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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 31, 2006, at noon.

Senate

THURSDAY, JANUARY 26, 2006

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.

Eternal Lord God, the fountain of truth and wisdom, thank You for the yearning You have placed in our hearts for You.

Today, equip our Senators for the tasks before them. Help them strive to make the rough places of our world smooth and the crooked places straight. As they debate the Judge Samuel Alito nomination to the Supreme Court, give them the wisdom to be guided by conscience and not contention. Empower them to disagree without being disagreeable. Guide their hands, hearts, and minds to those undertakings that please You. May they never swerve from the straight and narrow path of Your unfolding providence.

Help us all to live for Your honor so that even our enemies will be at peace with us. Bless our military men and women who sacrifice each day to keep us free. We pray in Your righteous 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, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 486, which the clerk will report.

The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Under the previous order, the time from 10 a.m. to 11 a.m. shall be under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. DEMINT. Mr. President, today, we resume consideration of the nomination of Judge Alito to be an Associate Justice of the Supreme Court. The order from yesterday allows the Democrat side to begin debate this morning at 10 o'clock and speak for up to 1 hour. Then the majority will have the hour from 11 to 12, and we will continue alternating 1-hour blocks of time between the two sides throughout the day. Members should plan their schedules accordingly to use the allocated time to make their statements. We will continue to work toward a final time for a vote on the nomination.

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

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

The legislative clerk proceeded to call the roll.

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

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

The Chair will state that the time from 11 a.m. to 12 p.m. shall be under the control of the majority leader or his designee, with each hour rotating back and forth in the same manner after that time.

The Senator is recognized.

Mr. LEAHY. I thank the distinguished President pro tempore, my friend of over 30 years. The debate has worked out well by going back and forth, showing the usual comity here in the Senate.

I began my discussion of Judge Alito's nomination for a lifetime appointment to the Nation's highest Court with the same issue I began my questions to Judge Alito and, before that, to now Chief Justice Roberts: That is the issue of checks and balances on Government power. Obviously, the answers given by Chief Justice Roberts I found satisfactory. I voted for him. The answers by Judge

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

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Alito, as I will explain further, I did not find satisfactory.

It is important because we are at a pivotal point in our Nation's history. This is a time of unprecedented governmental intrusion into the lives of ordinary Americans. The President has attempted to justify secret warrantless wiretapping of Americans, the evasion of legal bans against torture, and the detention of American citizens without due process of law. The Bush administration is making extraordinary claims of essentially unlimited power. There are troubling signs that this nomination is part of that effort by the President and Vice President to uphold Presidential claims of unchecked power and to upset the careful balance of our system of government, a system of government that was so carefully crafted by the Framers in our national charter, the Constitution. I have said I do not believe that Judge Alito would be that kind of a careful check and balance against Presidential overreaching. Because of that, I said I would not support his nomination.

I don't take this position lightly. There are nine members of the Supreme Court, seven of them nominated by Republican Presidents. I have voted for eight of those nine, but I will not for this one. I feel that the judge's record, his missed opportunities during the hearings to answer concerns about his record, leaves me to wonder whether he appreciates the role of the Supreme Court as a protector of Americans' fundamental rights and liberties. It is a test he failed. The Supreme Court has to be a source of justice. It has to be an institution where the Bill of Rights and human dignity are honored. It must be an institution dedicated to the mission embodied in the words etched in Vermont marble above the entrance to the Court where it says ''equal justice under the law.'' It must be an institution which carries on the spirit enshrined in our Constitution, refined following the Civil War, and realized further over the course of landmark decisions in Brown v. Board of Education and Baker v. Carr. Judge Alito's record and testimony demonstrate that he does not understand the vital role of the courts in implementing the constitutional guarantees of equal protection and equal dignity for all Americans.

A stark example of his failing the test took place during his confirmation hearing when I asked him a question Senator SPECTER had asked then Justice Rehnquist at his hearing to become the Chief Justice. I know; I was at the hearing. The question was a basic one: whether the Supreme Court can be stripped of jurisdiction to protect fundamental constitutional rights. I asked Judge Alito whether the Supreme Court could be stripped of jurisdiction to hear first amendment cases involving freedom of the press or freedom of religion or freedom of speech. The First Amendment is probably the greatest part of our Bill of Rights. I told him Senator SPECTER had previously insisted on an answer from Justice Rehnquist and that Justice Rehnquist had answered that it would not be constitutional to strip the Court of its jurisdiction, its vital function to protect fundamental rights. Unlike the late Chief Justice, Judge Alito responded as though it were merely an academic question. He said that there are scholars on both sides. He refused to state his view. This is a basic and fundamental issue for anybody aspiring to be a member of the Supreme Court. Justice Rehnquist got it right. For that matter, Judge Bork got it right. Judge Alito got it wrong.

When he failed to respond to my question, Senator SPECTER revisited it, but Judge Alito still failed the straightforward test. I asked the same question with respect to the fourth amendment, the fifth amendment, and the sixth amendment. Again, there was no answer. These are the constitutional amendments that guarantee our privacy rights, our protection against unreasonable searches and seizures, our right to due process, our right against self-incrimination, our protection against Government takings, and our right to public trial and to counsel. These are basic American rights that help to define us as a free people. They control the intrusiveness of Government power.

Judge Alito has shown through his answers that he does not appreciate the constitutional role of the Supreme Court as the protector of America's fundamental rights. In fact, in our system of checks and balances, the Supreme Court has to be the ultimate defender of Americans' constitutional rights. Judge Alito's refusal to acknowledge that in his answers is more than deeply troubling; it is stunning. It is stunning that anybody up for a lifetime appointment to the Supreme Court of the United States would not answer such basic questions. Suppose if by legislative act we could remove the constitutional right to freedom of religion or free speech how quickly we could remove our freedoms as Americans. Again, Justice Rehnquist and Judge Bork had it right. Judge Alito had it wrong.

I even gave him a concrete example. I asked whether in the early 1950s, Congress could have stripped the courts, including the Supreme Court, of jurisdiction to hear cases involving racial segregation in schools. This historical hypothetical raised the question whether the Supreme Court could have been prevented from deciding Brown v. Board of Education and enforcing the equal protection clause of the Constitution and calling for an end to unconstitutional racial segregation. His answer was no better. He was clearly stumped.

No Senator who truly cares about civil rights, equal rights, freedom of religion and speech and the press can have any confidence that Judge Alito understands the critical role of the Supreme Court in protecting those rights.

I ask unanimous consent that letters from civil rights organizations in opposition to Judge Alito's nomination be printed in the RECORD.

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

WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington, January 9, 2006.

Re NAACP urges thorough review of Judge Samuel Alito's troubling record on civil rights & civil liberties during Judiciary Committee hearing

MEMBERS,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR: As you are aware from earlier correspondence, the NAACP is opposed to the nomination of Judge Samuel Alito to the United States Supreme Court based on our thorough review of his dismal record on upholding civil rights and civil liberties protections. As such, we would urge you, as a member of the Senate Judiciary Committee, to use your position and your Constitutionally-mandated responsibility to thoroughly review Judge Alito's record on civil rights and civil liberties and to try to determine the extent to which Judge Alito is likely to preserve the civil rights of Americans if he is confirmed to our Nation's highest court.

The Supreme Court is, in many cases, the last opportunity for many Americans to assert their rights and ensure the protection of their liberties. Many of the civil rights gains that have been made over the past 50 years are a result of Supreme Court rulings. Thus, the NAACP feels that it is of the utmost importance that any nominee to the Court is clear about his or her intentions to protect the civil rights gains that have been made over the past 5 decades and have always been promised to us by the US Constitution.

Of specific concern to us from Judge Alito's past history is:

In a 1985 job application for a position with the Reagan Administration, Judge Alito disagreed in writing with the Warren Court's reapportionment decisions now known as ''one man, one vote'', which are among the Court's most widely accepted decisions on civil rights and equal representation. The ''one man, one vote'' theory is also one of the basic tenets of Voting Rights that the NAACP has fought for;

In the 1993 case Grant v. Shalala Judge Alito ruled against a class action alleging racial and other bias by an Administrative Law Judge when determining Social Security benefits, arguing that the Court of Appeals lacked the authority to conduct a trial and make independent findings on actions taken by an Administrative Law Judge for the Social Security Agency. In a strongly worded dissent to the Alito ruling, Judge Leon Higginbotham said that the decisions is ''. . . effectively have courts take a back seat to bureaucratic agencies in protecting constitutional liberties. This . . . is a radical and unwise redefinition of the relationship between federal courts and federal agencies.''

In the 1997 case Bray v. Marriot Hotels, Judge Alito strongly dissented from a Third Circuit ruling and made it clear that he supports impossibly high barriers for victims of discrimination to have their cases heard;

In a separate 1997 case, Riley v. Taylor, Judge Alito held that a prosecutor was not motivated by race in striking all African Americans from the jury of a death-penalty case involving an African American defendant. When the defendant produced statistical evidence showing the prosecution repeatedly

striking African Americans from juries, Judge Alito contended that this was irrelevant and likened it to a study showing that a disproportionate number of recent Presidents have been left-handed.

In a 2004 case, Doe v. Grady, Judge Alito dissented from a ruling against police officers who had strip-searched a woman and her 10-year-old daughter while executing a search warrant authorizing the search of her husband and their home.

In short, during the course of the NAACP's investigation into Judge Alito's past we became convinced that he is unfit to sit on the United States Supreme Court because race and gender are still a real problem in the United States; a fact he appears to neither recognize nor appreciate.

Accordingly, as I said earlier, I hope you will ask tough questions, and demand thorough answers, during the hearings that begin today on Judge Alito to try to determine even further the extent to which he is, or is not, committed to upholding and protecting the civil rights and civil liberties of all Americans. On behalf of the NAACP, I would also like to further express our strong opposition to the nomination and our hope that you urge your Senate colleagues to oppose and defeat Judge Samuel Alito's nomination. Please contact me, or my Bureau Counsel, Crispian Kirk, at (202) 463–2940 soon to let me know your position on this matter, and to let me know what I can do to work with you to ensure that President Bush nominates, and the Senate confirms, moderate, not extremist, judicial candidates to the federal bench.

Sincerely,

HILARY O. SHELTON,
Director.

NATIONAL URBAN LEAGUE,
January 10, 2006.

SENATE COMMITTEE ON THE JUDICIARY,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATORS: As you know, the National Urban League, Inc. (''Urban League'') is the oldest community-based civil rights organization in the country. Through our 102 professionally-staffed affiliates, located in 34 states and in the District of Columbia, the Urban League works to ensure, in a non-partisan way, economic and social parity and full civil rights for African-Americans and other people of color.

Nominations to the United States Supreme Court are of particular concern to the Urban League Movement because of the high Court's tremendous power and impact on the issues relevant to our mission of securing civil rights and economic empowerment for African Americans. Since the President nominated Judge Samuel Alito, Jr. to be an Associate Justice of the United States Supreme Court, the National Urban League has carefully and exhaustively reviewed his judicial record, judicial philosophy, and professional qualifications. Our study found that Judge Alito has a long and unambiguous history of opposition to critical and established voting rights protections, civil rights remedies and social justice guarantees. Our examination also established that Judge Alito frequently injects this philosophy into his judicial decision-making, often in direct contravention of well-settled law. A copy of our report is attached.

Based upon this review, it is our conclusion that Judge Alito's stated opposition to reasonable and established civil rights remedies and voting rights protections, and his consistent record of injecting these views into his decision-making to the degree that it undermines basic civil rights protections make him unsuitable for a seat on our nation's highest court.

Therefore, we urge the Senate Judiciary Committee to reject the nomination of Judge Alito to be a Supreme Court Justice and look forward to working with you to ensure the nomination and confirmation of judges who will uphold fundamental civil rights protections.

Respectfully,

MARC H. MORIAL,
President and CEO.

NAACP LEGAL DEFENSE FUND OPPOSES ALITO NOMINATION

REPORT DETAILS HOSTILITY TO CIVIL RIGHTS AND WARNS OF TIPPED BALANCE ON HIGH COURT

On December 15, 2005, the NAACP Legal Defense and Educational Fund, Inc. (LDF) announced opposition to the nomination of Samuel Alito, Jr. to the U.S. Supreme Court, citing his hostility to strong enforcement of civil rights laws. LDF warned that confirmation of Judge Alito would threaten to shift significantly the Supreme Court's jurisprudence relating to affirmative action, voting rights, employment and criminal justice issues.

At a press conference in Washington, D.C., LDF released a 10-page report detailing what it called an ''extreme'' judicial approach by Judge Alito that would demonstrably impact important future decisions of the High Court. The LDF report cites cases in which Alito has attacked congressional legislative authority in a manner that his colleagues viewed as extreme. As a Justice Department lawyer, he argued to uphold police use of deadly force and undermine the rights of criminal defendants. In the area of affirmative action, LDF highlighted ''troubling signals'' that Alito would tip the delicate Court balance to unravel policies ''at the epicenter of the modern struggle for racial equality.''

''We can predict with substantial certainty that Judge Alito will very likely vote in a manner that, given the current composition of the Court, will cause a substantial shift in the Court's civil rights jurisprudence with devastating effects,'' the LDF report cautioned.

Judge Alito is scheduled to appear before the Senate Judiciary Committee in early January for confirmation hearings.

LDF Director-Counsel and President Theodore M. Shaw stressed that the organization does not relish opposing a nomination to the Supreme Court and does so only when the nominee's record is contrary to the goals of equal justice that are the hallmark of LDF's work.

With the announcement of Justice Sandra Day O'Connor's retirement last summer, LDF called upon President Bush to nominate a successor who is not ideologically rigid and predictable, but who is fair and open-minded, and committed to protecting advances in civil rights. LDF emphasized that Justice O'Connor's successor should not be a mission-driven ideologue but, even if a conservative, should maintain the balance on the Court with respect to civil rights issues.

To analyze Alito's record, LDF reviewed published and unpublished opinions in cases decided by Judge Alito as well as documents released by the White House and the National Archives. Appointed by President George H.W. Bush to the U.S. Court of Appeals for the Third Circuit in 1990, Alito spent his entire legal career at the Department of Justice.

LDF's report also reveals:

Unquestionably, Justice O'Connor cast pivotal votes in civil rights cases coming before the Supreme Court. While Justice O'Connor did rule against civil rights litigants, at least her vote on important issues such as affirmative action was ''always in play.'' In contrast, a review of Samuel Alito's tenure at the Justice Department reveals that he was directly involved in the Reagan Administration's frontal attacks on affirmative action, arguing against affirmative action in three significant cases before the Court. In his 15 years on the bench, he has ruled against African Americans on this issue.

Judge Alito's record should be extremely troubling to minority workers, women and others who depend on equal opportunity protections in the workplace. Although he has heard dozens of cases, Judge Alito has almost never ruled in favor of an African-American plaintiff in an employment discrimination case; he has never authored even one opinion favoring an African-American plaintiff on the merits in such a case.

Judge Alito's criticism of the Warren Court's reapportionment decisions is extremely troubling. These cases ''set into motion a process that led to the dismantling of a political system infected both by prejudice and other forms of patent electoral manipulation.'' In his only opportunity on the bench to interpret the Voting Rights Act, Alito voted to uphold an at-large system of electing members to a Delaware school district, perpetuating an electoral system that diluted the voting strength of racial minorities.

In the criminal justice area, Judge Alito has repeatedly parted ways with his colleagues and failed to heed Supreme Court precedent in important cases regarding race discrimination in jury selection, the right to effective assistance of counsel, and search and seizure issues.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
WASHINGTON, DC, JANUARY 5, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As the Co-Chairs of the Lawyers' Committee for Civil Rights Under Law, we submit the enclosed ''Statement of Board Members Opposing the Nomination of Judge Samuel A. Alito as an Associate Justice of the Supreme Court of the United States'' on behalf of the 114 individual members of the Board of Directors and Trustees who subscribe to the Statement.

These members of our Board oppose Judge Alito because the record demonstrates that his views are in direct conflict with the core civil rights principles to which the Lawyers' Committee is dedicated, and that as a member of the Supreme Court, Judge Alito would cast votes and write opinions that would set back the cause of civil rights in our country and impede our progress toward the goal of equal justice for all. It is worth noting that in the Lawyers' Committee's 42-year history, its Directors and Trustees have opposed a Supreme Court nominee on only two previous occasions.

We also enclose a Final Report that analyzes Judge Alito's legal philosophy pertaining to civil rights and constitutional interpretation. This in-depth Report serves as the basis for the conclusions contained in the Statement and provides extensive analysis of Judge Alito's background. If Judge Alito's testimony during confirmation hearings or other evidence justifies a change in the conclusions we have drawn, we will so inform you.

We hope the Statement and Report are of assistance to you and your staff. For the reasons noted in them, we strongly urge the Ju-

diciary Committee to vote not to confirm this nominee.

Respectfully,

MARJORIE PRESS LINDBLOM,
Co-Chair.

ROBERT E. HARRINGTON,
Co-Chair.

AMERICAN ASSOCIATION FOR AFFIRMATIVE ACTION,
Washington, DC, January 11, 2006.

Re Nomination of Judge Samuel A. Alito, Jr., as Associate Justice of the Supreme Court of the United States

Hon. ARLEN SPECTER,
Chair,
Hon. PATRICK J. LEAHY,
Ranking Member, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: The American Association for Affirmative Action (AAAA), an association of equal employment opportunity (EEO), diversity and affirmative action professionals founded in 1974, respectfully urges you to oppose the nomination of Judge Samuel Alito, nominated to serve as Associate Justice of the U.S. Supreme Court.

AAAA has reached this conclusion based on Judge Alito's very troubling record on equal employment opportunity and affirmative action. In his 1985 application to be the Reagan Administration's Deputy Assistant Attorney General in the Office of Legal Counsel, Samuel Alito expressed his support of the ''same philosophical views'' that he believed were central to the Administration. In this application, Alito highlighted his work as Assistant Solicitor General on affirmative action and reportedly wrote that he was ''particularly proud'' of his ''contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed. . . .'' To use Judge Alito's ''Hank Aaron'' analogy, affirmative action requires not moving the fence in but opening the gate. After that, it is up to the player to demonstrate his or her abilities. Whoever selected Hank Aaron, Secretary Rice or Justice O'Connor understood that the essence of affirmative action is opportunity, not favoritism or quotas.

Judge Alito's application described the efforts of the Reagan Justice Department to restrict affirmative action and court-awarded remedies for discrimination as ''quota'' litigation. In one such case, Alito signed a brief arguing for restricting affirmative action remedies, even in cases where discrimination was intentional, egregious, and longstanding. In Local 28 of the Sheet Metal Workers' International Ass'n v. EEOC, the Solicitor General's brief advanced the extraordinary theory that relief in Title VII cases could be granted only to ''identifiable victims of discrimination,'' contradicting an earlier view of the EEOC itself. The Supreme Court rejected this argument.

In Local Number 93, International Association of Firefighters, AFL–CIO v. City of Cleveland, Alito signed on to an amicus brief seeking to reverse a consent decree that included numerical goals for the promotion of black firemen. By a 6–3 vote, the Supreme Court again rejected the Solicitor General's argument and upheld the affirmative action plan.

In the months before Alito applied for a job with Attorney General Edwin Meese, Meese waged a fierce campaign to have President Reagan abolish Executive Order 11246, signed by President Lyndon Johnson in 1965. The Order requires that federal contractors not discriminate in employment and that they use affirmative action. Ultimately, two-thirds of the Reagan cabinet repudiated the extreme views of the Justice Department and a coalition of corporations, members of Congress and civil rights organizations successfully defeated Meese's campaign against affirmative action.

There is nothing subsequent to Mr. Alito's tenure in the Reagan Administration or his testimony before the Senate Judiciary Committee to suggest persuasively that he has moderated his views on equal opportunity law enforcement. In civil rights cases he has often argued for higher barriers that victims of employment discrimination would have to overcome to secure remedies for such discrimination. For example, in Bray v. Marriott Hotels, Judge Alito's colleagues said Title VII of the Civil Rights Act of 1964 ''would be eviscerated'' if Judge Alito's approach were followed. In Nathanson v. Medical College of Pennsylvania, Judge Alito dissented in a disability rights case where the majority said: ''Few if any Rehabilitation Act cases would survive'' if Judge Alito's view were the law.'' And in Sheridan v. DuPont, he was the only one of 11 judges on the court who would apply a higher standard of proof in a sex discrimination case.

