure. The President nominates Justices, the Senate advises and decides whether to consent, and then the Justice who is confirmed serves for as long as he or she lives. This serves to separate the unusual possibly of impeachment, of course; limited in that service only by the Justice’s own conscience, intellect, sense of right and wrong, understanding of what the Constitution and law do to the capacity of the litigants who appear before the Court and by the Justice’s own colleagues on the Court to convince him or her.

This gets to why I have described the Senate’s responsibility to act on nominations to the Supreme Court as perplexing. It is our one and only chance to evaluate and influence the nominees, and then they are uncoutuable and politically unaccountable. But the Senate is a joint body elected by and accountable to the people. So naturally during the confirmation process we try to extract from the nominees to this Court, on this last change of life, commitments to their political commitments that they will uphold the decisions of the Court with which we agree and overrule those with which we disagree; and they naturally try to avoid making such commitments.

We are both right. Because the Supreme Court has such power over our lives and liberties, we Senators are right to ask such questions. But because the Court is intended to be the nonpartisan body, the branch before which litigants must come with confidence that the Justices’ minds are open, not closed by rigid ideology or political declaration, the nominees to the Court are unright to refuse asking such questions in great detail. I understand that I am describing an ideal which has not always been reached by individual Justices on the Court. But on the other hand, the history of the Supremes is full of examples of Justices who have issued surprisingly different opinions than expected, or even than expressed before they joined the Court; and also of Justices who have changed their opinions over the years of their service on the Court. That is their right, and I would add the responsibility the Constitution gives to Justices of our Supreme Court.

Our pending decision on President Bush’s nomination of John Roberts to the Supreme Court is made more difficult because it comes at an excessively partisan time in our political history. That makes it even more important that we stretch to decide it. It is not the first time in our history this has happened. But it nonetheless today undercuts the credibility and independence of the Supreme Court, and I might add it complicates this confirmation process. Because President Bush promised in his campaign that he would nominate Supreme Court Justices in the mold of Justices Scalia and Thomas, an extra burdensome burden of proof Roberts to prove his openness of mind and independence of judgment.

All of that is one reason why earlier this year I was proud to be one of the “group of 14” Senators. I view the agreement of that group of 14 as an important step away from partisan politicalizing of the Supreme Court. By opposing the so-called nuclear option, we were saying—7 Republicans and 7 Democrats—that a nominee for a lifetime appointment to the Supreme Court should be close enough to the bipartisan mainstream of judicial thinking to obtain the support of at least 60 of the 100 Members of the Senate. That is not asking very much for this high office.

When I was asked during the deliberation of the group of 14 to describe the kind of Justice I thought would pass that kind of test, I remember saying it would be one who would not commit to the Supreme Court with a prefixed ideological agenda but would approach each case with an open mind, committed to applying the Constitution and the rule of law to reach the most just result in a particular case. I remember also saying the agreement of the group of 14 could be read as a bipartisan appeal to President Bush which might be phrased in these words:

Mr. President, you won the 2004 election and with it came to the right to fill vacancies on the Supreme Court. We assume you will nominate a conservative but we appeal to you not to send us an extreme conservative who will confront the court and the country with a disruptive, divisive, preconceived ideological agenda. Send us an able, honorable nominee, Mr. President, who will take each case as it comes, listen fully to all sides, and try to decide it.

Based on the hours of testimony Judge Roberts gave to the Judiciary Committee under oath, the lengthy personal conversation I had with him, a review of his extraordinary legal and judicial ability and experience, and the off-the-record comments of people who have known or worked with Judge Roberts at different times of his life, and uniformly testified to his personal integrity and decency, I conclude that Judge Roberts meets and passes the tests I have described. I will, therefore, consent to his nomination.

In his opening statement to the Judiciary Committee on September 13, Judge Roberts said:

I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will open to the considered views of my colleagues on the bench. And I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability.