According to a report of the NAACP Legal Defense and Educational Fund, Inc., Judge Alito has almost never ruled for an African-American plaintiff in employment discrimination cases and has never written a majority opinion for the Third Circuit in favor of an African-American plaintiff on the merits of a claim of race discrimination in employment. In each majority opinion authored by Judge Alito and addressing such a claim, he has ruled against the African-American plaintiff.

This is not the time for the Judiciary, a longstanding refuge for victims of discrimination, to reverse fifty years of progress. The record emerging suggests that Judge Samuel Alito is not prepared to interpret the laws on behalf of all Americans.

Sincerely,

SHIRLEY J. WILCHER,
Interim Executive Director.

Mr. LEAHY. Judge Alito missed opportunities during the hearings on a number of issues. I am left with a deep and abiding concern about Judge Alito's understanding of the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has failed to do so.

Despite Judge Alito's attempts to retreat from several of the more outrageous statements in his 1985 job application for a political position in Edwin Meese's Justice Department, his testimony at the hearing has done little to dispel my concerns. The consequences for all Americans of Judge Alito putting the beliefs he expressed in that job application into practice on the Supreme Court are too great.

In his job application, Samuel Alito wrote, as a 35-year-old, practicing lawyer, that:

> In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions, particularly in the area[] of . . . reapportionment.

This was a startling statement to make in 1985, just two decades ago. He was 35 years old and had been practicing law for almost a decade when he wrote that statement about his disagreement with Warren Court decisions on reapportionment. Even after being asked about this statement several times at the hearing, Judge Alito failed to adequately answer why he would seek to highlight a disagreement with the landmark equal protection cases by which the Supreme Court made elections fairer for all Americans and established the principle of ''one person, one vote.''

The Warren Court's reapportionment decisions were among the central achievements of the civil rights era. They ensured that voting districts which had been grossly mal-apportioned, often to the detriment of minority voters, would be fairly revised so that everyone's vote was weighed equally. It is clear from looking at the Republicans' partisan redistricting in Texas that these cases did not solve all the problems. However, reapportionment cases like Baker v. Carr, 1962, and Reynolds v. Sims, 1964, are landmarks because they established that courts have a responsibility to make certain that voting districts meet constitutional standards.

It was Justice William Brennan of New Jersey who wrote the Court's opinion in Baker. Two years later, in Reynolds, the Court established the ''one person, one vote'' standard because, as stated by Chief Justice Warren in his opinion in that case:

> As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

At his hearing, Judge Alito was in retreat and had to concede that the concept of one person, one vote is well-settled and should not be reexamined. It was equally well-settled in 1985 when he made the statement in his job application. More importantly, Judge Alito's testimony calls into question whether he truly understands that the courts have a responsibility in our constitutional system to intervene to ensure that constitutional guarantees of equal access to the political system are met. This is important in situations where the political system is corrupt or where the political branches lack the will to fight against entrenched power or to reform themselves.

In response to a question from Senator KOHL, Judge Alito sought to retreat from the unqualified disagreement with the reapportionment cases expressed in his 1985 application. He told the Committee that his disagreement was based only on certain details of later Warren Court decisions like the 1969 case, Kirkpatrick v. Preisler. Not only is this narrow objection to certain Warren Court decisions not a credible explanation for why he made his sweeping assertions of disagreement in 1985, but Judge Alito also contradicted it later in his testimony when he suggested that his disagreement with the Warren Court's reapportionment decisions was based on Alexander Bickel's ideas about judicial self-restraint. Professor Bickel was not

concerned merely with later applications of one person, one vote. Rather, his theory was critical of the courts having any role at all in helping to guarantee that access to the political system is fair and equal.

In fact, one of the justices whom Judge Alito described as among his favorites, Justice Harlan, applied Bickel's theories in dissenting from every landmark Warren Court reapportionment case establishing one person, one vote, starting with Baker v. Carr. In Justice Harlan's dissenting opinion in Reynolds v. Sims, as in all of Justice Harlan's reapportionment dissents, he argued that there is no constitutional basis for one person, one vote and that courts should restrain themselves from ''usurping'' the state legislatures' self-serving apportionment decisions. In his dissent in Reynolds, Justice Harlan wrote: ''It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the States,'' and ''[w]hat is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible.'' This dissent, described as one of Judge Alito's favorites, hardly sounds like a disagreement only with certain aspects of later reapportionment decisions.

The effects of the Court's decisions to intervene were dramatic. Were the Supreme Court to have followed the dissents of Justice Harlan or the theories of Alexander Bickel that Judge Alito embraced in 1985, the massive disparities in the size of voting districts would not have been corrected in the 1960s. Nor would the underrepresentation of voters from urban areas, minority voters, have been corrected. Had the Court not acted we might still have poll taxes and other barriers to the ability of minorities to vote.

At the hearing we heard testimony from pioneering civil rights attorney Fred Gray, who spent a lifetime fighting for those who were denied the rights to equal protection and equal dignity under the law guaranteed by our Constitution. After he graduated from law school, Mr. Gray immediately went to work defending Rosa Parks and Dr. Martin Luther King, Jr., in the Montgomery bus boycott. He has a real-life appreciation for the role of courts as providing a check to protect individual rights and liberties. In the late 1950s, after the Alabama legislature changed the city limits of Tuskegee, excluding all but three or four African Americans who were registered to vote in the city, Mr. Gray brought before the Supreme Court the case of Gomillion v. Lightfoot. This unanimous decision securing the right to vote for African Americans laid the foundation for Baker v. Carr and the cases establishing one person, one vote.

I asked Mr. Gray what the consequences would have been had the courts followed the lead of Justice Harlan and Alexander Bickel, views with which Samuel Alito apparently agreed, and not involved itself in reapportionment. He testified:

> The difference is then, prior to these decisions, and even prior to Brown v. Board of Education, and prior to Gomillion v. Lightfoot and Browder v. Gayle, the case that desegregated the buses, we had very few African Americans and other minorities registered. We had little or no African Americans in public office. For example, in my state, in 1957 we had none. Now my State has approximately the same number of persons in our State legislature. It mirrors the population. We now have thousands of African Americans and other minorities who are holding public office, and an additional thousand that those public office holders have appointed to elected office.

Judge Alito did not adequately explain his disagreement with the Warren Court reapportionment decisions. He refused to say that he changed his views. He did not repeat what he had suggested in some private meetings—that he was merely saying what he thought people in the Reagan White House wanted to hear and that it was just a job application. Candidly, his testimony on this critical point makes no sense. This is too fundamental a matter to be left without a solid, credible explanation. The equal protection rights and voting rights of all Americans are the fulcrum for realizing the promises of our democratic republic.

Judge Alito's sweeping disagreement with the Warren Court's reapportionment decisions is not the only part of his 1985 job application which has caused me to doubt his understanding of the responsibility for the courts to intervene where the political process is broken down, corrupt or entrenched. Judge Alito also stated in that application that he believes in ''the supremacy of the elected branches of government.'' In the hearing, Judge Alito tried to retreat from this statement, describing it as ''inapt'' and ''very misleading and incorrect.'' However, he refused to disavow it, telling Senator KENNEDY: ''I haven't changed my mind.''

The Supreme Court's decisions to intervene in the reapportionment cases in the 1960s had a tremendous effect on the ability of millions of Americans to participate in the political process. Yet I am concerned that his 1985 written statement reveals that he will be too deferential to the President as ''supreme'' even when needed to be a check on the Government.

The elected branches have no claim to being legitimate, let alone ''supreme,'' if they are controlled by entrenched political corruption. After listening to several days of his testimony, I am left with serious questions and concerns about Judge Alito's appreciation for this critical role of the courts. These concerns are heightened by his apparent adherence to the so-called doctrine of the ''Unitary Executive.''

Judge Alito has failed to grasp the importance of the courts in providing a venue for all Americans to assert their rights. One of the clearest examples of this is Judge Alito's distressing record in cases in which individuals allege discrimination based on race, gender, or disability. Judge Alito has consistently found ways to keep the ''little guy'' from having a day in court. For example, he has held individuals trying to prove discrimination to an excessively high standard of proof, rendering their cases almost un-winnable. From the bench, he has favored the government and big companies accused of discrimination. He seems to view these cases not as examples of regular Americans struggling for equal treatment but, instead, as technical legal exercises.

Judge Alito's supporters—and many on the other side of the aisle were lined up to support him well before the hearings—have cherry picked individual cases to try to show that Judge Alito was fair to average Americans. Judge Alito told us to look at his whole record and we did. In fact, a study of Judge Alito's decisions by Knight Ridder newspapers found that Judge Alito was consistently skeptical of discrimination plaintiffs, generally setting high standards of proof and finding that the plaintiffs before him did not meet those standards. The study found that he was similarly dismissive of criminal defendants alleging discrimination by the government and of immigrants fighting deportation. Noted law professors Cass Sunstein and Goodwin Liu studied the cases where Judge Alito dissented from his colleagues and reached the same conclusion.

In several cases, the Third Circuit criticized Judge Alito for taking positions which would make it almost impossible for people to prove discrimination. In Bray v. Marriott Hotels, Judge Alito would have denied an African-American worker the chance to show that her employers denied her a promotion based on race. The majority criticized Judge Alito's dissent saying that a key discrimination statute ''would be eviscerated if our analysis were to halt where the dissent suggests.''

The case of Pirolli v World Flavors, Inc., is a particularly poignant example of the kind of case that gives me great concern about whether Judge Alito would uphold the rights of ordinary Americans seeking equal treatment. In that case, Kenneth Pirolli, a mentally retarded employee, brought a claim for hostile work environment based on sex and disability, alleging a pattern of sexual abuse and harassment that can only be described as disgusting. Judge Alito dissented from the Third Circuit's decision that Mr. Pirolli's case should go to a jury, not based on the merits of the claim, but essentially because he thought Mr. Pirolli's lawyer's legal brief was poorly drafted. Senator DURBIN asked Judge Alito about this matter and gave him every opportunity to explain. It remains another example of Judge Alito focusing on technical details rather than on the rights of real people.

As a former prosecutor, I am sensitive to the need for a fair process and a fair jury in all criminal cases, particularly the most serious ones. I am troubled that in Riley v. Taylor, Judge Alito dissented from an en banc decision in a capital case in which the Third Circuit granted a new trial because the prosecutor had improperly dismissed Black jurors. Judge Alito denigrated the defendant's use of statistical evidence to show improper exclusion of Black jurors, comparing it to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents. The majority criticized Judge Alito's inappropriate analogy, writing, ''To suggest any comparability to the striking of jurors based on their race is to minimize the history of discrimination against prospective Black jurors and Black defendants''.

In response to the many cases in Judge Alito's record in which he has ruled against victims of discrimination, victims of government intrusion, and immigrants, Judge Alito's Republican supporters searched hard to find a small set of cases to show Judge Alito has not always ruled against the ''little guy.'' What is notable about these efforts is that even in the cases they have trumpeted, Judge Alito often denied any meaningful relief to the average American.

Several Republicans have raised the case of United States v. Kithcart. They incorrectly suggest that in Kithcart, Judge Alito ruled in favor of an African American in a racial profiling case. Mr. Kithcart was pulled over by the police because he was African American and searched and arrested. When the case came before Judge Alito, he sent it back to the trial court to give the government a second chance to prove that the stop and search of an African American were constitutional and were not motivated by race. Judge McKee dissented from the remand saying, ''just as this record fails to establish that Officer Nelson had probable cause to arrest any Black male who happened to drive by in a black sports car, it fails to establish reasonable suspicion to justify stopping any and all such cars that happened to contain a Black male.'' When the case came back to Judge Alito on appeal, Judge Alito upheld the search and affirmed the conviction. So while he remanded the case back to the trial court, he then upheld the search and conviction in his final decision and afforded Mr. Kithcart no relief.

Judge Alito's supporters have pointed to Fatin v. INS as an example of a case in which Judge Alito sided with powerless immigrants and did not defer to the Government. This is another bad example because he ultimately ruled against the immigrant, Parastoo Fatin, and she was deported.

Ms. Fatin was an Iranian woman whose family had opposed the Ayatollah Khomeini and who had come to the United States as a student. She was fighting deportation and requested asylum, arguing that she would be subjected to harsh treatment as a former opponent of Iranian regime, as someone who did not practice a strict form of Islam, and as a woman—who would have to wear a veil and live under great restrictions in Iran. As his supporters have noted, Judge Alito ruled in the case that gender-based persecution could be a basis for asylum. But Judge Alito went on to rule against Ms. Fatin anyway. So he denied her petition for review and sent her on to be deported.

Judge Alito and Republican Senators seeking to bolster Judge Alito's record cited Leveto v. Lapina as an example of a case in which he protected the rights of individuals against government intrusion. It is telling about Judge Alito's record in the area of individual rights protection that in a case he trumpeted for his protection of the rights of individuals, he threw the Levetos out of court and denied them any remedy.

The facts of this case are egregious. In the course of an IRS tax fraud investigation of the Levetos, armed agents ''rushed'' Dr. Leveto at the veterinary hospital where he worked when he arrived at 6:30 a.m., patted him down, and then held him in a small room for over an hour, not allowing him to speak to anyone or make any calls. They then accompanied Dr. Leveto to his home where they patted down Mrs. Leveto, who was still in her nightgown, and then detained and interrogated her for 6 hours.

Meanwhile, other agents took Dr. Leveto back to the hospital where they held him in a closed room for 6 more hours. During this 6 hours, he was not permitted external communications, was accompanied on bathroom breaks, and was interrogated without Miranda warnings, while other agents searched the hospital. During the course of the search IRS agents sent hospital employees home and turned away clients in the parking lot, informing them that the hospital was closed until further notice.

Despite acknowledging numerous violations, Judge Alito dismissed the Levetos' appeal and their case based on ''uncertainty'' in the case law, and threw them out of court.

Supporters of Judge Alito have cited the case of Brinson v. Vaughn as an example of a case in which Judge Alito sided with a victim of discrimination, reversing a conviction because Black jurors had been improperly excluded from the jury pool. This was an easy case given the extraordinary facts involved. In Brinson, the prosecutor dismissed 13 of 14 prospective Black jurors and had previously made a training video in which he urged prosecutors to dismiss Black prospective jurors from the jury pool. This does not reassure me about my concern that Judge Alito will only give credence to claims of discrimination in extreme cases. Indeed, in Riley v. Taylor, when an en banc majority of the Third Circuit found that Black jurors had been improperly dismissed from the jury pool, Judge Alito disagreed and denigrated the defendant's use of statistical evidence to show improper exclusion of Black jurors, comparing it, as has been previously noted, to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents.

The role of courts should be to protect and make sure there is a fair forum for the powerless and even the unpopular. This is the reason the courts are the one undemocratic branch. I am concerned that rather than demonstrating an understanding of the effect of the law on the lives of real Americans as Justice O'Connor has shown, Judge Alito would close the courthouse doors to those Americans most in need of the courts to protect their rights.

In the next few years, the Supreme Court will hear many challenges to political entrenchment. Critical provisions of the Voting Rights Act, VRA, Congress's part in guaranteeing equal access to voting, the fundamental machinery of democracy, were upheld by the Warren Court in South Carolina v. Katzenbach, 1966, by an 8 to 1 vote. The VRA will need to be reauthorized before it expires in 2007. Subsequent court challenges will be critical to fairness to minority voters.

The Supreme Court will soon hear a challenge to Texas Republicans' partisan mid-Census redrawing of congressional districts. There are questions before the Supreme Court this term about campaign finance laws. We are seeing exposed in the news every day a culture of corruption through money and access that has taken root in Washington, by which one political party has sought to entrench itself as a permanent majority.

The cost to Americans is high if we in the Senate get it wrong. I go back to the central question I asked at the outset of Judge Alito's hearing: Will this nominee serve to protect the fundamental rights and liberties of all Americans? Based on Judge Alito's record, I have no confidence that he will provide a check against either an overreaching President or entrenched political power, nor that he will serve to protect Americans' fundamental rights and liberties.

I thank the distinguished Presiding Officer.

I yield to the distinguished Senator from California.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from California.

Mrs. FEINSTEIN. I thank the ranking member of the Judiciary Committee and I thank the Chair.

I come to the floor to offer my reasons for opposing Judge Alito. Let me begin with this: If the Supreme Court's decisions were simply mathematical computations of legal points, our job would be easy and all of the Court's decisions would be 9 to 0. But the legal philosophy and views of each individual Justice do play a role in decisionmaking on the Court. Perhaps not the

majority of the time, when the question before the Court is not controversial; but certainly when the question is controversial and divisive, legal views and philosophies do play a role.

We just had a recent example. Last week the Supreme Court upheld Oregon's Death with Dignity Act by a 6-to-3 decision in a case called Gonzales v. Oregon. When then-Judge Roberts came before the Senate, I and others questioned him on his end-of-life views. He then replied that the Government should not enter the arena. When discussing my point that he would not want the Government telling him what to do, he said:

> The basic understanding that it's a free country and the right to be left alone is one of our basic rights.

He gave us the impression that he believed there was, in fact, a right to die. However, just last week, Chief Justice Roberts joined the two most conservative members of the Court, Justices Scalia and Thomas, in an opinion that, if it had carried the day, would have allowed the administration to invalidate the end-of-life initiative twice supported by Oregon voters in State elections, once when it was enacted and once when it was reaffirmed.

Secondly, history reveals that legal views and philosophies have been the rationale for the rejection of at least 12 Presidential nominees for the Supreme Court. Members on the other side of the aisle often say these legal views and philosophies are not a bona fide consideration. But what I say is these have been used as the rationale for the rejection of at least a dozen Presidential nominees in history.

Let me mention a few of them. It began with President George Washington when he nominated John Rutledge in 1795. Rutledge was rejected by a vote of 10 to 14 because he made a speech denouncing the Jay Treaty between the United States and Great Britain.

Fifteen years later, President James Madison's nomination of Alexander Wolcott was rejected by the Senate by a vote of 9 to 24, in part, based of his policies while a U.S. collector of customs and his actions strongly enforcing controversial embargoes.

President Andrew Jackson, in 1835, nominated Roger Taney to the Supreme Court. He had served as the Secretary of Treasury, and he removed the Government's deposits from the Bank of the United States. Senators who were opposed to that move offered a motion postponing his nomination indefinitely, which passed 24 to 21.

President James Polk, nominated George Woodward in 1845, and allegations arose that as a delegate to the 1837 Constitutional Convention, he introduced an amendment that would have prohibited any foreigners who came to Pennsylvania after 1841 from voting or holding office.

President Ulysses S. Grant nominated Ebenezer Hoar in 1869, who had served as Attorney General. Senators were upset by the fact that he recommended nominees to the circuit courts without taking into consideration Senators' preferences. His nomination was defeated 24 to 33.

The same thing happened in 1881, when President Rutherford Hayes nominated Stanley Mathews. He was defeated because of his close ties to railroad and financial interests.

President Warren Harding, in 1922, nominated Pierce Butler. His nomination was blocked from consideration on the Senate floor because of an alleged procorporation bias and his previous advocacy for railroad issues that were coming before the Court.

In 1930, President Herbert Hoover's choice of John Parker was rejected because he made statements opposing the participation of African Americans in politics and because of his labor record while chief judge of the U.S. Fourth Circuit Court of Appeals.

Marshall Harlan II was nominated by Dwight Eisenhower in 1954. The nomination was never reported out of committee because some members felt he was ''ultraliberal'' and hostile to the South and dedicated to reforming the Constitution by ''judicial fiat.''

In 1968, President Lyndon Johnson nominated Abe Fortas to be elevated to Chief Justice of the Supreme Court. His nomination was defeated after the Senate failed to invoke cloture 45 to 43. One Senator is reported as saying that Fortas' ''judicial philosophy disqualifies him for this high office.''

It went on for two of President Nixon's nominees. Clement F. Haynsworth, Jr. was rejected in 1969 by a vote of 45–55. At that time, five senators issued a joint statement that expressed ''doubts about his record on the appellate bench,'' and one senator opposed the nomination on the basis of his record on civil rights issues.

The other, G. Harrold Carswell, was rejected by a vote of 45–51, in part based on his judicial philosophy. A statement issued by four senators at the time stated they opposed his nomination because his ''decisions and his courtroom demeanor had been openly hostile to the black, the poor and the unpopular.''

And, of course, one of President Ronald Reagan's nominees, Judge Robert Bork, whose views and legal philosophy were of great concern. Judge Bork believed Americans had no constitutional right to use contraception. He argued that in guaranteeing one man, one vote, the Court ''stepped beyond its boundaries as an original matter.'' And he had a broad view of Executive power. He once asserted that a law requiring the President to obtain a court order before conducting surveillance in the United States, and against U.S. citizens was ''a thoroughly bad idea and almost certainly unconstitutional.''

Most recently, White House Counsel Harriet Miers was withdrawn even before consideration by the Judiciary Committee due to the rightwing's objections.

So it is abundantly clear that judicial philosophy and legal views have been evaluated by senators from both sides of the aisle throughout history, and they are valid reasons to reject a nominee for the U.S. Supreme Court.

To now argue that evaluating one's judicial philosophy is setting a new precedent is simply turning a blind eye to history. So while none of us can predict how any person will act in the future, we do have to thoroughly consider information available that provides insights into a nominee's judicial philosophy and legal reasoning. I want to make clear.

Secondly, many of my colleagues on the Judiciary Committee have argued that the nomination of Justices Ginsburg and Breyer have set a precedent for how Supreme Court nominations should be handled, that no one questioned their judicial philosophy, and that they swept through by large votes. I want to take a moment to answer that.

The fact of the matter is that there was real advice and consent in the nominations of Justices Ginsburg and Breyer. Senator HATCH, in his book ''Square Peg: Confessions of a Citizen Senator,'' who was then the ranking member of the Judiciary Committee, gave the following account of the Ginsburg nomination:

> It was not a surprise when the President called to talk about the appointment and what he was thinking of doing.

So President Clinton told Senator HATCH what he was thinking of doing. Senator HATCH goes on:

> President Clinton indicated he was leaning toward Bruce Babbitt . . . Clinton asked for my reaction.
>
> I told him the confirmation would not be easy. I explained to the President that although he might prevail in the end, he should consider whether he wanted a tough, political battle over his first appointment to the Court. I asked whether he had considered Judge Stephen Breyer of the First Circuit Court of Appeals or Judge Ruth Bader Ginsburg of the District of Columbia Court of Appeals.

Both were confirmed with relative ease. So since the ranking member of the Judiciary Committee—the minority ranking member—had recommended these nominees, it is not surprising that they moved through the confirmation process relatively easy. I am confident that if President Bush had decided to nominate any of the candidates suggested by the current ranking member of the committee, Senator LEAHY, the process could have been smooth this time as well. But he didn't. With that said, I also believe that today is a very different day than the time when Justice Ginsburg and Justice Breyer were before the Senate. Let me point out some of the differences. There was not the polarization that there is within America today. There was not the clear effort to upset the current balance of the Court and move it far to the right.

When Justices Ginsburg and Breyer were before the Senate, it had been

more than 50 years since any statute had been struck down by the Supreme Court on commerce clause grounds.

It wasn't actually until April 26, 1995, after both Justices had been confirmed, that the Supreme Court began to revisit an area that had been well settled since the New Deal in the mid-1930s in its decision on a case known as Lopez. In U.S. v. Lopez, the Court struck down the Gun-Free School Zones Act that had been passed by the Congress, which essentially prohibited the possession of a firearm within a thousand feet of a school. It was this decision that signaled the beginning of the Rehnquist Court's federalism ''revolution.'' In the next decade, from 1995 to 2005, the Rehnquist Court struck down all or portions of 30 congressionally enacted laws, 10 of them on federalism grounds. Here they are on this chart. I will point out some of them to you:

The Indian Gaming Regulatory Act, the Federal Election Campaign Act, the Cable Television Consumer Protection and Competition Act, the Religious Freedom Restoration Act, the Communications Decency Act, the Brady Handgun Violence Prevention Act, the Water Resources Development Act, the Coal Industry Retiree Health Benefit Act, section 316 of the Communications Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Violence Against Women Act, the Telecommunications Act, the Americans with Disabilities Act, section 2511 of the Omnibus Crime Control and Safe Streets Act, the FDA Modernization Act, the Child Pornography Act, the Bipartisan Campaign Reform Act, the Child Online Protection Act and on and on and on, using various sections of the Constitution to hold impermissible congressional actions in these areas.

Now, this is a major thrust of the Court, and it is a serious thrust. It is one that this body and the other body ought to understand because, with these actions, the Court was essentially declaring that the Congress cannot legislate in many important areas, areas that are very important to me and to my constituents.

When Justice Ginsburg and Justice Breyer were before the Senate, we were not in the midst of a war with Iraq, nor was our country faced with a war on terror that could last for our lifetime and, for all we know, for our children's lifetime. Few would have predicted that the President would authorize the use of torture in defiance of the Geneva Convention and the Convention Against Torture and Military Law; that the President would argue that he had inherent plenary authority to detain Americans without due process; and that the President would authorize the electronic surveillance of Americans in direct violation of the law, a law passed by this body, the other body, and signed by President Carter in 1978.

In addition, when Justices Ginsburg and Breyer were before the Senate, Planned Parenthood v. Casey had just recently been decided. Casey made it clear that Roe v. Wade remained controlling precedent; it affirmed a woman's constitutional right to privacy; it clarified that States have an interest to protect viable unborn life; and it held that many State laws relating to abortion were valid.

With the Casey decision, there was a general acceptance that a woman's right to choose was secure. There had been a clear and direct challenge to Roe—as a matter of fact, it has been challenged at least three dozen times—and the Court had affirmed in Casey Roe's central holding.

Finally, as I noted when discussing Senator HATCH's book ''Square Peg,'' at the time Justices Ginsburg and Breyer were before the Senate, we didn't have an administration that was bent on moving the Court dramatically in one direction. Yet today, when we are evaluating a nominee to replace Justice Sandra Day O'Connor—a pivotal Justice, a Justice who was the fifth vote in 148 out of 193 decisions—the President continues to assert that he will only nominate those who view the Constitution through a lens of strict constructionism and originalism.

I think we must remember what these terms mean. I want to take a moment to do so. It is widely accepted among legal scholars that strict constructionists and originalists look to evaluate the Constitution based on what the words say as written and what the Framers intended those words to mean at the time they were written.

If we examine what these terms could mean when applied to actual constitutional questions today, it becomes clear why most legal scholars view the Constitution as a living document, able to adjust to the differences of the country today. Remember, in colonial times, there were 13 colonies and around 3 million people. Today we are close to 300 million people and we are 50 States.

Justice Brennan wrote in 1986 about this, and I quote him:

> During colonial times, pillorying, flogging, branding, and cropping and nailing of the ears were practiced in this country. Thus, if we were to turn blindly to history for answers to troubling constitutional questions, we would have to conclude that these practices would withstand challenge under the cruel and unusual clause of the eighth amendment.

He wrote that in the Harvard Law Review in December of 1986.

If an originalist analysis were applied to the 14th amendment, women would not be provided equal protection under the Constitution, interracial marriages could be outlawed, schools could still be segregated, and the principle of one man, one vote would not govern the way we elect our representatives.

My concerns about confirming a strict constructionist or originalist to the Court are best demonstrated by what this legal reasoning could mean in three important areas: congressional authority to enact legislation, checks on Presidential powers, and individual liberty and privacy interests. I want to talk about these for a minute in the context of Judge Alito.

It is my conclusion that Judge Alito would most likely join Justices Thomas and Scalia in the originalist and strict constructionist interpretations of the Constitution. And those are the interpretations that have been used by the Rehnquist Court in the past decade to overthrow all or portions of the 30 laws to which I just referred. I have come to this conclusion based on Judge Alito's record in the Reagan administration and on the bench.

In 1986, Congress passed what seemed to me a pretty simple law. It was called the Truth in Mileage Act. It basically forbid anyone from tampering with odometers in automobiles. As a deputy at the Office of Legal Counsel, Judge Alito recommended that President Reagan veto this bill because it violated principles of federalism.

Judge Alito also drafted a statement for President Reagan to make when he vetoed the bill, asserting ''it is the States and not the Federal Government that are charged with protecting the health, safety, and welfare of their citizens.''

It is the States, not the Federal Government. The implication is the Federal Government does not have a role in protecting the health, safety, and welfare of our citizens.

Judge Alito's restricted views of congressional authority later surfaced in his decisions while on the Third Circuit. For me, a prime example is the case of U.S. v. Rybar. This case is significant because it was a case where Congress clearly had the authority to enact legislation, and yet Judge Alito wrote a separate opinion, a dissent, to argue against the law. He was the sole dissenter, and he was outvoted.

In his opinion, he used a legal technicality that would have thrown out the conviction of a man who had illegally possessed and sold fully automatic machine guns in the State of Pennsylvania.

In reaching his conclusion, he seemed to ignore past precedents, clearly establishing congressional authority to regulate firearms, such as the Miller case of 1939.

He also dismissed previous statutes that had already outlined the obvious impact guns have on interstate commerce, even when sold within a State. To me, that was a major indication of his thinking.

The facts in this case make this point even more obvious: one gun was from China, the other was a military M3 submachine gun made during World War II by General Motors. Clearly, both guns had traveled through interstate commerce before reaching Pennsylvania where the arrest took place.

Judge Alito's views on congressional power could also limit Congress's ability to protect the environment. In the next few years, the Supreme Court is likely to hear a number of cases challenging Congress's authority to pass

laws protecting the environment, such as the Clean Water Act and the Endangered Species Act. In fact, later this term, the Supreme Court will hear two cases. One is Carabell v. Army Corps of Engineers, and the other Rapanos v. U.S.

The issue in both is whether the Congress has the authority to regulate nonnavigable waterways under the Clean Water Act. Both are brought to the Court on the basis that Congress could not regulate environmental control in nonnavigable waterways. If the Supreme Court were to strike down this provision, the Federal Government would lose its primary tool to protect wetlands.

If confirmed, Judge Alito could be the decisive vote in these environmental cases, and his record on the environment, in this regard, is not reassuring. Let me give an example.

In the case Public Interest Research Group v. Magnesium Elektron, it was undisputed that a chemical company had committed 150 different violations of the Clean Water Act by illegally dumping chemicals into a river. The plaintiffs in the case were members of an environmental group and had stopped using the river because of the pollution.

Judge Alito voted in a 2-to-1 decision to throw the case out. He adopted a narrow reading of both the Clean Water Act and the legal concept of standing. In doing so, his conclusion would have gutted the provision that allows individual citizens to enforce the law.

Three years later, the Supreme Court in a 7-to-2 decision in Friends of the Earth v. Laidlaw rejected Judge Alito's expansive view of the standing requirement, making it easier for individuals to sue to stop violations of the Clean Water Act.

So this is a serious concern—Clean Water Act, Clean Air Act, Endangered Species Act. Our ability to legislate in these areas is very much at stake with this judge.

Judge Alito's views on the scope of Presidential powers are deeply concerning to me at this point in American history. The Constitution gives both the President and the Congress critical roles in the defense of our Nation. The Constitution specifically provides in article I, section 8:

> The Congress shall have Power To . . . provide for the common Defense and general Welfare of the United States . . .
>
> To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
>
> To raise and support Armies . . .
>
> To provide and maintain a Navy;
>
> To make Rules for the Government and Regulation of the Land and Naval Forces . . .
>
> To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
>
> To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Services of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress . . . and
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers. . . .

In other words, we are responsible to give the powers to the President for him to execute in these areas. That is a very important article, and it is the heart of congressional authority and the balance of power at a time of crisis.

Our national security and constitutional liberties suffer when either branch oversteps its bounds. Today our Nation is in a very different place than it was 10 years ago. We face new challenges to our constitutional framework of checks and balances.

This President has asserted unprecedented authority in many areas which has raised profound constitutional questions. They include:

May the President authorize torture?

Does the Constitution permit the President to order the arrest and detention of individuals inside the United States without due process or access to counsel?

Does the Constitution allow the President to violate laws based on inherent plenary power?

Is it constitutionally permissible for the President to authorize electronic surveillance of Americans without a warrant in violation of Federal law?

Given the critical importance of these questions to both our national security and our constitutional democracy, I asked Judge Alito a variety of questions to get a sense of his vision of the balance of power between the President, the Congress, and the courts.

Rather than engage in a productive discussion about the issues, he simply repeated obvious truisms, such as ''nobody is above or below the law,'' or agreed to the unsurprising proposition that the Constitution and the laws of the Nation are supreme. He did not answer whether the President had to follow these laws.

His answers were inadequate, so I was left to evaluate his views based on his prior record.

At the Department of Justice, Judge Alito was part of the effort to press for expanded Presidential power, and there is no doubt about that.

While serving in the Department of Justice, he wrote a memo on Presidential signing statements, and here is what he argued:

> From the perspective of the executive branch, the issuance of interpretive signing statements would . . . increase the power of the Executive to shape the law.

''The power of the Executive to shape the law.'' Do we believe this is correct, or do we believe that the ability to make and shape the law rests with the Congress, and the President can sign it or veto and indicate his reasons for so doing, but not shape the law to his specific demand? Then when speaking before the Federalist Society in November of 2000, Judge Alito expressed his support for the unitary executive theory. In 1988, this unitary executive theory was rejected by the Supreme Court in a decision called Morrison v. Olson. It was rejected overwhelmingly. The majority was 7 to 1. The opinion was offered by Justice Rehnquist. The Court rejected Justice Scalia's argument that the independent counsel must be under the executive branch and report to the President. That took care of what is called the theory of the unitary executive.

Yet more than a decade later, Judge Alito declared:

> I still think that this theory best captures the meaning of the Constitution's text and structure.

Clearly, this is a statement for expanded Presidential authority and for the unitary executive.

Judge Alito's vague answers at the hearing, coupled with the specific statements made a few years ago, lead me to conclude that he is a strong proponent of expanded Presidential authority and that he is not committed to a proper system of checks and balances, which brings me to my third point.

If one is pro-choice in this day and age, with the balance of the Court at stake, one cannot vote to confirm Judge Alito. I, for one, really believe there comes a time when you just have to stand up, particularly when you know the majority of people stand as you do. And I don't make that statement simply based on my gut instincts. It is reflected in the polls we see.

A Gallup poll released earlier this week, January 24, stated that 63 percent of Americans do not want to see Roe overturned. And that is backed up by other polls.

A CNN/USA Today/Gallup poll released earlier this month, January 9, said a majority of Americans, 56 percent, do not believe Judge Alito should be confirmed if his confirmation hearings reveal he would vote to overturn a woman's right to have an abortion.

Around here when it comes to the issue of abortion the tail wags the dog. The minority is the dominant voice, while the majority of people out there feel very differently on the question. A majority of people, it is clear, in the United States of America believe that a woman should have certain rights of privacy—privacy that is limited by the State's interest to protect potential life, but a certain right to privacy. If you know this nominee is not going to respect those rights but holds differing views, then you have to stand up.

I am very concerned about the impact Judge Alito could have on women's rights, including a woman's right to make certain reproductive choices as limited by State regulation.

When the issues of Roe and precedent came up during the hearings for Chief Justice Roberts, he engaged in a conversation with me and other Senators. He acknowledged that Roe is well settled. He discussed the different factors the Court considered when Casey affirmed the central holding of Roe. In

fact, during Judge Alito's hearings, I read part of the Roberts transcript to him and I gave him an opportunity to review it. I then asked him to tell me where he differed from Chief Justice Roberts and if he, too, believed Roe is well settled. He responded this way:

I think that depends on what one means by the term well settled.

That was after reading an explicit and full description of what the now Chief Justice had said before us. His response clearly indicated, at least in my view, that he didn't regard precedent that highly.

I next tried to talk to him about his legal views and what he meant when he said ''precedent is not an inexorable command.'' I specifically stated:

Those are the words that Justice Rehnquist used arguing for the overturning of Roe. So my question is did you mean it that way?

The most Judge Alito would say is this:

The statement that precedent is not an inexorable command is a statement that has been in the Supreme Court case law for a long period of time. And sitting here, I can't remember what the origin of it is. . . .

In providing nothing more than this for an explanation, Judge Alito spoke volumes about his view on Roe. I listened carefully to the testimony of many legal scholars, including professors in constitutional law. One I want to quote, and I quoted it in the committee as well because it meant a great deal to me, is a professor of constitutional law at Harvard, Professor Larry Tribe. He said that, with the addition of Judge Alito:

The Court will cut back on Roe v. Wade, step by step, not just to the point where, as the moderate American center has it, abortion is cautiously restricted, but to the point where the fundamental underlying right to liberty becomes a hollow shell.

It is important to remember that Roe, as modified by Casey, is in fact a moderate compromise that considers both sides of the question. Together, Roe and Casey protect women's privacy interest but also allow States to pass regulations to restrict that interest postviability.

If you look carefully at Judge Alito's decisions in three cases—Planned Parenthood v. Casey, Blackwell v. Knoll, and Planned Parenthood v. Farmer—you will see in his writing where serious questions of his views arise. While sustaining Roe in these cases, Judge Alito's opinions also raised serious questions indicating if Judge Alito was not bound by precedent, or there was a gray area, he would weaken Roe by narrowly interpreting what constitutes an undue burden. Since in his dissent in Casey, Judge Alito argued that spousal notification was not an undue burden—a position rejected by the Supreme Court.

Judge Alito may have a different interpretation of when life begins that could dramatically alter the Court's rulings and impact women's access to contraception. This concern was highlighted when in Alexander v. Whitman, Judge Alito wrote a separate opinion to clarify that he disagreed with the Court's ''suggestion that there could be 'human beings' who are not 'constitutional persons.'''

Judge Alito may not agree with the Supreme Court's holding in Roe that a woman's health must be protected for a law to be constitutional. This issue was raised in Planned Parenthood v. Farmer where Judge Alito agreed with the decision of the Court to strike down a New Jersey abortion law. However, he asserted that the Court's opinion, including the discussion about the lack of a health exception, was ''never necessary.''

In addition, I was deeply troubled by Judge Alito's 1985 job application. Let me tell you where he was in 1985. He was not a youngster. Senator DURBIN pointed this out in the Judiciary Committee. He had already clerked at a New Jersey law firm. He had already clerked for a Federal court of appeals judge. He had spent 4 years as an assistant U.S. attorney, and he had spent 4 years as Assistant to the Solicitor General in the Department of Justice, and he had argued 12 cases on behalf of the Federal Government before the Supreme Court and numerous other cases before the Federal courts of appeals. So this was not some naive ingenue coming down the pike, trying to get a job in the administration. He filled out the job application and gratuitously added these words, that he believed ''the Constitution does not protect a right to an abortion.'' He was not asked the question; he simply added those words. Why would you do that if you have argued 12 cases before the Supreme Court, if you spent 4 years as an assistant U.S. attorney, if you have argued before Federal circuit courts, you have clerked for judges—why would you do it unless it was a deeply held view of yours that you wanted to express?

I asked him about this privately in my office and he said that he was attempting to get a political appointment. But he also told me that the application speaks for itself and he did not disavow what he wrote. That spoke volumes about where he is today. It is pretty clear to me that, given a chance, he would vote to overthrow Roe.

He also wrote in that same application:

In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions, particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment.

The Warren Court's reapportionment decisions established the principle of one man, one vote, and they stopped the abhorrent practice of diluting votes by making some voting districts larger than others. For example, prior to these decisions some voting districts in the same State were 41 times the size of others.