I could not have asked for a more reassuring statement.

During the hearings, some of our colleagues on the Judiciary Committee challenged Judge Roberts to reconcile that excellent pledge with memos or briefs he wrote during the 1980s or early 1990s, or opinions he wrote on the Circuit Court in more recent years. They were right to do so. I thought Judge Roberts’ answers brought reassurance, if not total peace of mind. But then again, I have no constitutional right to total peace of mind as a Senator advising and deciding whether to consent on a Justice of the Supreme Court.

From his statements going back more than 20 years, I was troubled by, and in some cases strongly disagreed with, opinions or work he had been involved in on fundamental questions of racial and gender equality, the right of privacy, and the constitution. But in each of these areas of jurisprudence, his testimony was reassuring.

On questions of civil rights, Judge Roberts told the Judiciary Committee of his respect for the Civil Rights Act and the Voting Rights Act, as precedents of the Court, and he said they “were not constitutionally suspect.”

He added that he “certainly agreed that the Voting Rights Act should be extended.”

When asked by Senator KENNEDY whether he agreed with Justice O’Connor’s statement in upholding an affirmative action program that it was important to give “priority to the real world impact of affirmative action policies in universities,” Judge Roberts answered, “You do need to look at the real world impact in these areas and in other areas as well.” He also told Senator DUMBY that the Reagan administration had taken the “incorrect position” on Bob Jones University.

I have said, and I say again, that I found those answers to be reassuring.
With regard to the right of privacy, Judge Roberts gave a lengthy and informed statement: “The right of privacy is protected under the Constitution in various ways.”

He said:

It’s protected by the Fourth Amendment which guarantees that the right of people to be secure in their persons, houses, effects, and papers is protected.

It’s protected under the First Amendment dealing with prohibition on establishment of a religion and guarantee of free exercise.

It protects privacy in matters of conscience.

Those are all quotes from Judge Roberts, and I continue:

It was protected by the framers in areas that were of particular concern to them—The Third Amendment protecting their homes against the quartering of troops.

And the framers, a Court precedent should be revisited, Judge Roberts said:

The right of privacy is a component of the liberty protected by the due process clause.

The Court has explained that the liberty protected is not limited to freedom from physical restraint and that it’s protected not simply procedurally, but as a substantive matter as well.

And those decisions have sketched out, over a period of years, certain aspects of privacy that are protected as part of the liberty in these decisions of the Court.

I thought that was a learned embrace of the constitutional right of privacy, particularly when combined with Judge Roberts’ consistent support of the principle of stare decisis, respect for the past decisions and precedents of the Court in the interest of stability in our law and in our society.

Regarding Roe v. Wade, Judge Roberts specifically said, “That is a precedent entitled to respect under the principles of stare decisis like any other precedent of the Court.”

When asked by Senator FEINSTEIN to explain further when, under stare decisis, a Court precedent should be revisited, Judge Roberts said:

Well, I do think you do have to look at those criteria. And the ones that I pull from those cases, first of all, the basic principle that it’s not enough that you think that the decision was wrongly decided. That’s not enough to justify revisiting it. Otherwise there would be no role for precedent, and no role for stare decisis. Second of all, one basis for reconsidering the issue of workability (And) . . . the issue of settled expectations, the Court has explained you look at the extent to which people have conformed their conduct to the rule and have developed settled expectations in connection with it.

Again, specifically with regard to Roe v. Wade, I found those answers reassuring.

One of Judge Roberts’ circuit court opinions on the commerce clause gave rise to fears that he would construe Congress’s authority to legislate under that important clause. But in his consistent expressions of deference to the work of Congress and his several references to the Supreme Court’s recent decision in Gonzales v. Raich, Judge Roberts reassured me.