As an attorney with the Solicitor General's Office of the Department of Justice, Judge Alito argued three affirmative action cases, each time urging the Supreme Court to strike down affirmative action programs. The arguments he made in these cases are contrary to the Supreme Court's subsequent decision in Grutter v. Bollinger, another 5–4 decision where Sandra Day O'Connor was the decisive fifth vote. In Grutter, the Court held that the University of Michigan and other colleges and universities receiving Government funding could consider race, ethnicity, and gender in school admissions policies in order to encourage a diverse student body.

Judge Alito encouraged the Senate to judge him on his 15-year record on the Third Circuit. An examination of this record reveals a judge who tends to rule against civil rights more often than his colleagues. A review of Judge Alito's opinions by Yale Law School professors concluded that in the area of civil rights law, he consistently used procedural and evidentiary standards to rule against female, minority, age, and disability claimants. Similarly, a review of 311 published opinions by Knight-Ridder found that, although his opinions were rarely written with obvious ideology, he seldom sided with an employee alleging discrimination.

Here again, there is a case, Riley v. Taylor, that is particularly troubling. This case took place in Delaware, where prosecutors had excluded every African-American juror in all four of its first-degree murder trials that had taken place in a Delaware county that year. A majority of the Third Circuit, sitting en banc, concluded that excluding every Black juror in four State murder trials was evidence of race-based discrimination. I would conclude that, too. The Court noted that it is not ''necessary to have a sophisticated analysis by a statistician to conclude that there is little chance of randomly selecting four consecutive all white juries.''

Judge Alito dissented. In contrast, he argued that ''there is little chance of randomly selecting left-handers in five out of six Presidential elections. But does it follow that the voters cast their ballots based on whether a candidate was right- or left-handed?''

This dissent demonstrates a failure to grasp the critical point. Left-handed individuals have not suffered the long history of discrimination in this country the way African Americans have. I think to use that, as a Federal appellate court judge, as a bona fide argument to say that you can have four consecutive murder trials in a county and exclude every African American from the jury shows you have a mode of thinking that is not in the mainstream of American legal thinking.

So, bottom line, based on all of the information before me, I have decided to vote against Judge Alito's confirmation. Mine is a vote that is made with the belief that a person's legal reasoning and judicial philosophy, especially at a time of crisis, at times of

conflict, and at times of controversy, do mean a great deal. It is my belief that this nominee's legal philosophy and views will essentially swing the Court far out of the mainstream, toward legal philosophy and views that do not reflect the majority views of this country. I will vote no. I urge my colleagues to vote no.

I ask unanimous consent to have printed in the RECORD a list of California organizations that oppose Judge Alito's confirmation and a set of letters from pro-choice organizations following my full remarks, and I yield the floor.

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

CALIFORNIA ORGANIZATIONS THAT OPPOSE JUDGE ALITO'S NOMINATION

ACLU of Northern California; ACLU of Southern California; AFSCME California; Alliance for Justice; Asian Pacific Law Caucus; Asian Pacific American Legal Center of Southern California; California Church Impact; California National Organization for Women; California Nurses Association; California State Conference of NAACP Branches; Coalition for Economic Equity; California Women's Agenda; Committee for Judicial Independence; Disability Rights Education and Defense Fund; Ella Baker Center; Equal Justice Society; Equal Rights Advocates; Greenlining Institute.

Lawyers Committee for Civil Rights of the San Francisco Bay Area; Mexican American Legal Defense and Educational Fund; MoveOn.org; NARAL Pro-Choice California; NAACP Legal Defense and Educational Fund; National Council of Jewish Women California; National Health Law Program; People For the American Way West; Planned Parenthood Affiliates of California; Planned Parenthood Golden Gate; National Lawyers Guild California; Planned Parenthood Los Angeles; Progressive Jewish Alliance; Public Advocates Inc.; Rainbow Push California; SEIU California State Council; Sierra Club; Women's Employment Rights Clinic; and Women's Leadership Alliance.

CATHOLICS FOR A FREE CHOICE,
Washington, DC, January 11, 2006.

Senator ARLEN SPECTER,
Chairman,
Senator PATRICK LEAHY,
Ranking Member, U.S. Senate Committee on the Judiciary.

DEAR CHAIRMAN SPECTER, RANKING MEMBER LEAHY AND MEMBERS OF THE JUDICIARY COMMITTEE: I write to you today as president of Catholics for a Free Choice, an organization that shapes and advances sexual and reproductive ethics that are based on justice and reflect a commitment to women's well being, to express our opposition to the nomination of Judge Samuel A. Alito Jr. to the Supreme Court of the United States.

Our decision to ask the U.S. Senate Committee on the Judiciary to reject this nomination and not to send this nominee for an up-or-down vote by the entire Senate is not one that we take lightly. Indeed, Catholics for a Free Choice, after examining his record an carefully following Chief Justice John Roberts' confirmation hearing did not oppose his nomination.

Based on public documents released by relevant government agencies and from published interviews and statements with and from the nominee himself during the first days of the confirmation hearing, it is evident that Judge Alito is a vastly different nominee from Chief Justice John Roberts. These differences, however are not only manifested in judicial philosophy, but sadly in critical aspects of his character and integrity.

Our reasons for oppose this nomination go far beyond Judge Alito's personal and legal opposition to reproductive health services including abortion—but center on the underlying principles of the qualifications necessary to serve on the Supreme Court.

In our view, serving on the highest court in the land takes a fundamental commitment to the individual rights enshrined in the Constitution. These include the rights of women to make decisions about their bodies; the rights of employees to seek judicial relief when they feel they have been discriminated against based on race or gender; a belief in the ''one person, one vote'' doctrine that has been a pillar of American democracy; and an understanding that all citizens of the United States have equal standing under the law regardless of which religious tradition they identify with, if any. Throughout his time on the federal bench, Judge Alito has not shown an allegiance to these principles and has in fact, in many cases, shown hostility to them.

Equally important is the integrity and character of the mail or woman being nominated. This integrity includes a consistent view of the law and a guarantee that the principle espoused by the nominee are based on sound legal reasoning and conscience—and not based upon which political appointment or job they are applying for at the time. Judge Alito has an unfortunate mate and well-documented history of changing his positions on key personal rights based upon which position in government he is being considered for. To us, this suggests a nominee whose values in public service are not grounded in principles, integrity and respect for individual rights, but in the politics and personal ideology of the moment.

Judge Alito has also demonstrated through his words and his actions that what he pledges during confirmation hearings does not necessarily reflect his actions once confirmed and behind the bench. During his 1990 confirmation hearings for the U.S. Court of Appeals for the Third Circuit. Alito promised to rescue himself from any cases involving Vanguard Group Inc. and Smith Barney Inc., companies which have handled some of his personal investments. Despite this promise, Alito ruled on a case involving Smith Barney in 1996 and Vanguard Group in 2002. When pressed about this major lapse, Alito responded that the 1990 promise applied only to his first few years on the bench. This is a clearly troubling example of either a major ethical lapse on the part of Judge Alito or yet another example of the nominee saying one thing to get the job, and then playing by different rules when he wins confirmation.

Of critical importance to Catholics for a Free Choice is the outright hostility to and the politicization of reproductive rights by this nominee. Unlike Chief Justice Roberts who was well known to be personally opposed to abortion before he was confirmed to the Court, but pledged to separate those views and respect the law of the land nominee Alito has made both his personal and legal views on this subject a hallmark of his career advancement.

Throughout his career, Judge Alito has shown that he believes—both personally and legally—that the right to choose, to make decisions about the most private and profound aspect of a woman's life, i.e. when and whether to have children, is not protected under the Constitution. There are several examples of this, including his 1985 application letter to then-Attorney General Edwin Meese III in which Alito wrote that he was, ''particularly proud'' of his personal contributions to legal views endorsed by the administration including ''that the Constitution does not protect a right to an abortion,'' and his integral role as an attorney in the Reagan Justice Department where he sought ''opportunity to advance the goals of overruling Roe v. Wade and, in the meantime, of mitigating its effects.

We were not convinced by his claim during his confirmation hearings that he has an open mind on the right to choose as embodied in Roe. Given his belief that the Constitution does not protect a right to an abortion and his personal view that abortion is morally untenable, it would be foolhardy to accept his claim of open mindedness.

During opening statements of the Alito hearings, Senator Edward Kennedy asked the defining questions for the entire hearings. He began, ''So the question before us in these hearings is this: Does Judge Alito's record hold true to the letter and the spirit of equal justice? Is he committed to the core values of our Constitution that are at the heart of our nation's progress? And can he truly be evenhanded and fair in his decisions?''

Through his words, his legal actions and his incontrovertible actions to date, the simple answer is no. Judge Alito cannot be counted on to issue rulings and to write opinions based upon sound legal philosophy and the proper consideration of past landmark rulings by the Court. Judge Alito cannot be counted on to protect the individual rights and freedoms of Americans who count on the federal judiciary to protect them from undue burdens imposed by ideologically driven governments and administration officials. And lastly, Judge Alito cannot be counted on to deliver justice in a manner that does not commingle previously stated strongly held personal and legal viewpoints that will be of serious detriment to members of our society.

I urge you to vote no on this nomination and by doing so to save the rights to privacy and the individual freedoms and choice to which all Americans—regardless of race, gender, religion or sexual orientation—are entitled.

Sincerely,

FRANCES KISSLING,
President.

NARAL PRO-CHOICE AMERICA,
January 11, 2006.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of NARAL Pro-Choice America, I am writing to express our opposition to the confirmation of Samuel Alito to the U.S. Supreme Court. During his career, Alito has consistently demonstrated hostility toward fundamental reproductive rights. If he is confirmed as an Associate Justice on the Supreme Court, women will likely lose critical protections that Roe v. Wade established.

At the Department of Justice in the 1980s, Alito actively worked to limit and ultimately overturn Roe v. Wade. As an assistant to the Solicitor General, he wrote a lengthy, detailed strategy memorandum in which he recommended that the Reagan administration intervene in a significant abortion-related case before the Supreme Court in order to advance the administration's anti-choice agenda. In the memo, Alito detailed his legal strategy to dismantle the protections of Roe v. Wade, while pushing toward the ultimate goal of overturning the landmark decision altogether. He supported even the most intrusive and unreasonable restrictions on reproductive freedom. Perhaps most disturbingly, he saw nothing wrong with the government forcing doctors to tell patients that their use of birth control may

cause abortion—an utterly inaccurate statement that defies scientific definitions endorsed by the medical community and the federal government.

Far from claims to the contrary, Alito's work at the Department of Justice was hardly that of a government functionary. According to a then-colleague in the Solicitor General's office, Alito sought out the opportunity to work on the administration's friend-of-the-court brief in the case, the colleague has explained that Alito was instrumental in crafting the brief, providing ''the research, the thinking, as well as the legal research and analysis.'' In application for another job in the Department of Justice, Alito later boasted that he was ''particularly proud'' of his contribution in the case ''in which the government has argued in the Supreme Court that. . .the Constitution does not protect a right to an abortion.'' He emphasized that this was a ''legal position'' in which he personally believed ''very strongly.''

It was my hope that, during his Senate hearings, Alito would explain further these writings and share with senators and the American public whether he still holds these legal opinions about a woman's right to choose. Unfortunately, thus far, he has failed to do so. Alito admitted that his 1985 statement accurately reflects his views at the time, but then flatly, repeatedly, refused to answer whether he continues to believe that ''the Constitution does not protect the right to an abortion.'' Especially given his willingness to state his legal views in other areas, we have no choice but to conclude that he in fact continues to hold this extremely troubling view of women's fundamental freedom, and that he will vote to dismantle and ultimately overturn Roe v. Wade should he be confirmed.

Again, turning back to Alito's career: After his appointment to U.S. Court of Appeals for the Third Circuit, Alito tried, in the single case before him affording an opportunity to shape the contours of reproductive-rights law, to allow states the greatest latitude for restricting women's's right to choose. As a member of the three-judge panel that heard Planned Parenthood of Southeastern Pennsylvania v. Casey before the case went to the Supreme Court, he wrote a dissent in which he voted to uphold every restriction on the right to choose at issue in the case. He argued in favor of a statute that would have forced married women to notify their husbands before seeking abortion care, even though the statute would endanger and coerce women who may fear abuse if forced to notify their husbands. Just a year later, Justice Sandra Day O'Connor cast the decisive vote to strike down the law. Justice O'Connor, along with her coauthors, wrote, ''Women do not lose their constitutionally protected liberty when they marry.''

Alito and his defenders sometimes cite other: abortion-related decisions he has issued as claimed evidence that his legal philosophy does not predispose him against a woman's right to choose. But the claim is baseless. Planned Parenthood of Central New Jersey v. Farmer was squarely controlled by a Supreme Court case that dealt with a virtually identical statute. Elizabeth Blackwell Health Center for Women v. Knoll was decided on administrative law grounds and tells us nothing about how Alito will rule on a woman's constitutional right to privacy and choice. Regrettably, pro-choice Americans can take no comfort in these decisions. At every meaningful opportunity Alito has sought to restrict our constitutional freedom of choice.

Because Samuel Alito's record is rife with hostility toward women's reproductive freedom, NARAL Pro-Choice America must oppose his confirmation to the Supreme Court. I urge you to vote ''no'' on this nomination.

Thank you for your consideration.

My best,

NANCY KEENAN,
President.

PLANNED PARENTHOOD, FEDERATION OF AMERICA, INC. AND ACTION FUND, INC.

Washington, DC, January 10, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate.

Senator PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the Planned Parenthood, the world's largest and most trusted voluntary reproductive health care provider, we urge you to oppose the nomination of Judge Samuel Alito to be Associate Justice of the United States Supreme Court. Planned Parenthood has a long-standing history of working to ensure the protection of reproductive rights, as well as working to advance the social, economic, and political rights of women. Because the United States Supreme Court wields the ultimate and unreviewable power to define the contours of women's rights, the right to privacy, reproductive freedoms, and other basic civil rights, Planned Parenthood believes that justices appointed to this Court must demonstrate an affirmative commitment to safeguarding these fundamental rights and freedoms.

We believe that not only has Samuel Alito, Judge for the Third Circuit Court of Appeals, failed to demonstrate a commitment to protecting these rights, he has revealed himself to be actively hostile toward them. Indeed, his record is one of open antagonism toward constitutional protections for reproductive rights and freedoms. Therefore, PPFA strongly opposes his nomination to the United States Supreme Court.

Alito has made clear on repeated occasions his hostility toward the right to choose. In 1985, while serving as an Assistant to the Solicitor General in the Department of Justice, Alito devised and promoted a legal strategy to bring about the eventual overruling of Roe v. Wade, and, in the meantime, to ''mitigate its effects.'' In an application he submitted to become a Deputy Assistant U.S. Attorney General, he wrote that he was ''particularly proud'' of his work on cases where the government argued that ''the Constitution does not protect a right to an abortion.''

His hostility continued as an appellate judge. Indeed, Judge Alito's judicial record reflects and advanced the very legal strategy he laid out years earlier to undermine the right to choose. Judge Alito was the lone dissenter in Planned Parenthood of Southeastern Pennsylvania v. Casey when the case was before the Third Circuit. Writing separately from his colleagues, Alito voted to uphold a state law that forced married women to notify their husbands prior to obtaining an abortion. On review, a majority of the Supreme Court—including Justice O'Connor—emphatically rejected Alito's interpretation as one based on outdated notions of women's role in marriage and society and held the husband notification provision unconstitutional.

Judge Alito's record demonstrates hostility to women's equality in general and reproductive rights specifically. Judge Alito has been nominated to replace Justice Sandra Day O'Connor, who has for over a decade played a crucial role in protecting these fundamental rights. If permitted to take Justice O'Connor's seat on the High Court, Judge Alito would have the power to advance his ''closely held'' personal view that Roe should be overturned, to work to unravel settled law and to influence adversely the course of the Constitution's basic protections for access to reproductive health care for more than a generation. Judge Alito's record suggests that, if confirmed, he would do just that.

On behalf of the millions of women and men who count on us to protect their reproductive health, we urge you to oppose the nomination of Judge Samuel Alito to Associate Justice and protect the right to choose.

Sincerely,

KAREN PEARL,
Interim President.

[Jan. 11, 2006]

RMC OPPOSES JUDGE ALITO FOR SUPREME COURT

The Republican Majority for Choice (RMC) regrettably announces its opposition to the nomination of Judge Samuel Alito to the Supreme Court.

RMC is an organization whose core mission is to protect the right to choose as outlined in Roe v. Wade and to represent the millions of Republicans who strongly support this right. After much research and analysis of Mr. Alito's own record and statements on this issue of individual freedom it is clear that he is an advocate for further restricting this right.

Judge Alito seems by all measures to be an experienced and capable jurist, but one who is out of step with mainstream Americans on the issue of abortion and maintaining the legal right to choose.

There is no crystal ball to predict how a Justice Alito would rule in future cases; therefore we have closely monitored the confirmation hearings with the hope that Judge Alito would offer some clarifying statements that would allay our concerns about his record. Instead, he side-stepped the issue of whether or not the right to privacy in the Constitution extends to reproductive choice. He avoided answering whether Roe was settled law and existing precedent required a health exception to statutes limiting a woman's access to abortion.

Without such assurances, we can only calculate his judicial philosophy on reproductive rights through the prism of his past actions and statements. As the replacement for the architect of the ''undue burden'' standard, the stakes are too high for RMC to support an appointee who outlined a blueprint to dismantle that very standard.

The reality is that Judge Alito would not have to vote to overrule Roe in order to be the architect of the denial of a woman's right to choose. He could give lip service to respecting Roe while upholding the numerous legislative efforts to chip away at reproductive freedom. The cumulative result is that Roe v. Wade and its progeny are rendered meaningless.

But Judge Alito's position on choice, however, is not the only disappointment surrounding his nomination. The selection of Judge Alito sends a very clear message from the Bush Administration and the Republican leadership in Congress that they are willing to continue steering the party into a marginalized corner that puts it at odds with most voters.

Sadly, we have come to a point at which average Republicans are beginning to abandon the GOP policy and candidates. We have seen this in the public outcry concerning President Bush's opposition to stem cell research; we saw it last November in the Virginia gubernatorial race, and we will see it again this year if Republican candidates continue to promote extremist views. We pledge to continue our mission to promote common

sense solutions to help lessen the incidence of abortion while ensuring that women and families maintain the safe and legal right to choose. We will no longer stand by while women's rights are used as a political soapbox for either party.

NATIONAL ABORTION FEDERATION,
Washington, DC, January 9, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Senator PATRICK LEAHY,
Ranking Minority Member, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the National Abortion Federation and our members, I am writing to express our opposition to the nomination of Judge Samuel A. Alito to the United States Supreme Court. If confirmed, Alito would shift the Court to the right and would be a vote to overturn Roe v. Wade, thereby jeopardizing women's lives and health.

Alito has made no secret of his opposition to abortion and a woman's constitutional right to privacy. Alito has argued that the ''Constitution does not protect abortion,'' and has touted his work to overturn Roe v. Wade as an early highlight of his career. Although some have tried to downplay these statements as evidence only of an advocate applying for a job, Alito was not merely expressing his personal views or advocating for a client. Instead, Alito was offering his own legal philosophy and legal opinion that the Constitution does not protect the right to choose.

Additionally, Alito has actively volunteered to work on cases arguing for a reversal of Roe v. Wade. For example, Alito volunteered to draft the legal strategy and framework for the government's brief in Thornburgh v. American College of Obstetricians and Gynecologists. In that case, the government's brief sought to mitigate the effects of Roe for the short term while launching a ''back-door assault'' on Roe for the long term. Alito's work on the brief was deemed ''instrumental'' by one of his colleagues and central to the drafting of the brief.

Judge Alito's hostility to Roe v. Wade is not only evident from his tenure as a government lawyer, but also from his work as a judge on the U.S. Court of Appeals for the Third Circuit. While serving on that court, Judge Alito supported restricting access to abortion and limiting the right to privacy in Planned Parenthood v. Casey. His opinion on spousal notification was ultimately rejected by the Supreme Court. In the 2000 case, Planned Parenthood of Central New Jersey v. Farmer, Alito refused to join the majority opinion in striking down a ban on abortion because it lacked an exception to protect women's health. Instead, he wrote his own opinion making clear he joined the decision only because he was required to follow the Supreme Court precedent of Stenberg v. Carhart, a case he no longer would be required to follow as a Supreme Court justice.

Rather than nominating a moderate, consensus candidate to the Supreme Court, President Bush chose to bow to the pressures and demands of his far-right base and nominate Samuel Alito, a jurist whose judicial philosophy is clearly out of the mainstream. The fact that the President chose such an extreme candidate to replace Justice O'Connor, who cast the swing vote in many reproductive rights cases, is unacceptable. For these reasons, the National Abortion Federation calls on the United States Senate to defeat the nomination of Samuel Alito to the United States Supreme Court.

Sincerely,

VICKI A. SAPORTA,
President and CEO.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I rise this morning in support of the nomination of Samuel Alito to the position of Associate Justice of the U.S. Supreme Court. I have had an opportunity over the past couple of days, and certainly in this past hour, sitting in the chair as you are, Mr. President, to listen to the discussions on both sides of the aisle about the nominee before us, Judge Alito. I have been listening very carefully to the comments that have been made and the discussion of certain issues. But when it comes to the issue of Judge Alito's credentials, I do not hear a debate about them. I do not hear a hue and cry that this is a man who does not have the credentials to serve in the U.S. Supreme Court. I believe, and I believe many of my colleagues would agree, that Judge Alito's credentials are exemplary. No President should be denied the prerogative of appointing a person who is as qualified as Judge Alito to the Court.

Judge Alito, after 3 very long days of responding to over 700 questions, emerged from these nomination hearings the same person who many of us who met with him understood him to be—quite simply, a seasoned jurist who has the intellect, the temperament, and the reverence for the law which is required for service on the Nation's highest Court. So it is not surprising that Judge Alito has received the American Bar Association's highest rating for any nominee. It was a unanimous ''well qualified'' rating.

For those who are not familiar with how the American Bar Association scores or does the rating of the judges, the criteria that are looked to are criteria such as the judicial qualifications—the resume, the credentials; whether or not the individuals have presented themselves or conducted themselves free from bias, operating in a fair and impartial manner as a fair and impartial decisionmaker; and also looking to judicial temperament.

The bar association, through its rating process, couldn't keep a scorecard as to whether the individual has ruled more times in favor of the big guy over the little guy. It is a process where truly judicial temperament, the qualification, the credentials, and the free-from-bias and fair decision-making, is the criteria that is looked at.

We have heard over the course of days and in the committee hearings about Samuel Alito's background. He has a very moving and a very American personal story. Born to immigrant parents, Judge Alito is probably the first one to say that the person he admires most is his father—his father who battled barriers of prejudice until he became both a teacher and the first director of the New Jersey Office of Legislative Services.

Judge Alito excelled at his studies. He received degrees from two Ivy League institutions. But I sense—I certainly picked this up in my meeting with him—that Judge Alito is not one to forget where he came from or forget his modest roots.

His testimony in the hearings was unassuming, unpretentious. He thoughtfully listened, and I believe sincerely responded, to the committee's questions, recognizing that there are certain limitations in terms of predicting outcomes or sticking to the issues that might be before the Court should he be confirmed.

By all accounts, including those of many Democrats who have served with him, Judge Alito scrupulously lets the facts and the law—the facts and the law, not the politics—dictate his decisions.

What struck me during the nomination process in the hearing was the testimony of so many of his colleagues—and not just Republican colleagues but a wide range of individuals, self-professed liberals, and conservatives—who all spoke very highly of and who acclaimed Judge Alito.

I would like to mention a couple of the comments that were made in the course of the testimony. The testimony of the Third Circuit Court's senior judge, Judge Aldisert, had this about Judge Alito:

> We who have heard his probing questions during oral arguments, of being privy to his wise insightful comments in our private conferences; we who have observed at firsthand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions; we—who are his colleagues—are convinced that he will also be a great Justice.

Here is another statement from one of his colleagues, from Judge Edward Becker, who serves on the Third Circuit, and who sat with Judge Alito on over 1,000 cases. He described the judge as:

> Brilliant . . . highly analytical, and meticulous and careful . . . The Sam Alito that I have sat with for fifteen years is not an ideologue. He is not a movement person. He is a real judge, deciding each case on the facts and the law, not on his personal views whatever they may be. He scrupulously adheres to precedent.

Still another colleague, Judge Leonard Garth, described him as ''an intellectually gifted and morally principled judge . . . he will always vote in accordance with the Constitution and laws as enacted by Congress.''

I believe these qualities are critical; for when Judge Alito is confirmed, as I believe he will be, he will have giant shoes to fill. The legacy that Justice Sandra Day O'Connor will leave is one of fair-mindedness, open-mindedness, and lack of an ideological agenda. Justice O'Connor once described her approach to cases in this way:

> It cannot be too often stated that the greatest threats our constitutional freedom comes in times of crisis . . . The only way

for judges to mediate these conflicting impulses is to do what they should do anyway: stay close to the record in each case that appears before them, and make their judgments based on that alone.

Based on my conversations with Judge Alito, his testimony before the committee, and the statements of so many of his colleagues who know his work best, I am confident that Judge Alito will have that open- and fair-mindedness. He told the Judiciary Committee:

Good judges are always open to the possibility of changing their minds . . . Result-oriented jurisprudence is never justified because it is not our job as judges to try to produce particular results.

In his opening statement, Judge Alito recalled the oath that he made at the time he was sworn as a judge of the court of appeals. He stated that he would ''administer justice equally, both to the rich and the poor'' and that he would ''carry out the laws and the Constitution'' to the best of his ability.

I believe Samuel Alito has done that for nearly two decades as a Federal judge. I will certainly look to him to do that in his new role—again, without agenda, without prejudgment, without bias.

I join many of my colleagues on the Senate floor this morning in supporting the nomination of Judge Samuel Alito to the U.S. Supreme Court.

I yield the floor.

Mr. HAGEL. Mr. President. I rise to announce my intention to vote in favor of Judge Samuel A. Alito's nomination to be an Associate Justice of the Supreme Court of the United States.

The Senate Judiciary Committee and others have thoroughly scrutinized his background and credentials. Hundreds of documents and memos he produced as a lawyer have been reviewed, along with hundreds of judicial opinions he authored or participated in during his 15 years as a Federal court of appeals judge. Those documents have revealed a strong intelligence and a deep respect for the law and the Constitution.

Earlier this month, the Judiciary Committee held several days of hearings on Judge Alito's nomination. Everything in those hearings reinforced my impressions of Judge Alito from my meeting with him in November. He was forthcoming during the committee members' questioning, candidly answering hundreds of questions regarding specific cases, the law, and his judicial philosophy. His judicious temperament during the hearings was apparent.

During the hearings, I was also impressed by the comments of seven current and former Third Circuit Court of Appeals judges. They testified in support of Judge Alito's nomination to the Supreme Court. This support by the individuals most familiar with Judge Alito's skills and judgments carries great weight.

Finally, last month, the American Bar Association unanimously rated Judge Samuel Alito as ''well qualified'' for his appointment as Associate Justice of the Supreme Court. This is the highest rating that can be given to a judicial nominee. Given Judge Alito's performance at the hearings and the strong support for his nomination, no one should be surprised by this top ABA rating.

I enthusiastically endorse and support Judge Alito's nomination. I believe he will bring a solid base of legal and judicial experience to the Court. The President has chosen wisely, and I encourage my Senate colleagues to join me in voting for this exceptional nominee.

Mr. VOINOVICH. Mr. President, I rise today to urge my colleagues to vote to confirm Judge Samuel A. Alito, Jr., as an Associate Justice of the U.S. Supreme Court.

Before I discuss my reasons for supporting Judge Alito, I would like to make a few remarks about the judicial confirmation process. Judge Alito is the second nominee to the Supreme Court since I was elected to the Senate. I have been pleased with how his nomination has been handled by both the White House and the Judiciary Committee.

I wish to compliment Senator SPECTER and Senator LEAHY for the excellent job they have done in handling the confirmation hearings for Judge Alito. The hearings were fair and orderly. These hearings gave the country an important opportunity to see what type of person Judge Alito is: one with a long history of service to his country and with a true love of the law. As was the case with the confirmation hearings for Chief Justice Roberts, the ''advice and consent'' process gave the country a valuable lesson in constitutional law, showing that each branch of Government plays a valuable role in our democracy.

The President has nominated another fine candidate to the Supreme Court. History will look back on the nomination of Judge Alito, combined with President Bush's nomination of Chief Justice Roberts, as one of the most important legacies of the Bush administration.

A Supreme Court nominee must have two qualities. First, a nominee must have an exceptional intellect. Second, a nominee must be committed to the rule of law. I am very pleased to say that based on everything I have seen and heard, Judge Alito has demonstrated both of these qualities.

It is difficult to see how Judge Alito could have more impressive professional credentials. From his academic record to his almost 30 years in government service, including 15 years on the U.S. Court of Appeals for the Third Circuit, Judge Alito has accumulated a remarkable record of achievement.

As my colleagues have previously noted, Judge Alito graduated from Princeton University, was elected to Phi Beta Kappa, and was selected as a Scholar of the Woodrow Wilson School of Public and International Affairs. Judge Alito then attended Yale Law School where he served as an editor of the Yale Law Journal.

Since his start as a young lawyer, Judge Alito has shown a commitment to public service in the Jeffersonian ideal of the citizen-lawyer. Judge Alito served as a law clerk to Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit. After completing his clerkship, Judge Alito began his legal career as an Assistant U.S. Attorney briefing and arguing cases before the Third Circuit. I hope that Judge Alito's commitment to public service is noted by law students and young lawyers around the country as they think about their career choices. Judge Alito's experience stands as a model of public service and has led him to the opportunity to obtain one of the highest honors a lawyer can hope to achieve, a chance to serve his country as an Associate Justice of the U.S. Supreme Court.

In 1987, Judge Alito was nominated and approved by unanimous consent as the U.S. attorney for the District of New Jersey. As U.S. attorney, Judge Alito prosecuted a wide variety of cases, including those involving white collar and environmental crimes, drug trafficking, organized crime, and violations of civil rights. Judge Alito's extensive experience as a Federal prosecutor will add a unique perspective to the Court's decisionmaking process.

In 1990, Judge Alito was unanimously confirmed by the Senate to serve on the U.S. Court of Appeals for the Third Circuit. Throughout his 15 years as a judge on the Third Circuit, Judge Alito has developed a reputation as a methodical, gracious, even-tempered jurist with a history of fairness for all who appear before him. Judge Alito is also known for producing well-written and well-reasoned opinions. His 15 years on the Third Circuit give Judge Alito a unique and seasoned perspective on, and appreciation for, the courts.

His impressive educational and professional background makes Judge Alito well prepared to be an Associate Justice of the Supreme Court. As he displayed during his confirmation hearings, he has an encyclopedic knowledge of the Supreme Court and of constitutional law. Yet he also has diverse, real-world experience in government and in how law interacts with the actual day-to-day operation of government. Judge Alito has the ideal balance of academic and practical experience.

Given his professional achievements, it is not surprising that the American Bar Association has given Judge Alito its highest rating. Mr. Stephen L. Tober, the chairman of the American Bar Association's Standing Committee on the Federal Judiciary, noted in his statement, the ABA unanimously concluded that Judge Alito is ''well qualified'' to serve as Associate Justice on the U.S. Supreme Court. The ABA noted that ''[Judge Alito's] integrity,

professional competence, and judicial temperament are indeed found to be of the highest standing. Judge Alito is an individual who, we believe, sees majesty in the law, respects it, and remains a dedicated student of it to this day.''

Judge Alito has shown a commitment to the rule of law. Now, no two people will agree on how to interpret every provision of the Constitution or of every statute. Nevertheless, Judge Alito's statement that ''there is nothing that is more important for our republic than the rule of law'' is an important testament to his commitment to ensuring that the rule of law, and not individual preferences of Justices, remains supreme. It is essential that any nominee displays a conscious commitment to deciding cases based on the law, rather than on his or her own personal views.

During Judge Alito's confirmation hearings, I was struck by how dedicated he is to the law and to correctly applying the law as a judge. As Judge Alito noted, ''The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and in interpreting the law . . . in accordance with what it really means and enforcing the law even if that's unpopular.'' He went on to state, ''A judge can't have any agenda. A judge can't have any preferred outcome in any particular case. And a judge certainly doesn't have a client. The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.''

I observed Judge Alito's demeanor and conduct during this confirmation process, as he refused to abandon his judicial independence for the sake of political expediency. As Judge Alito noted, ''We shouldn't decide those questions, even in our own minds, without going through the whole process. If we announce—if a judge or a judicial nominee announced before even reading the briefs or getting the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would lose all their respect for the judicial system, and with justification, because that is not the way in which members of the judiciary are supposed to go about the work of deciding cases.''

Accordingly, I have every confidence that parties who appear before Judge Alito will encounter a judge who is committed to viewing each case without bias and to reaching a decision that is dictated by the rule of law alone.

Finally, I want to offer some personal observations about Judge Alito. Too often we view executive and judicial nominees through political or ideological glasses and not as human beings. Nominees quickly get labeled as being a ''Republican nominee'' or a ''Democratic Nominee'' or as belonging to a particular school of thought or being a follower of a particular thinker or politician. This is unfortunate as each nominee's character gets overlooked and we fail to see this important aspect of each nominee. It is, however, a nominee's character that can have the biggest impact on his or her work.

In Judge Alito, I believe the Senate has before it not only a nominee who has the capability to be a great Associate Justice but also a nominee who is simply a wonderful person.

I share Judge Alito's appreciation of the great and wonderful opportunities for all Americans. I was moved by Judge Alito's sentiments about his father, as he recalled how a ''small good deed'' from a local Trenton area person allowed his father the chance to attend college and how this act of kindness eventually led to Judge Alito's presence before the U.S. Senate. I can relate to the story of Judge Alito's father because my own father was strongly influenced by his high school principal and a history teacher to stay in school rather than take a laborer's job. With the strong encouragement from these two individuals, my father completed high school and attended Carnegie Tech on a Kroger's Scholarship. Such stories are familiar to many descendants of immigrants and they show that the American Dream is still alive and well.

During my meeting with Judge Alito, he displayed a gracious manner and humble attitude. He is clearly very smart and engaging, and it was a pleasure to hear him explain his view of the Supreme Court and the rule of law. But he is also a very openminded person who listens to others with sincerity and a willingness to hear their views. For such a brilliant and successful person, I did not detect a hint of arrogance. He is a dedicated family man with a good sense of humor whom I believe all Americans will be able to respect and admire.

I have also been pleased to hear that my impressions of Judge Alito have been echoed by so many others during the hearings. I point particularly to the testimony of Professor Nora Demleitner, a self-professed ''left-leaning Democrat,'' who served as a law clerk with Judge Alito after graduating from Yale Law School. Professor Demleitner described Judge Alito as ''a man of great integrity, decency and character.'' Professor Demleitner also noted that Judge Alito is one of her role models and that he has one of the most brilliant legal minds of our generation.

In short, Judge Alito displays the openmindedness, humility and commitment to serving the public interest that should serve as the paradigm of judicial temperament for members of our highest Court.

In reviewing Judge Alito's academic and professional record, his firm commitment to the rule of law, and his strong character, it is clear that Judge Alito is eminently qualified to serve on the Supreme Court. It would be truly unfortunate if we allow this nomination to fall victim to the partisanship that has been growing in the Senate.

I, therefore, urge my colleagues to support the nomination of Judge Alito to be the next Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, as a member of the majority and sitting as the President of the Senate yesterday, I was able to hear several hours of debate on the nomination of Judge Sam Alito, Jr.

I heard time and again dire predictions that Judge Alito is going to give the executive branch complete authority over our Government, including himself on the Supreme Court. Those who oppose him never mentioned one single case where Judge Alito ruled in favor of the President or expanded Executive power—not once. They think if they just keep repeating the same far-left smear—one dreamt up by far-left groups such as Ralph Neas' People for the American Way and Nan Aron's Alliance for Justice—the American people will fall for it.

It is disturbing to me that those who oppose Sam Alito are taking their cues from people such as Nan Aron and the Alliance for Justice who, even before the hearings began, before we had any hearings whatsoever, bragged, ''You name it, we'll do it,'' to sink Judge Alito.

I think the American people and their elected representatives would rather base their views on the lawyers and judges from across the political spectrum who had actually known Judge Alito.

Former Third Circuit Judge Gibbons explained his faith in Judge Alito's ability to fairly judge cases in which the government is asserting its executive power. He said: ''The committee members should not think for a moment that I support Judge Alito's nomination because I am a dedicated defender of that administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere, and we are certainly chagrined at the position that is being taken by the administration with respect to those detainees. I am confident, however, that as an able legal scholar and a fair-minded justice, he will give the arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration without any predisposition in favor of the position of the executive branch.''

Defense lawyers who litigated against Judge Alito confirm that when Judge Alito was part of the executive branch, he had a modest view of its power.

The New York Times reported that one defense attorney, Dan Ruhnke,

said that Judge Alito lacked the ''cop mentality'' of many career prosecutors and was ''never a cheerleader for law enforcement.''

Another defense attorney, Drew Barry, said that Judge Alito was ''not a bloodthirsty United States attorney,'' and that he was ''a vigorous prosecutor who went after a wide variety of bad guys, but his reputation was not someone who would ask for the heaviest sentences.''

As a member of the Judiciary Committee and in my time in the Senate, this is a sorrowful time for me.

The politics of personal destruction were all too evident in the Senate hearing and continue on the floor of this body.

The ''guilt by association'' standard of those who oppose Sam Alito would disqualify anybody who would be nominated no matter who the President is.

The idea that politics guides the Supreme Court nominations process in the Senate is new. The idea of the ''results only in my eyes qualification'' proves that those who challenge the integrity of Sam Alito require standards that they themselves could never live up to.

To be critical is fair to the process of confirmation, but destruction and absolute mischaracterization of one's record the way we have seen reaffirms the lack of fairness and conscience of those who carry out such tactics.

As a member of the Judiciary Committee, I spent 4 days listening, questioning, and watching—not only Sam Alito but all those who came to testify for him and those who came to testify against him.

Here is what I observed—not as a lawyer, not as a Senator, but as a physician trained in the art of observation and the art of listening.

Sam Alito is a man of high moral character. You do not hear the direct words challenging that, but you hear everything indirectly.

He is also a man of intellectual brilliance, impressing everyone who comes in contact with him.

He is a man of dedication to the law, to equal justice under the law.

He is a man who has shown dedicated commitment to the things that are important in our country.

He is a man who is completely sold out to one thing, and one thing only: His record and his life has demonstrated equal justice under the law.

What I also observed was a great diversity of political background of those who support him, those who know him, those who have worked with him for the last 15 years, regardless of their political views, either liberal or conservative, regardless of their gender or their color, regardless of their view on abortion.

Those who know him uniformly support him as a great jurist, a man of integrity and conscience, and one who is completely sold out to the idea that everyone in this country has equality under the law.

Those who know him, those who testified, of all stripes, of all political persuasions, would and are challenging what we have been hearing on the floor by those who oppose him—the mischaracterization of his rulings, the mischaracterization of his beliefs, the mischaracterization of his actions.

What I also observed, which concerns me even more, was that those who don't know him but have a political agenda to keep the Court activist and beyond its constitutional bounds oppose him. They do not know him. But what they do know is judicial activism, making law where none exits, which they put before a judiciary committed to equal justice under the law.

That is why he is being opposed. Their greatest fear is the Court will return to a place where the Constitution, the statutes, and treaties are interpreted, but personal political agendas are left at the door.

They fear the battles lost in the legislatures will no longer be carried out by judicial fiat. The former Soviet Union is the great example. They had a constitution but there was not equal justice under that constitution.

During Chief Justice Roberts' opening statement to the Judiciary Committee, he referenced the fact that the most powerful entity in the world, the U.S. Government, deferred to the rule of law when the Court was convinced that a private client was right on the law and the Government was not. He referenced President Reagan's speeches about the Soviet Constitution and how it purported to grant wonderful rights of all sorts to people, but those rights were empty promises because that system did not have an independent judiciary to uphold the rule of law and enforce those rights. Roberts concluded:

> We do, because of the wisdom of our founders and the sacrifices of our heroes over the generations to make their vision a reality.