So I will vote to confirm John Roberts and send him off to the non-political world of the Supreme Court with high hopes, encouraged by these words of promise he spoke to the Judiciary Committee at the end of his opening statement to that committee as follows:

If I am confirmed, I will be vigilant to protect the independence and integrity of the Supreme Court, and I will work to ensure that it upholds the rule of law and safeguards those liberties that make this land one of endless opportunities for all Americans.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Thank you, Mr. President.

Mr. President, along with a vote to authorize war, the vote on the nomination of a Supreme Court Justice, especially a Chief Justice, is one of the most important votes that Senators ever cast. Because the Supreme Court is the guardian of our most cherished rights and liberties, the vote on any Supreme Court nominee has enormous significance for the everyday lives of all Americans.

Supporting or opposing a Supreme Court nominee is not—and should not be—a partisan issue. Indeed, in my opinion, it should not be a partisan issue. I have voted to confirm nearly twice as many Republican nominees to the high Court as Democratic nominees. To be sure, there are some nominees that I have opposed. But that opposition was not the political party of the President who nominated them, but on the record—or lack of record—of the testimony and writings of each individual nominee. In hindsight, there are some votes—either for or against—that I wish I had cast differently, but each vote reflected my best, considered judgment at the time, based on the information and record before me. That is what the Constitution calls us to do as Senators.

Yet some of our friends on the other side of this aisle have tried to portray a vote against John Roberts as a reflexive, partisan vote against any nominee by President Bush. Still others have made the sweeping statement that any Senator who can’t vote for any nominee of a Republican President. These broad statements are patently wrong and suggest partisan posturing that does serious injustice to the most serious business of giving a lifetime appointment to a Justice to serve all the land.

With full appreciation and awareness of the Senate’s solemn obligation to give advice and consent to this all-important Supreme Court nomination by President Bush, I have read the record, asked questions, re-read the record, and asked even more questions. But after reviewing the record such as it is, I am unable to support the nomination of John Roberts to be the Chief Justice of the United States.

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protect and defend the Constitution, and we take that oath seriously. But the rule of law does not exist in a vacuum. Constitutional values and ideals inform all legal decisions. But John Roberts never shared with us his own constitutional values and ideals.

He said that a judge should be like an umpire, calling the balls and strikes, but not making the rules.

But we all know that with any umpire, the call may depend on your point of view. Any instant replay from another angle can suggest a very different result. Umpires follow the rules of the game. But in critical cases, it may well depend on where they are standing when they make the call.

The same is true with judges.

As Justice Oliver Wendell Holmes famously stated: The life of the law has not been logic; it has been experience.’ He also said that legal decisions are not like mathematics. If they were, we would need all the lawyers and women, and reason and intellect to sit on the bench—we would simply input the facts and the law into some computer program and wait for a mechanical result.

We all believe in the rule of law. But that is just the beginning of the conversations that come to the meaning of the Constitution. Everyone follows the same text. But the meaning of the text is often imprecise. You must examine the intent of the Framers, the history, and the current reality. And this sometimes leads to very different outcomes depending on each Justice’s constitutional world view. Is it a full and generous view of our rights and liberties and of government power to protect the people or a narrow and cramped view of those rights and liberties and the government’s power to protect ordinary Americans?

Based on the record available, there is insufficient evidence to conclude that Judge Roberts view of the rule of law would include as paramount the protection of basic rights. The values and perspectives displayed over and over again in his record cast doubt on his view of voting rights, women’s rights, civil rights, and disability rights.

In fact, for all the hoopla and razzle-dazzle in four days of hearings, there is precious little in the record to suggest that a Chief Justice John Roberts would espouse anything less that the narrow normative view that staff attorney John Roberts so strongly advocated in the 1980s.

On the first day of the hearing, Senator KIRK asked, “Which of those positions were you supportive of, or are you still supportive of, and which would you disagree with?” Judge Roberts never gave a clear response.