Under our law, the mighty can be defeated by the meager.

We heard yesterday the philosophy of those who oppose this great jurist. Let me quote it exactly because it is very dangerous. This quote is from the Senator from Rhode Island:

> . . . in truth the Supreme Court is the Constitution.

If that is so, we are no longer a nation of laws but rather a nation of judges. That is not America. That is not freedom. That creates nine kings, the exact opposite of what our Founders intended. That is the very thing the American people rejected in the election of 2004. It was about judges.

Finally, let's talk about the real issue that will cause most people to oppose him. They fear he may truly believe in liberty for all. That is their fear. Let me explain. Senator KENNEDY had a very eloquent quote during the hearing. I would like to repeat it:

> America is noblest when it is just to all of its citizens in equal measure. America is freest when the rights and liberties of all are respected. America is strongest when we can all share fairly in its prosperity. And we need a court that will hold us true to these guiding principles today and into the future.

But he did not mean ''all,'' he meant all those except the truly innocent and truly weak, the preborn child. Behind me are two pictures, one of a 26-week-old preterm infant in a neonatal IC unit, smaller than your hand; and the other picture is of a 26-week preborn child's face seen by ultrasound.

The Declaration of Independence states:

> We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness . . .

So, America, ask yourself, how did we get to the point that the accidental killing of a 26-week unborn infant is a felony but taking of that same life by abortionists is legal? It is schizophrenic. Why should your liberty be based on your location inside the womb or out?

The Court's jurisprudence on liberty and privacy interests is fundamentally flawed. They fear a correction in that flaw.

To quote Robbie George of Princeton University:

> On what constitutional basis can we say that abortion is protected by ''due process'' but a right to assisted suicide . . . is not? Why is sodomy protected and prostitution unprotected? Why does the right to privacy not extend to polygamy or the use of recreational drugs?

That is the kind of justice you have when you are a nation of judges and not law. Hopefully, someone of Sam Alito's character can steer the ship back to liberty for all, including the weakest and most innocent of all. Sam Alito was sold out to this document, the U.S. Constitution. He sold out to equal justice under the law. We need to speak truthfully about the opposition to him. We need to speak truthfully about the problems that have been created by an activist Court, and about the opposition to bring back and steer the ship to where the judges make judgment based on the Constitution, laws, and the treaties of this country, not their political philosophies.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TALENT. 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. TALENT. Mr. President, it is a privilege for me to spend a few minutes visiting with the Senate about Judge Alito. Based on my study of his record and my discussions with him, I believe, if confirmed, he will turn out to be one of our best Supreme Court Justices.

I do not know that anybody on the floor has contested his professional qualifications. He is certainly exceptionally qualified, at least based on

that, to serve on the Nation's highest Court. He has the experience, the temperament, and integrity that America expects in a Supreme Court Justice.

Judge Alito has more prior judicial experience than any Supreme Court nominee in more than 70 years. He has served for 15 years as a judge on the Court of Appeals for the Third Circuit. He participated in the decisions of more than 1,500 Federal appeals. He wrote more than 350 opinions. I think his clerks probably have to work pretty hard, he has been so busy. This is why I wonder why some people say they do not know enough about what he might do. I do not know how any judge, how any candidate could qualify on that basis, if Judge Alito does not.

He served as the top Federal prosecutor in one of the Nation's largest Federal districts. He was an appellate advocate for the United States in the Office of Solicitor General. He was a Deputy Assistant Attorney General in the Office of Legal Counsel. He received his bachelor's degree from Princeton. I would not hold that against him. He was elected Phi Beta Kappa at the time. He went to Yale Law School, where he served as an editor on the Yale Law Journal. That is quite a record.

During last week's hearing, Judge Alito answered over 700 questions for more than 18 hours. He was thoughtful and thorough in answering the tough questions. He was humble throughout the process, which is something I personally look for when considering anybody who is seeking a life appointment and particularly a judicial appointment. I think a big dose of ''humble'' is important if you want to be a judge because you are in the position, as a judge, to be rude to people and they cannot be rude back to you. I think you ought to have a temperament where you are not tempted to do that.

What does the record and the process reveal about this nominee? Simply that he is one of the finest nominees ever to come before the Senate. We learned a lot about him as a person during this process as well. He is certainly brilliant and hard working. He went before the Judiciary Committee without a note. He is a man of integrity. He is honest. He is devoted to his family. These are all qualities we want in the men and women who serve our Nation on the high Court. These are the kinds of qualities that will move America forward and move the judicial branch forward.

He has proven beyond any doubt that he has the qualifications, the temperament, the knowledge, and the understanding of the Constitution to serve on the United States Supreme Court. I do not know how you can prove it, if he has not proven it. I would imagine even those who are going to oppose his nomination for other reasons would agree he has the right kind of temperament and qualifications. He wants to be on the Court because he loves the law. And he is a judge because he wants to serve the United States. Those are the right reasons to want to be on the Supreme Court.

I made a point on other occasions about judicial nominations that I think is relevant here. It is, in a way, misleading to talk about a judicial nominee being in or out of the mainstream of American jurisprudence because the truth is there is more than one mainstream. Lawyers are divided over which jurisprudential theory ought to guide judges in interpreting the statutes and in interpreting the Constitution. Just as we in the Senate disagree, legitimately, about political philosophy, lawyers also disagree about jurisprudential philosophy.

Oftentimes, there is not any one completely correct answer when you are interpreting a vague provision of the Constitution, but that does not mean there are no incorrect answers. Because reasonable people looking at the history and the text of the document might disagree as to what is exactly the right answer in a given case does not mean there are no wrong answers. And a wrong answer, as Judge Alito said so clearly in his introductory remarks before the Judiciary Committee and throughout his testimony, is an answer that does not respect the rule of law.

Here is what Judge Alito said:

> The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

A wrong answer is one that is based on an idea of the judicial role that allows the judge to do whatever he or she thinks they would want to do if they were in control of the policy involved in an issue. Whatever their theory of interpreting the Constitution is, they should be consistent in applying it. Judges should not work for a particular outcome or agenda.

Here is what Judge Alito said on this issue:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have.

As Chief Justice Roberts said when he was testifying before the Judiciary Committee: Judges are umpires. They are not the rule-makers. The people are the rulemakers, through their representatives, in their laws and in their Constitution.

In another statement Judge Alito said:

> I don't think a judge should be keeping a scorecard about how many times the judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us. But I think that if anybody . . . looks at the cases that I have voted on in any of the categories of cases that have been cited, they will see that there are decisions on both sides.

He went on to say:

> In every type of employment discrimination case, for example, there are decisions on both sides.

Because of this respect for the rule of law, the individuals who know Judge Alito best—and that includes Republicans and Democrats, his colleagues on the bar and on the bench—have overwhelmingly supported his elevation to the Supreme Court. I think it is important, when you look at nominees, to make certain they have support from people from all parts of the political spectrum and all parts of the jurisprudential spectrum.

Let me quote a couple people.

Nora Demleitner is the vice dean for academic affairs and professor of law at Hofstra University School of Law. And to this point I have not cited anybody from Missouri supporting Judge Alito, but I am going to vote for him anyway. She said:

> Now, since the very early days of my clerkship, I must admit that Judge Alito has really become my role model. I do think he is one of the most brilliant legal minds of our generation, or of his generation, and he is a man of great decency, integrity and character. And I say all of this as what I would consider to be a left-leaning Democrat; a woman, obviously; a member of the ACLU; and an immigrant.

This is Dean Demleitner speaking.

In addition, Judge Aldisert, who has served with Judge Alito on the Third Circuit, had the following to say:

> In May 1960, I campaigned with John F. Kennedy in the critical Presidential primaries of West Virginia. The next year, I ran for judge . . . and I was on the Democratic ticket, and I served eight years as a State trial judge. As the Chairman indicated, Senator Joseph Clark of Pennsylvania was my chief sponsor when President Lyndon Johnson nominated me to the Court of Appeals, and Senator Robert F. Kennedy from New York was one of my key supporters. Now, why do I say this? I make this as a point that political loyalties become irrelevant when I became a judge. The same has been true in the case of Judge Alito, who served honorably in two Republican administrations before he was appointed to our court. Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

I could go on with other quotes. I am not going to. I suppose everything really has been said about Judge Alito in the Senate, although not everybody said it, so the debate is going to go on for a while. But I do think the first and most basic right we all have as political actors—in the sense that every person who lives in this country shares in running the Government—the first and most basic right we have is the right to govern ourselves through the processes set up in our Constitution. It is not out of a desire to avoid difficult decisions but out of a respect for that right that Judge Alito talked about the rule of law.

I want to say this. Whether your views about social policy are on the right side of the political spectrum or whether they are on the left side of the political spectrum, I believe we can all rest easily in leaving the development of our culture and our society to the wisdom and the decency of the American people. The center in this country

has held in the past, and it will hold in the future.

As President Franklin Roosevelt said: This Nation will endure as it has endured, and not because of the courts, not because of the Congress, not because of the President but because of the people. They will move us in an orderly and decent direction, as they have for 200 years. We do not need to be governed by guardians or dictators, whether they are in the form of judges or anybody else. That is what Judge Alito meant when he was talking about the rule of law.

I have said from the beginning of this debate—and I withheld my decision about the judge until I had a chance to meet him and watch the hearings and get a feel for who he is—he deserved a fair and respectful confirmation process, ending in a timely up-or-down vote on the Senate floor. I hope he will receive that. I believe, if confirmed, he will respect the Constitution, he will apply a consistent jurisprudence, without imposing his personal views on the law. For that reason, I am pleased to vote to confirm Judge Alito. I am hopeful the full Senate will give this highly qualified nominee a fair up-or-down vote and then send him to service on the U.S. Supreme Court.

I thank the Chair and yield back whatever remains of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. VITTER. 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. VITTER. Mr. President, I rise in support of the nomination of Judge Samuel A. Alito to be an Associate Justice of the U.S. Supreme Court. I am supporting Judge Alito's nomination because he is, No. 1, superbly qualified to sit on the Supreme Court, and, No. 2, and as important, he possesses the right view of the role of a judge, the right judicial philosophy, which I think is essential in terms of taking a seat on that high Court.

The appointments clause, article II, section 2, clause 2, of the Constitution gives the President the plenary power to nominate certain high-level officials and, as important, bestows on the Senate a crucial role, a crucial constitutional role, of advice and consent.

Like, I hope, every Member of this body, I take that constitutional duty of advice and consent very seriously. I owe it as high as any duty to the Louisiana people I represent. In line with that, I will neither provide a rubberstamp of approval for all of President Bush's nominees nor will I automatically disapprove any Democratic President's nominees for the Supreme Court or any other Federal court.

I think I have shown my seriousness of purpose in that regard in my short time in the Senate. I have studied the qualifications and legal writings of all nominees to see whether they possess a consistent and well-grounded judicial philosophy and have the right credentials and qualifications.

I was very upfront about being mindful of that responsibility when Harriet Miers was nominated. I looked very carefully at her qualifications and her judicial philosophy and, quite frankly, I expressed some real reservations about that.

That is why, after Judge Alito was nominated, I focused on those qualifications and that judicial philosophy just as hard. I met him personally. I watched his confirmation hearings. I read his record. That is the process I used to reach this conclusion, that, No. 1, he is eminently qualified in terms of credentials and background, and, No. 2, he has the right judicial philosophy, the right view of the role of a judge in our society.

Let's talk, first, about those basic legal qualifications. Again, Judge Alito is superbly qualified. His academic achievements and his distinguished career make that clear.

He has a bachelor's degree from Princeton University and a J.D. from Yale Law School. After graduating from law school, Judge Alito began his career in public service as a clerk for Judge Leonard Garth on the Third Circuit Court of Appeals and is now a colleague of his on that court. He served as an assistant U.S. attorney, Assistant to the U.S. Solicitor General, Deputy Assistant Attorney General, and U.S. attorney for the District of New Jersey. He has argued specifically before the U.S. Supreme Court 12 cases, at least two dozen court of appeals cases; direct, relevant and impressive experience in terms of that sort of high-level litigation.

In 1990, President George H.W. Bush nominated Judge Alito for the Third Circuit Court of Appeals, and he was confirmed by unanimous consent in this body because of his strong credentials and clear and overwhelming qualifications. Of course, today those qualifications are even greater because he has served as a judge on that circuit court for the past 15 years.

After being nominated to the U.S. Supreme Court, the ABA rated Judge Alito as ''well qualified.'' That is the highest rating possible. Everyone recognizes the ABA is not some conservative political group by any stretch of the imagination. If its membership has a slant, it is probably to the left. That is the gold standard, that rating of judicial qualifications and credentials. Again, Judge Alito received the highest rating.

Then he had his confirmation hearings. Despite some ugly questioning, frankly, and some smear tactics, in my opinion, he had an impressive performance. He demonstrated clear humility and indepth understanding of legal matters. And perhaps most impressive in terms of what he faced from the minority side, he maintained his composure in an unfortunately partisan atmosphere.

As I said at the beginning, those credentials and qualifications, that legal background is the first important matter I look to. But it is not the only matter. The second equally important matter I look to is a person's judicial philosophy. Do they understand the correct role of a judge in society? I have thought a lot about that regarding all nominees who have come before this body. I thought Judge Roberts expressed that role precisely right when he talked about being an umpire and not a pitcher or a batter. Judge Alito has that same view of the appropriate role of a judge.

Throughout the debate over judicial nominees, this notion of whether a nominee possesses the right judicial philosophy has been asked a lot. Some may ask what this term means and why it is important. Again, it is important because it goes to the heart of the role of a judge and how this democracy works. I believe what it means is a commitment to the rule of law, a commitment to the Constitution as written, and a commitment not to let one's personal political views or personal political leanings or prejudices enter into any of those important decisions on the Court. It requires a judge to be openminded, to analyze the law carefully, to analyze the facts of each case based on the Constitution and the law. It requires a judge not to do what can be tempting—intoxicating in terms of the power a judge can hold—not to make new law based on personal opinion, not to play legislator but to follow the law as enacted by the Congress or the State legislature.

Judge Alito has demonstrated that right judicial philosophy. He has demonstrated his unwillingness to change the law to fit his personal beliefs. He stated clearly:

> There is nothing that is more important for our Republic than the rule of law. No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

What is vital and embedded in the concept of the rule of law is the application of the law as written, not judges becoming kings or legislators and imposing their views and legislating from the bench. I believe this is the second and crucial matter we must look to in the confirmation of judges, particularly those who would be Justices of the U.S. Supreme Court. I have great confidence in Judge Alito's correct understanding of the role of a judge.

It has troubled me that throughout this confirmation process, some of my colleagues and many outside interest groups, many members of the press, have demonstrated a different view of the role of a judge. One way they have demonstrated that is by treating Judge Alito more akin to a candidate for political office than a nominee for the highest Court. They have talked about judges taking sides, being on this side

versus that side, taking the side of labor versus management, taking the side of environmentalists versus business groups, taking the side of the little guy versus the big guy. In talking in those terms, many Members of this body and many liberal interest groups and many members of the press have demonstrated a completely different view of the role of a judge which is inappropriate. Other than the fact that many of their characterizations of Judge Alito in these terms are false—for instance, he has decided in favor of employment discrimination plaintiffs in 22 percent of the cases, whereas the national average is 13 percent—it troubles me that the public is being led to believe that we should think of judges as legislators, that it should be a results-oriented discussion.

This goes to the heart of the confirmation process. The role of the judiciary is to interpret the law and to apply it to the facts of each case. It is not to elect legislators, politicians to go on the bench and vote certain interests or certain political philosophies.

I believe Judge Alito has the correct view, the opposite view, quite frankly, as has been demonstrated by some Members of this body and certainly by the liberal press and liberal interest groups. In his confirmation hearing, the judge made this clear. He described his disagreement with keeping a scorecard of how many times a judge rules for or against a particular party. He stated:

> I don't think a judge should be keeping a scorecard about how many times that judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us.

I wish to touch on one other specific type of case because I believe Judge Alito has been smeared in this category, and that is with regard to his strong record and experience in the area of civil rights. I have been disappointed that some of my Democratic colleagues have chosen to paint Judge Alito as having anything less than the stellar record on civil rights that he has. In doing so, they don't really cite any evidence for this accusation. They think if they just keep repeating this smear, one dreamt up by far-left groups such as Ralph Neas' People for the American Way and the Alliance for Justice, if they keep repeating the lie over and over, the American people will fall for it. The American people are smarter than that. The American people are listening to some distinguished people, including distinguished African Americans, with whom Judge Alito has served.

To cite a couple of examples, the late Judge Leon Higginbotham, the first African American to serve on the Federal District Court for the Eastern District of Pennsylvania and whom the L.A. Times called ''a legendary liberal and scholar of U.S. racial history,'' had said of Judge Alito:

> Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda. He is not an ideologue.

Former Third Circuit Judge Timothy K. Lewis, an African American, testified in support of Judge Alito. He joked that it was no coincidence he was sitting on ''the far left'' of the panel. He said:

> I was then—as I am now—a committed and active Democrat. I learned in my year with Judge Alito that his approach to judging is not about personal ideology or ambition. He is not result oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference.

And Judge Lewis emphasized:

> If I sensed that Sam Alito during the time that I served with him or since then was hostile to civil rights as a justice of the United States Supreme Court, I absolutely would not be here today.

I hope the smear tactics will end, particularly on an issue as important and sensitive as civil rights. I am confident the American people are hearing from those sound voices, including African-American voices, who have served directly with Judge Alito, many of them are politically liberal. Many of them are Democrats who say Judge Alito is fair. He is impartial. He is not results oriented.

That returns me to the central factor I have focused on in this process: Does Judge Alito have the right view of the role of a judge? Does he have the right judicial philosophy? Is he committed to the Constitution as written, to the rule of law as it is written not by him but by legislatures and the Congress? Is he committed to that and is he committed to not legislating from the bench? I believe his record and testimony and all of the evidence supports a firm conclusion that he is committed to that proper role of a judge. For that reason, I am proud to be supporting the nomination of Judge Samuel Alito. I am confident he will serve as a very distinguished member of the Supreme Court.

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

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

The legislative clerk proceeded to call the roll.

Mr. INOUYE. 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. INOUYE. Mr. President, at this moment in our history, our country faces a spectrum of challenges broader than any we have ever faced before, both at home and abroad. However great the storm we face today, I am confident that our Nation, founded on the architecture of our Constitution, will prevail. The checks and balances established among the Congress, the President, and the courts are the true arsenal of freedom. In the end, these checks and balances in the hands of the American people will prove greater than any assault on the precious freedoms and liberties our forefathers fought to establish.

For the officials of our Federal Government, the protection of the institutions of our American democracy is a duty that both transcends and supersedes all others, especially for members of the Supreme Court who must interpret the Constitution of our Nation as a living foundation for the freedom and liberty of our people.

From confiding the power of the Federal Government in three co-equal but separate branches of government, to guaranteeing the civil liberties that bless our Nation, the Constitution enshrines principles that are as relevant today as they were when it was first penned centuries ago.

These cherished principles are the backbone of our Nation, and they comprise the final yardstick for taking the mettle of any man or woman who would aspire to our Nation's highest Court. I have studied the full record of President Bush's nominee, Samuel A. Alito, Jr., and carefully measured it against the sworn duties of the Supreme Court. Regretfully, I conclude that Judge Alito falls short.

From his writings on the Third Circuit Court of Appeals to his public speeches, I discern a man who would fundamentally rewrite the interpretation of our Constitution and leave in doubt the legacy of freedom it was meant to preserve.

For many, this will mean his record on civil rights, reproductive choice, or the death penalty. Let there be no mistake, I share these concerns, and I have spent my life fighting for these rights.

For me, however, the greatest area of doubt lies in Judge Alito's consistent preference for expanding the power of the President by relaxing the checks and balances the Constitution places on the executive branch of Government.

In 1989 and 2000, Judge Alito gave speeches to the Federalist Society in which he embraced an obscure legal doctrine called the ''unitary executive theory.'' This so-called ''unitary executive theory'' places the President almost above the law.

Under this theory, independent counsel appointed to investigate Presidential misdeeds would be unconstitutional. Similarly, the theory holds that enforcement agencies independent of the President, such as the Securities Exchange Commission, the Federal Communications Commission, and the National Labor Relations Board, would also be unconstitutional because they are not under the President's control.

The theory also justifies a President who would overstep Acts of Congress and the Constitution when acting as Commander in Chief.

How Judge Alito might actually apply this ''unitary executive theory'' on the Supreme Court is, of course, an open question.

Separated by a span of 11 years, however, his own speeches in 1989 and 2000

suggest that Judge Alito's views on the powers of the President are long-held and strong.

A memo he generated early in his career with the Reagan administration amplifies this impression. In that memo, Judge Alito wrote on a President's authority to modify an act of Congress by making a ''*signing statement*''—a written document issued by a President on signing an act of Congress into law.

In the memo, Judge Alito wrote, that ''the President's understanding of the bill should be just as important as that of Congress.'' This statement suggests that Judge Alito believes the President has a role in the legislative process not contemplated under the Constitution's exclusive grant of legislative power to the Congress.

Judge Alito's writings and speeches show how he personally believes that the Congress should have less power to check and balance the President.

His judicial opinions, issued in his official capacity as a judge on the Third Circuit, demonstrate a parallel conviction that the Congress should have less authority in general.

In United States v. Rybar, Judge Alito wrote a minority opinion asserting that the Congress had no authority to pass laws to regulate machine guns. The majority opinion criticized Judge Alito's narrow and restrictive view of Congressional authority.

In Chittister v. Department of Community and Economic Development, Judge Alito ruled that the Congress had no authority to allow State employees to sue for damages under the Family Medical Leave Act. Judge Alito's restrictive view on Congress's authority was later invalidated by the Supreme Court when it considered the same issue in a later case.

Our Supreme Court shoulders the solemn task of discovering how the Constitution applies to the unique problems of the day. Through dialog, study, and diligent inquiry, the Justices bring to bear the collected experiences of the Nation, and forge justice from the Constitution by tempering its words with human compassion, wisdom, and integrity.

Judge Alito's record suggests that he holds his personal beliefs on expanding the President's power so strongly that they might come before the call of justice. Accordingly, I have concluded that I must oppose his nomination.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Asian American Justice Center, dated January 10, 2006, and a letter from the Japanese American Citizens League, dated January 8, 2006. Both letters refer to the nomination of Judge Alito.

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

ASIAN AMERICAN JUSTICE CENTER,
Washington, DC, January 10, 2006.

Hon. ARLEN SPECTER,
Chairman,
Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the Asian American Justice Center (formerly National Asian Pacific American Legal Consortium), a national civil rights organization dedicated to advancing and defending the civil rights of Asian Americans, we are writing to express our concern opposition to the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court of the United States. Judge Alito's record demonstrates hostility and poses grave risks to constitutional and legal rights and protections that are core to the advancement of the communities we represent.

Supreme Court decisions continue to have an immense impact on the lives of Asian Americans, ranging from Gong Lum v. Rice (1927), an unsuccessful challenge to school segregation that would later be overturned by Brown v. Board of Education in 1954, to United States v. Korematsu (1944), where the Court upheld the internment of Japanese Americans. Often, cases where the rights and liberties of minorities are at question are decided by a very narrow 5–4 margin. Based upon materials produced by Judge Alito as well as his judicial record, we believe that he would fail to demonstrate a clear understanding of key issues important to the civil rights communities.

In 1986 Alito wrote a letter in his capacity as Deputy Assistant Attorney General to former FBI Director William Webster in which he suggested that ''illegal, aliens have no claim to nondiscrimination with respect to nonfundamental rights,'' and that the Constitution ''grants only fundamental rights to illegal aliens within the United States.'' Alito makes no mention of Plyer v Doe in this letter, which ruled that a state could not discriminate against undocumented children in public education, even though education is not considered a fundamental constitutional right. This raises questions about whether he would adequately protect undocumented immigrants from unconstitutional forms of discrimination.

Judge Alito's opinions in cases involving racial discrimination and voting rights lead us to believe that he will fail to champion civil rights in a manner that would ensure that all communities will be full participants in the rights and liberties that our constitution promises. For example, in Bray v. Marriot Hotels, a racial discrimination case, the majority concluded that Alito's dissenting view would protect employers from suit even where the employer's belief that it had selected the best candidate ''was the result of a conscious racial bias.'' As majority pointed out, ''Title VII would be eviscerated if out analysis were to halt where the dissent suggest.'' In his 1985 application to the Department of Justice's Office of Legal Counsel, Judge Alito raised opposition to the Supreme Court decisions that first articulated the fundamental civil rights principle of ''one person, one vote.'' Those decisions later paved the way for major strides in the effort to secure equal voting rights for all Americans and greater representation of racial and ethnic minorities at all levels of government.

Of great concern to us is Judge Alito's record on immigration law. In asylum cases, it appears that Judge Alito has a tendency to rule against individuals who are seeking protection in the United States, even where evidence show that they have been or would have been persecuted in their own countries. In Chang v. INS, Judge Alito disagreed with the court's decision to grant asylum despite the fact that Chang had presented evidence that his wife and son already faced persecution and he was threatened with prison if he returned to China. In Dia v. Ashcroft, Judge Alto dissented from a majority opinion granting asylum to an immigrant from the Republic of Guinea whose house was burned down and wife raped in retaliation for his opposition to the government.

For the above reasons, we must oppose his confirmation as Associate Justice. We appreciate your consideration of our views. If you have any questions, please feel free to contact AAJC Deputy Director Vincent A. Eng at (202) 296–2300, x121 or AAJC Director of Programs Aimee J. Baldillo at (202) 296–2300, x112. We look forward to working with you.

Sincerely,

KAREN K. NARASAKI,
President and Executive Director.

JAPANESE AMERICAN CITIZENS LEAGUE,
San Francisco, CA, January 8, 2006.

Hon. PATRICK J. LEAHY,
U.S. Senate, Ranking Minority Member, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: The Japanese American Citizens League (JACL), the nation's oldest and largest Asian American civil rights organization, wishes to express our strong opposition to the nomination of Judge Samuel Alito to the United States Supreme Court.

Judge Alito's legal opinions and writings over the past several years have left a clear record of an individual whose legal views could have serious negative impact on the nation's Asian American communities. As a civil rights organization, we are not only troubled by Judge Alito's ideological brand of conservatism, but also by his judicial leanings that would make tenuous the constitutional protections of American citizens.

The record shows that Judge Alito once stated proudly his opposition to affirmative action; as a lawyer for the government, he has argued that immigrants can be denied basic protections and rights guaranteed by the Constitution; he has shown little regard for individuals who have sought sanctuary in the U.S. through the political asylum appeal process; he has expressed a legal opinion that would support racial discrimination in employment cases; he has written an opinion that would have denied a gender discrimination case to be heard by the court; he has raised serious concerns about the ''one person one vote'' concept of democracy; he has shown a proclivity to undermine due process and privacy protections.

The Supreme Court is in many instances the final arbiter in protecting the rights of Americans and therefore should not be a vehicle for those who would push for a political agenda, be it from the left or the right of the political spectrum. Given the early pronouncements in his career and his legal opinions either as a government attorney or from the bench, we are not convinced that Judge Alito can serve the interests of the people as a member of the highest court of the land.

The Japanese American Citizens League urges you, as a member of the Senate Judiciary Committee, to vigorously question Judge Alito on his past record and to carefully examine his current legal positions. The JACL strongly opposes Judge Alito's nomination and does not believe that his confirmation as an Associate Justice of the Supreme Court serves the best interest of all the people of this great nation.

Yours truly,

JOHN TATEISHI,
National Executive Director.

Mr. INOUYE. 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. HARKIN. 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. HARKIN. Mr. President, soon the Senate will vote on the nomination of Samuel Alito to replace Justice O'Connor on the U.S. Supreme Court. Of all of the issues we consider in the Senate, perhaps no issue raises such deep and fundamental questions as the nomination of a Supreme Court Justice.

The issues that come before the Supreme Court are not abstract legal concepts; rather, they involve the very values that define who we are as a nation. They ask us to think about what kind of society we want to be. I believe strongly that we want to be a society which strives for justice, protects the powerless, provides meaningful protections to workers, and allows those who have suffered discrimination to seek recourse and affirm their rights in Federal court.

I believe that a nominee to the Supreme Court needs more than just excellent legal qualifications. He or she must possess a true passion for justice, an understanding that the law cannot be viewed with cool, analytical dispassion, but with the acknowledgement of its role in molding a fairer and more just society. He or she must understand and believe in the critical role the Federal courts play in protecting the civil rights of all Americans, including the 54 million Americans who live every day with a disability. A thorough review of Judge Alito's record and of the Senate Judiciary Committee hearing has convinced me that he falls far short of that measure and, as a result, I oppose his nomination.

One of the things I found most troubling about Judge Alito was his statement that one of the factors that motivated him to study constitutional law was his disagreements with the Warren Court decisions in the areas of criminal procedures and voting rights. Frankly, I find this to be a stunning admission. I know there are many who often decry the decisions of the Warren Court as inappropriate liberal judicial activism.

I strongly disagree with that characterization. So many of the decisions of the Warren Court, beginning with the 1954 unanimous decision in Brown v. Board of Education—that decision that separate is not equal—are not just liberal values, they are American values—American values that each person's vote should have the same weight; that legislative districts should contain equal population; that the freedom to marry a person of another race is a fundamental civil right; the decision that broadcasters are required to provide programming that serves the public interest and to provide for a diversity of viewpoints; the decision that illegally seized evidence cannot be used in a trial; the decision that poor people are entitled to have lawyers in criminal cases; the decision that the wearing of symbols of protest is protected speech; the decision that suspects have the right to remain silent; the decision that you have a right to an attorney; the decision that you have the right to be informed of these protections and the charges against you.

These were all Warren Court decisions, and these decisions, far from evidencing an extreme view of the Constitution, are decisions that the vast majority in this country believe are fair and correct and give meaning to our Constitution's promise of individual liberty and dignity.

Yet Judge Alito chose to cite his disagreement with these very decisions as his motivation for studying law. He chose to cite his disagreements with these decisions as his reason for working to narrow or overturn the rulings in the Reagan Justice Department.

I find this very troubling. I cannot help but wonder what other laws Justice Alito might seek to narrow if he is granted lifetime tenure on the Supreme Court.

Another law that gives meaning to our Constitution's promise of liberty and dignity is the Americans with Disabilities Act. Fifteen years ago—now approaching 16—I championed the ADA, as it is now known, because I had seen discrimination against the disabled firsthand, growing up with my brother Frank who was deaf. Throughout his life, Frank experienced active discrimination at the hands of both private individuals and the government, and this served to limit the choices before him.

Frank's experience was by no means unusual, as Congress documented extensively prior to enacting the Americans with Disabilities Act. As part of the writing of that bill, we gathered a massive record of blatant discrimination against those with disabilities.

We had 25 years of testimony and reports on disability discrimination. Fourteen congressional hearings and 63 field hearings by a special congressional task force were held in the 3 years prior to the passage of the Americans with Disabilities Act. We received boxes loaded with thousands of letters and pieces of testimony gathered in hearings and townhall meetings across the country from people whose lives had been damaged or destroyed by discrimination against people with disabilities. We had markups in five different committees. We had over 300 examples of discrimination by States—by States—against people with disabilities.

I know this. I was there. I was the chairman of the Disability Policy Subcommittee and the lead sponsor of the bill.

Yet since enactment of the ADA, the Court has repeatedly questioned—or I should say a minority of the Court has repeatedly questioned—whether Congress had the authority to require States to comply with the ADA and, amazingly, whether Congress adequately documented discrimination. For example, in 2001, the Court narrowly held that an experienced nurse at a university hospital, who was demoted after being diagnosed with breast cancer because her supervisor did not like being around sick people, was not covered by the ADA because she had the misfortune to work for a State hospital. If she had worked for a private hospital, she would have been covered, according to the Supreme Court.

In contrast, in 2004, again by a narrow margin, 5 to 4, with Justice O'Connor in the majority, the Court held that Congress did have the authority to require States to make courthouses accessible.

Over the next few years, the Court will likely look at whether other State and locally owned facilities are required to be accessible. And in case anyone doubts that accessibility is still a day-to-day issue for the disabled in this country, I want to point out two stories recently in the Des Moines Register in the last week.

First, the fire alarm went off in the State capitol, and there was no way for people in wheelchairs, including a State legislator who was recently injured in a farming accident, to exit the building.

Another example is before that, a woman in a wheelchair had no way to get onto the stage to speak at a Martin Luther King, Jr., Day tribute.

But there is no guarantee that the Court will continue to require that facilities be made accessible. Instead, we could end up with a crazy patchwork where courthouses are accessible but maybe libraries are not; prisons are accessible but maybe employment offices are not.

When we passed the ADA, we in Congress did not forbid employment discrimination against the disabled unless they work for the State. We didn't say some services must be accessible. But that is what the Court has been saying. Talk about judicial activism.

To put a fine point on it, the ADA is at the mercy of the Supreme Court and of the nominee who assumes this seat. Based on his record, I am gravely concerned that Judge Alito does not believe that Congress has the authority to protect the fundamental rights of all Americans. Instead, his record is one that values the rights of the State over the rights of people.

In the two instances where Judge Alito has been required to interpret recent Supreme Court cases limiting the power of Congress to pass national legislation under the 14th amendment or under the commerce clause, he has gone further than the Court itself.

First, consider a case involving the Family and Medical Leave Act, the law that allows Americans to take unpaid leave from work to care for a newborn child, a sick child, or an ailing parent.

Over 50 million Americans have taken unpaid family and medical leave since its passage, including 5 million State workers. Yet confronted with a case challenging whether State and local employers were required to grant unpaid family and medical leave, Judge Alito held in Chittister v. Department of Community and Economic Development that Congress lacked the authority to order State and local employers to abide by the law.

Imagine that, Judge Alito on the Third Circuit said that we didn't have the authority to pass the family and medical leave bill. He was opposed to it.

Fortunately, that holding was affirmatively rejected by the Supreme Court in 2004 when the Supreme Court ruled 6 to 3 in favor of the FMLA. Chief Justice Rehnquist was the author of that opinion. He was joined by Justice O'Connor.

Think about this. Would that case have been decided the same way if Chief Justice Roberts had been there in place of Chief Justice Rehnquist? And if Justice Alito had been there instead of Justice O'Connor? I am afraid it would not.

Secondly, again in 2004, the Supreme Court issued a 5-to-4 decision that held similarly that Congress could order State courthouses to abide by the Americans with Disabilities Act. Justice O'Connor was in the majority, a 5-to-4 decision, Lane v. Tennessee. This is where a person with a disability had been cited for speeding and was given a ticket. He used a wheelchair. He showed up at the courthouse, and guess what. The court was on the second floor. There was no elevator. So they said: OK, we will carry you up. The first time he appeared in court they carried him up into the courtroom. Then the case was put over to another day. The second time Lane showed up, they said: We will carry you up again.

He said: I'm not going to be carried up. I have too much dignity for that.

They said: OK, you are going to have to crawl. Get out of your wheelchair and crawl up the steps or, of course, the court will fine you because you did not appear in the courtroom.

This is a real case. This really happened. It went to the Supreme Court. A 5-to-4 decision held that courthouses must be accessible under the ADA.

If Justice Alito had been there instead of Justice O'Connor, given his limited view of congressional authority, it would be foolish to think that we would have had the same outcome, and Mr. Lane would, indeed, have to crawl up the steps of the courthouse or be carried up.

I want to digress here a moment. There may be those who say maybe it was an old courthouse and they couldn't put in an elevator. The ADA does not require that. It says that services must be accessible. The judge can hold court wherever he wants. The judge could have gotten out of that second floor room and gone down to a room on the first floor and held court there, and Mr. Lane could have wheeled his wheelchair into that room.

Services must be accessible, and that is what we said in the ADA. But Mr. Alito does not see it that way. His failure to recognize the role of the Federal courts in protecting victims of discrimination can be seen even more directly.

In 1995, the Third Circuit, on which Mr. Alito sat, ruled that people with disabilities should be allowed to live in the community, not warehoused in institutions, whenever it was possible. The Third Circuit's opinion was consistent with Justice Thurgood Marshall's opinion in the Cleburne case. Justice Marshall wrote that persons with disabilities, and I quote Justice Thurgood Marshall:

> . . . have been subject to a ''lengthy and tragic history'' of segregation and discrimination that can only be called grotesque. [In the early 20th Century] a regime of state-mandated segregation and degradation emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow. . . .[L]engthy and continuing isolation of the retarded has perpetuated the ignorance, irrational fears, and stereotyping that long have plagued them.

The Third Circuit agreed that people should not be warehoused. They should be allowed to live in the community whenever possible. Yet after three judges on the circuit court ruled that such institutionalization was a form of discrimination under the ADA, Judge Alito argued that the Third Circuit should reconsider the opinion.

When asked about this issue at his Judiciary Committee hearing, Judge Alito suggested that his desire to rehear the case did not suggest he had a disagreement with the outcome. Frankly, I find this response difficult to believe. I think most lawyers would agree that judges do not vote to rehear cases unless they disagree with the outcome or unless other factors, factors that were not present here, require such a rehearing.

Fortunately, Judge Alito's desire to reconsider the Helen L. case was denied. The Supreme Court shortly after that held, in the landmark Olmstead decision, that unnecessary institutionalization is, in fact, a form of discrimination. Once again, Justice O'Connor sided with the majority in the Olmstead decision. Given Judge Alito's judicial record, we can safely assume that he would have come down on the opposite side of this landmark ruling and might even have steered the Court in a different direction, and years of progress toward equal rights for the disabled might have been erased.

In case after case on the Third Circuit, Judge Alito seems to have been immune to the real-life struggles of the people in the cases before him. It is like: This is the legal theory. Don't bother me with the facts. Don't bother me with what is actually happening. There is some legal theory out there that I believe in, and somehow this legal theory trumps, overcomes the real-life travails of ordinary people. As I said—immune to the real-life struggles. The fact that the police strip-searched a 10-year-old girl, the fact that a mentally disabled worker was sexually assaulted, the fact that a farm family was threatened at gunpoint by U.S. Marshals without any resistance during an eviction process—all of this failed to sway him that these ordinary Americans even deserve to be able to present their cases against the Government. It failed to persuade the judge that they should even be allowed to present their cases against the Government. This is real life, real people, and real situations. But, no, Judge Alito had some other philosophy, some other theory that overcame this.

In the past few days, I have heard a number of my colleagues on the other side of the aisle express alarm or dismay that so many Democratic Senators have expressed their opposition to this nominee. In light of the record that I just outlined, I find it alarming that more Senators on the Republican side have not expressed their opposition to this nominee. I thought it was my friends on the other side who so loudly proclaimed individual liberty, individual dignity of the person. Yet Judge Alito dismisses this under some rubric of a judicial philosophy or some theory that he has.

I must say, my alarm becomes more pronounced when I consider Judge Alito's record on Executive power. At a time when the President of the United States is illegally spying on American citizens, at a time when the President believes that he can ignore the clear intent of Congress—including a vote of 90 Senators—and continue the use of torture in the interrogation of criminal suspects, at a time when the President believes he can indefinitely detain American suspects without charges and without access to a lawyer, it is more important than ever that Justices on the Supreme Court recognize the need to protect and preserve the balance of power envisioned by our Founding Fathers.

Judge Alito is not that Justice. He is, instead, an adherent of a legal theory that Presidential powers should be wholly unchecked. In fact, he is the author of the very strategy used by President Bush earlier this month when he essentially said to 90 Senators: I signed the amendment that says no torture but I hereby declare that I can ignore it if I feel like it.

After reviewing Judge Alito's record, it is not difficult to wonder, if Judge Alito had been on the Supreme Court during its consideration of Marbury v. Madison, would he have voted the other way? Would we have an imperial President today and not a Court that has the role as final arbiter? That strikes at the very heart of our Democratic form of government and our checks and balances.