Other than his grudging concession during the hearing that he knows of no present challenge that would make section 2 of the Voting Rights Act unconstitutional, suspect— a position that took almost 20 minutes of my questioning to elicit— John Roberts has a demonstrated record of strong opposition to section 2, which is almost universally considered to be the most powerful and effective civil rights law ever enacted. Section 2 outlaws voting practices that deny or dilute the right to vote based on race, national origin, or language minority status—and is largely uncontroversial today.

But in 1981 and 1982, Judge Roberts urged the administration to oppose a bi-partisan amendment to strengthen section 2, and to have, instead, a provision that made it more difficult some states to prove discriminatory voting practices and procedures. Although Judge Roberts sought to characterize his opposition to the so-called “effects test” as simply following the policy of the Reagan administration, the dozens of memos he wrote on this subject show that he personally believed the administration was right to oppose the “effects test.”

When Roberts worried that the Senate might reject his position, he urged the Attorney General to send a letter to the Senate opposing the amendment, stating, “My own view is that something must be done to educate the Senators. . . .”

He also urged the Attorney General to assemble a leadership against the amendment strengthening section 2. He wrote that the Attorney General should “head off any retrenchment efforts” by the White House staff who were inclined to support the effects test. In other words, Judge Roberts urged the administration to require voters to bear the heavy burden of proving discriminatory intent—even on laws passed a century earlier—in order to overturn practices that locked them out of the electoral process.

Judge Roberts wrote at the time that “violations of section 2 should not be made too easy to prove. . . .” Remember, when he wrote those words there had been no African-Americans elected to Congress since Reconstruction from seven of the States with the largest black populations.

The year after section 2 was signed into law, Judge Roberts wrote in a memorandum to the White House Counsel that “we were burned” by the Voting Rights Act legislation. Given his clear record of hostility to this key voting rights protection, the public has a right to know if he still holds these views. But Judge Roberts gave us hardly a clue.

Even when Senator FEINGOLD asked whether Judge Roberts would acknowledge today that he had been wrong to oppose the effects test, he refused to give a yes-or-no answer. Judge Roberts responded: “I’m certainly not an expert in the area and haven’t followed and have no way of evaluating the relative effectiveness of the law as amended or the law as it was prior to 1982.”

So we still don’t know whether he supports the basic law against voting practices that result in denying voting rights because of race, national origin, or language minority status.

You don’t need to be a voting rights expert to say we’re better off today in an America where persons of color can be elected to Congress from any State in the country. You don’t need to be a voting rights expert to know there was a problem in 1982, when no African American had been elected to Congress since Reconstruction from Mississippi, Florida, Alabama, North Carolina, South Carolina, Virginia, or Louisiana—where African Americans were almost a third of the population—because they were effectively denied African Americans and other minorities the equal chance to elect representatives of their choice.

You don’t need to be a voting rights expert to say it’s better that the Voting Rights Act paved the way for over 9,000 African American elected officials and over 6,000 Latino elected officials who have been elected and appointed nationwide since the passage of that act.

And you don’t need to be an expert to recognize that section 2 has benefited Native Americans, Asians and others who historically encountered harsh barriers to full political participation.

Yet Judge Roberts refused in the hearings to say that section 2 would represent his current views.

Judge Roberts also refused to disavow his past record of opposition to requiring non-discrimination by recipients of federal funds. He wrote that the Reagan administration should “head off any retrenchment efforts” by the White House staff who were inclined to support the effects test. This position was adopted because, as President Kennedy said in 1963, “[s]imple justice requires that public funds, to which all taxpayers . . . contribute, not be spent in any fashion which . . . subsidizes, or results in . . . discrimination.”

He supported a cramped and narrow view that would exempt many formerly covered institutions from following civil rights laws that protect women, minorities and the disabled. Under that view the enormous subsidies the Federal government gives colleges and universities in the form of Federal financial aid would not have been enough to require them to obey the laws against discrimination. That position was so extreme that it was rejected by the Reagan administration and later by the Supreme Court. Although Judge Roberts later acknowledged that the Reagan administration rejected this view, he would not tell the committee whether he still holds that view today.

He also never wrote personally agrees with the decision in Franklin v. Gwinnett, where the Supreme Court unanimously rejected his argument that title IX, the landmark law against gender discrimination, provides no moral funds. These laws apply only to a schoolgirl who was sexually abused by her schoolteacher.

A careful reading of the transcript of his testimony makes clear that he has embraced the Supreme Court’s decision to uphold affirmative action at the University of Michigan Law School, nor did he expressly agree with the Supreme Court decision that all
children—including those who are undocumented—have a legal right to public education. He emphasized his agreement with certain rationales used by the court in those cases, but he left himself a lot of wiggle room for future reconciliation of those 5–4 decisions.

Finally, a number of my colleagues on the committee asked Judge Roberts about issues related to women’s rights and a woman’s right to privacy. On these important matters, too, he never gave answers that shed light on his current views.

No one is entitled to become Chief Justice of the United States. The confirmation of nominees to our courts—by and with the advice and consent of the Senate—should not require a leap of faith. Nominees must earn their confirmation by providing us and the American people with full knowledge of the values and convictions they will bring to decisions that may profoundly affect our progress as a nation toward the ideal of equality.

Judge Roberts has not done so. His repeated reference to the rule of law reveals little about the values he would bring to the job of Chief Justice of the United States. The record we have puts at stake our progress toward the ideal of equal opportunity. There is clear and convincing evidence that John Roberts is the wrong choice for Chief Justice. I oppose the nomination. I urge my colleagues to do the same.

I suggest the absence of a quorum.

Mr. ALEXANDER. Mr. President, my constituents have been asking me, “Who will President Bush nominate for the second Supreme Court vacancy?” The question reminds me of a story about a punter from California who went all the way to the University of Alabama to play for Coach Bear Bryant. Day after day, this punter would kick it more than 70 yards. Finally the young kicker came over to the coach and said: Coach, I came all the way from California to Alabama to be coached by you. I have been out here kicking for a week, and you haven’t said a word to me.

Coach Bryant looked at him and said: Son, when you start kicking it less than 70 yards, I will come over there and remind you what you were doing when you kicked it more than 70 yards.

That is the way I feel about President Bush and the next Supreme Court nominee. My only suggestion for him would be respectfully to suggest that he try to remember what he was thinking when he appointed John Roberts and to do it again. Especially for those of us who have been trained in and who have respect for the legal profession, it is important that we support the Roberts nomination and confirmation process. It is difficult to overstate how good he seems to be. He has the resume that most talented law students only dream of: editor of the Harvard Law Review and a law clerk to Judge Henry Friendly.

I was a law clerk to Judge John Minor Wisdom in New Orleans, who regarded Henry Friendly as one of the two or three best Federal appellate judges of the last century. In fact, we law clerks used to sit around and think about ideal Federal panels on which three judges would sit. Sometimes Judge Wisdom and Judge Friendly would be on the same panel, and we tried to think of a third judge. There was a judge named Allgood. We thought if we could get a panel of judges named Wisdom, Friendly, and Allgood, we would have the ideal panel. So Joe Bude came from Judge Friendly. Then he was law clerk to the Chief Justice of the United States. Add to that his time in the Solicitor General’s Office, where only the best of the best lawyers are invited to serve; then add his success as an advocate before the Supreme Court both in private and in public practice. Then what is especially appealing is his demeanor, his modesty both in philosophy and in person, something not always so evident in a person of superior intelligence and such great accomplishment.

There are the stories we heard during the confirmation process of private kindesses to colleagues with whom one worked. Judge Roberts’ testimony before the Senate Judiciary Committee demonstrated all those qualities, as well as qualities of good humor and intelligence, and an impressive command of the law. The Senate must consider. Those televised episodes, which I took time to watch a number of, could be the basis for many law school classes or many civics classes. Judge Roberts brings, as he repeatedly assured us, a resume on the committee, no agenda to the Supreme Court. He understands that he did not write the Constitution but that he is to interpret it, that he does not make the Constitution; he has only that he is to apply them. He demonstrates that he understands the Federal system. It is not too much to say that for a devotee of the law, watching John Roberts in those hearings was like having the privilege of watching Michael Jordan play basketball. He knows his stuff.

One doesn’t have to be a great student of the law to recognize there is unusual talent here.

If Judge Roberts’ professional qualifications and temperament are so universally acclaimed, why do we now hear so much talk of changing the rules and voting only for those Justices who we can be assured are “on our side”? That would be the wrong direction for the Senate to go. In the first place, history teaches us that those who try to predict how Supreme Court nominees will decide cases are almost always wrong. Felix Frankfurter surprised Franklin Roosevelt. Hugo Black surprised the South. David Souter surprised almost everybody. In the second place, courts were never intended to be set up as political bodies that could be relied upon to be predictably on one side or the other of a controversy. That is what Congress is for. That is why we go through elections. That is why we are here. Courts are set up to do just the opposite, to hear the facts and apply the law and the Constitution in controversial matters. Who have confidence in a system of justice that is deliberately rigged to be on one side or the other despite what the facts and the law are?

Finally, failing to give broad approval to an obviously well-qualified nominee such as Judge Roberts—just because he is “not on your side”—reduces the prestige of the Supreme Court. It jeopardizes its independence. It makes it less effective as it seeks to perform its indispensable role in our constitutional republic.

For these three reasons, Republican and Democratic Senators, after full hearings and discussion, have traditionally given with one hand to nominees for Supreme Court Justice an overwhelming vote of approval. I am not talking about the ancient past. I am talking about the members of today’s Supreme Court, none of whom are better qualified than Judge Roberts. For example, Justice Breyer was confirmed by a vote of 87 to 9 in a Congress composed of 57 Democrats and 43 Republicans. Justice Ginsburg was confirmed by a vote of 96 to 3 in a Congress composed of 55 Democrats and 45 Republicans. Justice Kennedy was confirmed by a vote of 97 to 0 in a Congress composed of 55 Democrats, 45 Republicans. Justice Scalia, no shrinking violet, was confirmed by a vote of 98 to 0 in a Congress composed of 47 Democrats as well as 53 Republicans. Justice O’Connor was confirmed by a vote of 99 to 0 in a Congress composed of 46 Democrats and 49 Republicans. And Justice Stevens was confirmed by a vote of 98 to 0 in a Congress composed of 61 Democrats and 37 Republicans. The only close vote, of those justices on this Court, was for the nomination of Justice Thomas, following certain questions of alleged misconduct by the nominee. Thomas was confirmed by a vote of 52 to 48. However, even in that vote, 11 Democrats crossed the aisle to support the nominee.

Most all Republican Senators can vote for Justice Ginsburg, a former counsel for the American Civil Liberties Union, and a nominee who also
declined, as Judge Roberts occasionally did, to answer questions so as not to jeopardize the independence of the Court on cases that might come before her. If every single Democratic Senator could vote for Justice Scalia, then why cannot virtually every Senator in this Chamber vote to confirm John Roberts?

I was Governor for 8 years in Tennessee. I appointed about 50 judges. I looked for the qualities that Judge Roberts has so amply demonstrated: intellectual, sound character, respect for the law, restraint, and respect for those who might come before the court. I did not ask one of my nominees how he or she might vote on abortion or on immigration or on taxation. I appointed the first African-American chancellor and the first African-American State supreme court justice. I appointed some Democrats as well as Republicans. That kind of flexibility has served our State well. It helped to build respect for the independence and fairness of our judiciary.

I hope that we Senators will try to do the same as we consider this nomination for the Supreme Court of the United States. It is unlikely in our lifetime that we will see a nominee for the Supreme Court whose professional accomplishments, demeanor, and intelligence is superior to that of John Roberts. If that is so, then I would hope that our colleagues on both sides of the aisle will do what they did for all but one member of the current Supreme Court and most of the previous Justices in our history and vote to confirm him by an overwhelming majority.

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

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the time be extended until the end of my statement.

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

Mr. NELSON of Florida. Mr. President, I am going to vote for Judge Roberts as Chief Justice. I will be making a lengthy statement later on in the day as there is time allowed, since the time allocated right now under the previous order is very limited.

However, I did want to take this opportunity to say, with the fresh memories of Katrina and now Rita, I think it is incumbent upon us to finally get our collective heads out of the sand and face up to the fact that we are dependent on foreign energy sources, and that since we cannot drill our way out of the problem because the development of those resources of oil would take years and years to complete, the great natural resources of this country is coal.

Of course, that does not affect my State of Florida; we have 300 years of reserves of coal, and we now have the technology to cook this coal with highly intense heat in what is known as a coal gasification project. It burns off the gas, and that is a clean-burning gas.

It would be my hope that this country will start getting serious about weaning ourselves from dependence on foreign oil by using our technology to address this problem.

So that is what I wanted to share with my colleagues, since there was a couple of days before the previous order, and then I will be making my statement about Judge Roberts later in the day.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the time be extended until the end of my statement.

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

Mr. NELSON of Florida. I will be making my remarks in accordance with the previous order, and then I will be making my address this problem.

The PRESIDING OFFICER. The Senate is in recess until 10:45 a.m. and reconvenes at that time.

Mr. NELSON of Florida. Mr. President, I urge my colleagues on both sides of the aisle to return to the business at hand.

Mr. NELSON of Florida. I asked unanimous consent that the time be extended until the end of my statement.

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

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The PRESIDING OFFICER. The Senate is in recess until 10:45 a.m. and reconvenes at that time.
confirm him because he has lived it. We can ask no more of our judges but we must ask no less. Let this be the standard we apply to this nominee and to future nominees, both to the Supreme Court and to lower courts.

I urge my colleagues to confirm the President’s nomination of Judge John G. Roberts as Chief Justice of the United States.

I yield the floor.

RECESS

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

Thereupon, the Senate, at 12:38 p.m., recessed until 2:20 p.m., and reassembled when called to order by the Presiding Officer (Mr. CHAMBLISS).

EXECUTIVE SESSION

NOMINATION OF JOHN G. ROBERTS, JR., TO BE CHIEF JUSTICE OF THE UNITED STATES—Continued

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, what is pending before the Senate?

The PRESIDING OFFICER. Under the previous order, the time from 2:15 to 2:45 p.m. will be under the control of the majority. We are on the Roberts nomination.

Mr. SESSIONS. Mr. President, I appreciate the opportunity to share some thoughts on this important matter and I probably will speak again before this final vote occurs.

Mr. President, this is an important process. What we are doing here is more important than the average confirmation, in my view. What has been going on for virtually the entire time I have been in the Senate, going on 8 years, and certainly in the last 5 years, has been a rigorous and vigorous debate over the role of courts in American life. The American people have become very concerned that those we appoint and confirm to the Federal judiciary and have been given a lifetime appointment, as a result of that are unaccountable to the American people; that they are not, therefore, any longer a part of the democratic process and can only be removed from office on causes relating to an impeachment or their own resignation or death.

This has raised concerns because these lifetime-appointed, unaccountable officials of our Government have set about to carry out political agendas. There is no other way to say it. I hate to be negative about our courts because I believe in our courts. The courts I practiced before, the Federal courts in Alabama, are faithful to the law. If a Democratic judge or Republican judge, or a liberal or conservative, is faithful to the law, I do not see a problem. Overwhelmingly, in the courts of America today, justice is done.

But we have a growing tendency among the members of our Supreme Court. Many of them have been there for many years. It strikes me that perhaps they have lost some discipline. They have forgotten they were appointed and not appointed. As my good friend Judge Cloyd Thomas, now deceased, Judge Thomas, in the Southern District of Alabama: Remember, you were appointed, not appointed.

I think they have forgotten that. I believe they have begun to think it is important for the courts to settle disputed social issues in the country; that they are somehow an elite group of guardians of the public health and that they should protect us from ourselves on occasion.

We have seen that. We have seen a series of opinions that, as a lawyer, I believe cannot be justified as being consistent with the words or any fair interpretation of the words of the Constitution of the United States. That is what a judge should do.

These issues are important, as I said, because if this is true, and if judges are going beyond what they have been empowered to do, and they are twisting or redefining or massaging the words of the Constitution in an unjustified act of imposing a personal view on America, then that is a serious problem indeed, and I am afraid that is what we have.

They say it is good. The law schools, some of them, these professors, believe judges should be strong and vigorous and active and should expand the law and that the Constitution is living. So, therefore “living” means, I suppose, you can make it say what you want it to say this very moment.

But Professor Van Alstyne at Duke once said to a judicial conference I attended many years ago: If you love this Constitution, if you really love it, if you respect it, you will enforce it—"it" being the Constitution. When judges don’t do that they therefore do not respect the Constitution. In fact, they create a situation in which a future court may be less bound by that great document. It can erode our great liberties in ways we cannot possibly imagine today.

The name of Justice Ginsburg sometimes came up at Judge Roberts hearings because of her liberal positions on a number of issues before she went on the bench. You she was confirmed overwhelmingly. An argument was made therefore Judge Roberts, who has mainstream views, ought to be confirmed. She just recently made a speech to the New York Bar Association. She said she was not happy being the only female Justice on the Court but she stated:

Any woman will not do. There are some women who might be appointed who would not advance human rights or women’s rights.

What about other groups’ rights? Do you not advance all those other rights, too? And what is a right?

Then she dealt with the question of foreign law being cited by the Supreme Court of the United States. We have had a spate of judges, sometimes in opinions and sometimes in speeches, making comments that suggest their interpretation of the law was influenced by what foreign people have done in other countries. She said: I will not take enlightenment wherever I can get it. I don’t want to stop at the national boundary.

Then she noted that she had a list of qualified female nominees, but the President hadn’t consulted with her—and I would hope not, frankly.

Why are we concerned about citing foreign law? We are concerned because this is an element of activism. Our historic liberties are threatened when we turn to foreign law for answers.

This is a bad philosophy and a bad tendency because we are not bound by the European Union. We didn’t adopt whatever constitution or laws or documents they have in the European Union. What does our Constitution say?

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense and general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Not some other one. Not one you would like, not the way you might like to have had it written, but this one. That is the one that we passed. That is the one the people have ratified. That is the one the people have amended. And that is the one a judge takes an oath to enforce whether he or she likes it or not.

You tell me how an opinion out of Europe or Canada or any other place in the world has any real ability to help interpret a Constitution, a provision of which may have been adopted 200 years ago.

I submit not. You see, we have to call on our judges to be faithful to that. I do not want, I do not desire, and the President of the United States has said repeatedly that he does not want, he does not desire that a judge promote his political or social agenda. That is what we fight out in this room right here, right amongst all of us. We battle it out, and I am answerable to the people in my State, the State of Alabama. That is who I answer to, and each one of us answer to the people in our states; and the President answers to all the people of the United States. That is where the political decisions are made, and we leave legal decisions in the court.

My time to speak is limited. I will close with this: We have never had a judge come before this Senate, in my opinion, who has in any way come close to expressing so beautifully and so richly and so intelligently the proper role of a court. Judge Roberts used a common phrase: You should be a neutral advocate. Certainly that should be that. Absolutely that is a good phrase. A judge should be modest. He should decide the facts and the law before the