But don't take my word for it. Consider the words of the Justice whom

Judge Alito seeks to replace, Justice O'Connor, who wrote in the Supreme Court's recent decision in Hamdi v. Rumsfeld that it is:

. . . clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.

I agree with Justice O'Connor. It is clear under the Constitution of the United States that our President does not have unfettered powers. It is clear that the Supreme Court has the authority, the duty to serve as a check on that power. And it is clear to me that Judge Alito is not committed to providing that check.

As recently as 2000, in a speech before the Federalist Society, Judge Alito said in his speech:

. . . the President has not just some executive powers, but the executive power—the whole thing.

What does that mean?

. . . the President has not just some executive powers, but the executive power—the whole thing.

What does Judge Alito mean by that? I find this to be a frightening theory, in someone getting life tenure on the Supreme Court.

In closing, the new Supreme Court Justice will have a tremendous impact on our society. The decisions before the Court will determine whether we are true to our fundamental national values of fairness and justice and dignity for all. In Judge Alito, we have a nominee whose history, record, and testimony make clear that he holds an unduly restrictive view of the power of Congress to enact laws to protect workers, to protect public safety, to protect victims of discrimination, and that he holds a dangerous view of the Court's proper role in providing a necessary check on Executive powers. Indeed, if Judge Alito is confirmed, I fear that many of the core protections provided to people with disabilities under the Americans With Disabilities Act and other laws simply disappear. For these reasons, I strongly oppose his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I rise today to state my intention to vote against the nomination of Judge Alito to be the next Associate Justice of the Supreme Court. Let me start by saying I certainly do not doubt Judge Alito's qualifications, his integrity, his temperament. He has served on the Federal bench for over 15 years, and he has demonstrated during that time that he is, indeed, a very capable jurist. Nonetheless, after carefully looking at his judicial record and listening to his answers to the Senate Judiciary Committee, it is also clear to me that if confirmed, Judge Alito will move the Court in what I believe is the wrong direction for our country.

Judge Alito has been nominated to replace Justice Sandra Day O'Connor. She is a moderate who has been a critical fifth vote in cases impacting privacy rights, disability rights, civil rights, the environment, consumer protections, discrimination laws, access to the courts and campaign finance reforms, among others. It has taken us years to enact legislation aimed at protecting the rights of all Americans in these areas I have mentioned. Other Justices on the Court, particularly Justices Scalia and Thomas, have pressed to reverse many of the advances the Congress has made in these areas. They have pressed to limit congressional power under the commerce clause and the ability of Congress to enact Federal civil rights legislation. I fear that Judge Alito will join Justices Scalia and Thomas in this regard.

Justice O'Connor's vote has also been instrumental in ensuring that we do not surrender our civil liberties in times of war. Justice O'Connor's statement in the Hamdi decision was just quoted by my colleague from Iowa. It was a resounding reaffirmation that the President could not indefinitely detain a U.S. citizen without providing adequate due process. The quote which was just made, and has been made by many of my colleagues, is that:

We have long since made clear that a state of war is not a blank check for a President when it comes to the rights of our Nation's citizens.

At a time when the President has asserted expansive powers with regard to imprisoning U.S. prisoners without charges, with regard to wiretapping without warrants, with regard to using interrogation techniques that amount to torture, it is essential that we have Justices on the Supreme Court who are willing to provide a check on the authority of the executive branch. Judge Alito's record indicates that he may not be the right person to provide this important check.

For example, he stated his support in varying degrees for this so-called unitary executive theory. This relatively obscure legal theory has very little support in the mainstream legal community, but it has profound implications for our understanding of the Constitution.

Just recently, Congress passed a law reiterating the prohibition on the use of torture. In signing the legislation, the President issued a statement reserving the right to take whatever action he deems necessary as Commander in Chief—in effect reserving the right to ignore the very law which he was at that time signing. The President cited this unitary executive theory as the legal basis for his power to disregard the plain text of the legislation.

We need to have a Supreme Court that is prepared to provide the necessary checks and balances crucial to our democratic system of government. I believe Justice O'Connor charted a moderate course in terms of the authority of Congress to enact legislation aimed at protecting the welfare of Americans and with regard to upholding the rights of citizens vis-a-vis their own government, and I believe it is important to maintain that same course.

This is not to say that I have agreed with all of Justice O'Connor's decisions. But her swing vote has helped to maintain a balance on the Court that has kept many decisions within the mainstream, and I believe Judge Alito's confirmation will sway the existing balance on the Court in a manner that will jeopardize many of the protections afforded to the American public, many of which have been the result of many years of struggle. For this reason, I am not able to support his nomination.

I yield the floor, and 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.

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

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

Mrs. LINCOLN. Mr. President, I rise today to state my opposition to the nomination of Samuel Alito to the United States Supreme Court.

After thoroughly reviewing Judge Alito's record during his time on the Federal bench, I am left with grave and serious concerns about his views on the power and scope of executive branch authority, the lack of discrimination against parents in the workplace, his general disposition toward cases involving civil rights, and his views on the scope of voter rights.

Because of these concerns, I cannot in good conscience support his nomination to the Supreme Court to replace Sandra Day O'Connor, the highest Court in the land with tremendous ability to exercise judgment over the people of this Nation.

Over the course of Judge Samuel Alito's career and his tenure on the Federal bench, he has compiled a troubling record of personal statements and court decisions that signal his willingness to defer authority to the executive branch when questions of presidential powers are deliberated before the Supreme Court.

I strongly believe that our Constitution calls for an independent and coequal judicial branch that provides a check on the government's power to encroach upon our individual rights of Americans.

At a time when many Arkansans have expressed concerns over the President's legal authority to eavesdrop on Americans without court supervision and detain U.S. citizens without judicial review or due process, I cannot support a Supreme Court nominee who has repeatedly failed to uphold reasonable limits of presidential authority at the expense of constitutional liberties.

This issue is especially significant because Judge Alito would replace Justice Sandra Day O'Connor, who recently ruled in a 2004 case on executive authority that ''a state of war is not a blank check for the President when it comes to the rights of the nation's citizens.''

While the legislative and executive branches of government are, by their very nature, political, we demand our judicial branch be above that.

When one party controls both of the political branches, the independence of the judiciary is especially important.

It is not just important to keep in check but also to maintain the confidence of the American people that their government is balanced and that it is there to serve them and not the politicians.

Our Founders created our country and its government with the memories of tyranny still fresh in their minds.

The judicial branch was given exceptional authority for the specific reason that it provides a critical check on the two political branches of our government.

This is not to say that the judicial branch is charged with correcting the perceived wrongs of the party in power. It is simply charged with upholding the Constitution and the rights guaranteed to citizens under it. Upholding this requirement is the most important duty the court is given.

If a potential nominee to the Supreme Court cannot or will not uphold either part of this solemn duty, his or her appointment will serve to undermine the fundamental system of checks and balances on which our government depends.

Of equal concern is Judge Alito's record on the issue of discrimination in the workplace.

In Chittister v. Department of Community and Economic Development, Judge Alito's statement that the Family Medical Leave Act was a ''disproportionate solution'' to the problem of workplace discrimination is deeply troubling.

In an opinion rejecting the position of Judge Alito, Chief Justice Rehnquist explicitly noted that common workplace practices had been discriminatory toward both men and women by reinforcing the role of women as the sole domestic caregiver.

I fear that Judge Alito' s inability to recognize this type of discrimination threatens dire consequences for rights hard won by women over the last few decades.

The majority of our Nation's families depend on income from both parents just to get by. The future and strength of our Nation depends on the strength of the fabric that our families are made of.

I cannot in good conscience vote to allow any of the gains that have allowed women to become an integral part of our Nation's workforce while remaining exceptional mothers to their children to be rolled back.

As his record points out, Judge Alito has consistently set an unfairly high burden of proof in discrimination cases leading him to rule consistently against Americans who are merely attempting to assert their basic constitutional rights.

Judge Alito's philosophy of deferring to the government and those in positions of authority threatens to undermine many of the laws established by Congress to ensure that discrimination does not prevent anyone from realizing his or her full potential—not just as an American, but as a human being.

Also of concern are Judge Alito's comments on voter rights. He has stated his interest in constitutional law was motivated largely by his disagreements with the Supreme Court reapportionment decision that established the principle of ''one person, one vote.''

This landmark case became a cornerstone of our democracy by ensuring that everyone's vote would be weighted equally, regardless of an individual's economic background, their address, or the color of their skin.

If an individual is prevented from seeking a fair remedy at the ballot box by denial of his basic right to vote, the only avenue he has left is our judicial system.

Judge Alito's skepticism of established principles of voter rights coupled with his skepticism of claims relating to discrimination is a dangerous combination that threatens to exclude many Americans from full and equal participation in their government and society.

I remind my colleagues that the strength of our Nation comes from the input of the diversity of individuals who make up this great land. We cannot diminish that.

Equal access to the ballot box is a right guaranteed to every American that is the very foundation of democracy.

These rights came after much work and incredible sacrifice and to me they are too important to put at risk.

As I stated during the debate on Chief Justice Robert's nomination, considering a Supreme Court nomination is one of the most important duties we are called upon as Senators to fulfill.

I did not come to my decision on Judge Alito' s nomination lightly.

Ultimately, I supported the nomination of Chief Justice Roberts because I sincerely believed he cared more about the rule of law and our Nation's judicial system than he did about ideology or political parties.

I sincerely regret I cannot draw the same conclusion about Judge Alito.

For me, this nomination is not about a single issue or controversy. It is much more important than that.

This nomination is about the rights and freedoms we cherish as Americans.

It is about the future course of our Nation and the impact the decisions of the Supreme court will have on the citizens of this great land.

I feel government has a commitment to those amongst us who face incredible challenges to ensure that the values we all hold dear as Americans apply equally to them.

I have real doubts about Judge Alito's views on the role of government in protecting those rights. I respect the opinions of my constituents and colleagues on both sides of this issue. But in the end, after great prayer and research—and certainly after listening to all the principles I learned growing up as a farmer's daughter in east Arkansas in the rural part of this Nation—I made the decision that I believe is in the best interests of my State and of my country.

I appreciate the time attention of my colleagues. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

Mr. GRASSLEY. Mr. President, do I have 30 minutes?

The PRESIDING OFFICER. The Senator may use as much of the next hour as he pleases.

Mr. GRASSLEY. Thank you.

Mr. President, I support the nomination of Samuel Alito. President Bush has made a very excellent choice in picking Alito. He has the intellect, judicial temperament, and integrity to be an excellent Justice.

He seems to have a very clear understanding of the proper role of the judiciary in our government. That came out very clearly in the hearings.

He commands the respect of his colleagues on the Third Circuit, as their testimony before our committee demonstrated.

He also has the respect of the lawyers who practice before him and the employees who have worked with him. That was demonstrated in testimony before our committee as well.

But we can't always accurately predict how an individual ultimately will make decisions once he or she gets on the bench. But we do have a constitutional process in place, and we have to use our judgment within that process and trust the confirmation process.

I would say the 225-year history of our country succeeding as it has is an affirmation that the process has worked well.

We have confirmed many outstanding individuals to the Supreme Court, and the process has worked well thus far and will continue to work well with Judge Alito.

Judge Alito was very impressive in the hearings. He did an excellent job under a great deal of fire. He was thorough, he was candid, and he was forthright with all 18 of us on the committee, and demonstrated a deep understanding of the law and a deep understanding of the law and our Constitution.

Contrary to the claims of some of my colleagues from whom we have been hearing this morning and yesterday, Judge Alito's testimony was very substantive, and he was responsive.

Let me quantify that. Judge Alito answered more than 650 questions during nearly 18 hours of testimony. Compared to the performances of Justice Ginsburg who answered 307 questions at her hearing, and Justice Breyer, who answered 291 questions, one can hardly swallow what we hear on the other side—that Judge Alito was not forthcoming with the Committee.

I easily conclude, as I think the public concludes, that he has been one of the most forthcoming nominees to come before the Judiciary committee.

The Constitution provides the President with the power to nominate Supreme Court Justices. And it provides the Senate with advise and consent duties, presumably ending up in an up-or-down vote.

In Federalist No. 66, Alexander Hamilton wrote:

> It will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice he may have made.

That is Alexander Hamilton commenting on the role of the President and the Senate in the judicial confirmation process. I have been on the Judiciary Committee for more than 25 years. I take this constitutional responsibility very seriously. Our work in committee allows us to evaluate whether a nominee has the requisite judicial temperament, intellect, and integrity. We also evaluate throughout that process whether the nominee understands the proper role of a Justice in our democratic system of government; mainly, but not limited to, respect for the rule of law and respect for the Constitution, all over any personal agenda the nominee might have. A Justice, to do justice, cannot have a personal agenda.

Specifically, a Supreme Court nominee should clearly understand that the role of a judge under the Constitution is a limited role, to say what the law is, rather than make the law.

I quote Alexander Hamilton, Federalist Paper No. 78:

> The courts must declare the sense of the law, and if they should be disposed to exercise will instead of judgment, the consequences would equally be the substitution of their pleasure to that of the legislative body.

In fact, most Americans want judges who will confine their job to interpreting the law and the Constitution, rather than making policy and societal choices from the bench. But what we have seen lately is a trend where the courts have expanded the role of the judiciary far beyond what was originally intended in the Constitution and by the Framers. The courts have taken on a role that is much more akin to what we do in Congress, the legislative branch, making law, which is to make policy choices and to craft laws based on those choices.

As a consequence of this power grab by the courts, the judicial confirmation process also, unfortunately, has become extremely politicized. That is because when judges improperly assume the role of deciding essentially political questions rather than legal questions, the judicial confirmation process also devolves into one focused less on whether a nominee can impartially and appropriately implement the law. Instead, the process devolves into one focused on whether a nominee will implement a desired political outcome from the bench, regardless of what the law says, regardless of what the Constitution requires.

But Judge Alito understands the proper role of a judge. Judge Alito understands the judicial branch plays a limited role in our system of government—but not surprisingly so because that is what the Constitution intended. Judge Alito testified:

> The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and interpreting the law . . . in accordance with what it really means and enforcing the laws even if that's unpopular.

He continues:

> But although the judiciary has a very important role to play, it is a limited role. . . . It should always be asking itself whether it is straying over the bounds, where it is invading the authority of the legislature, for example, and whether it is making policy judgments rather than interpreting the law. And that has to be a constant process of reexamination on the part of the judges.

Judge Alito's record is clear that he will not make law, but rather he will strictly interpret the law we write. His record is clear that he will do his very best to remain faithful to the actual meaning of the Constitution, rather than mold it into what he would like that Constitution to say.

Judge Alito said, along that line:

> Judges do not have the authority to change the Constitution. The whole theory of judicial review we have, I think, is contrary to that notion. The Constitution is an enduring document and the Constitution does not change. It does contain some important general principles that have to be applied to new factual situations that come up. But in doing that, the judiciary has to be very careful not to inject its own views into the matter. It has to apply the principles that are in the Constitution to the situations that come before the judiciary.

Judge Alito possesses a knowledge of and respect for the Constitution that is necessary for all Supreme Court Justices. Judge Alito, in his testimony, demonstrates an understanding of the proper role of a Justice. He understands and respects the separate functions of the judicial branch as opposed to the functions of the legislative branch and the executive branch, the political branches of government.

Judge Alito explained that a judge's role is not one of an advocate. He testified:

> The role of a practicing attorney is to achieve a desired result for the client in a particular case at hand, but a judge cannot think that way. A judge can't have any agenda. A judge can't have any preferred outcome in a particular case. And a judge certainly does not have a client. The judge's only obligation, and it's a solemn obligation, is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

For all of his opponents, when we hear things such as that and they fit in with what the Constitution's writers intended for the judiciary to do, how can we find fault with Judge Alito's approach? Why would we fear him at all?

Judge Alito also believes in justice for all, as afforded by the laws and the Constitution of our great nation. He told the 18 members of the Judiciary Commitee:

> No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

He said:

> Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.

Another very important position Judge Alito takes:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we shouldn't be implementing any sort of policy agenda or policy preference that we have.

Contrary to the claims of his opponents, Judge Alito understands the Judiciary has an important role in our system of checks and balances. He understands the importance of the independence of the judicial branch. Judge Alito will not shirk from that responsibility and he will see that the Judiciary is an effective check on abuses of power, both by the executive and the legislative branches of government. In fact, as Judge Aldisert, who served with Judge Alito on the Third Circuit testified:

> Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Let me quote former Judge Gibbons, who also served with Judge Alito and who now is litigating with the Bush administration over the treatment of detainees held at Guantanamo. He believes Judge Alito will not shy away from checking Government abuses. He does not believe Judge Alito will rubberstamp any administration's policies if they run counter to the law and the Constitution. And he certainly did not have any concern about Judge Alito's judicial independence.

Judge Gibbons testified:

> It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. . . . I'm confident, however, that as an able legal scholar and a fairminded justice, he will give arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

I agree. I believe Judge Alito will be that independent judge who will apply

the law and the Constitution, not just to Congress, but to every branch of government, and every person, because Judge Alito knows no one, including the President, is above the law.

Not only is Judge Alito an intelligent and experienced jurist, he is also an openminded and fair judge. I am telling everyone that, but anyone that saw the hearing knows that, from the 18 hours he testified before the Judiciary Committee 2 weeks ago. He is an openminded and fair judge. He told the committee:

Good judges develop certain habits of mind. One . . . is the habit of delaying reaching conclusions until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague when the judges privately discuss the case.

How much more appropriate is that approach to the law than just yesterday the Supreme Court decided to hear an execution case of a person in Florida when they got the decision made and the word down as they were strapping him in to inject the lethal chemical into him: Wait, don't make a decision until all the facts are in. So that person did not die last night.

In fact, Judge Alito acknowledged he has changed his opinion in the middle of the judicial process because he is waiting for all the facts, those motions, those debates, to be done before he finally concludes. He testified:

There have been numerous cases in which I've . . . been given the job of writing an opinion . . . and in the process of writing the opinion, I see that the position that I had previously was wrong. I changed my mind. And then I will write to the other members of the panel and I will say, I have thought this through and this is what I discovered and now I think we should do the opposite of what we agreed, and sometimes they'll agree with me and sometimes they won't.

Now, what do you hear from the people opposed to Judge Alito? His critics have tried to paint him out to be an extremist. An activist judge with some agenda hostile to individual rights and to what his critics have called the ''average American.''

We were presented with analyses on how outside the mainstream Judge Alito's opinions were. But that is not what we heard from the American Bar Association. This group of men and women unanimously voted to award Judge Alito its highest possible rating: ''well qualified.'' We have heard from the Democrats that this ABA rating is the ''gold standard'' about how to make any judgment about who is qualified to serve on the judiciary.

But that is also not what we heard from the panel of four sitting and two former Third Circuit judges who have worked with Judge Alito for more than 15 years. They did not think Judge Alito was out of the mainstream, as certain people on the floor are trying to claim, or an extremist, as you have heard often argued by the other side. We heard quite to the contrary.

I have to say the committee received absolutely extraordinary testimony from these appellate judges, which included nominees from—just think, these different Presidents nominated these people who testified before us, who said Judge Alito will make a great Justice—President Lyndon Johnson, President Richard Nixon, President Ronald Reagan, President George H.W. Bush, and President Bill Clinton, these Presidents appointed the people who came to us and said Samuel Alito will make a good Justice.

There is disagreement on the floor of the Senate as to whether he will be a good Justice. These are individuals we have heard from who have had the opportunity to witness the interworkings of Samuel Alito as a judge during their private conferences, on a daily basis, behind closed doors, when all the hair is let down. They saw his deliberative process. They know the ''real deal'' Sam Alito. And these witnesses—all respected and accomplished judges in their own right—each of them only had glowing comments about Judge Alito. Their support was unqualified.

As Judge Aldisert told the committee:

We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice.

Let's go to Judge Becker:

The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent.

Judge Becker said:

I have never seen him exhibit a bias against any class of litigation or litigants. . . .His credo has always been fairness.

Chief Judge Scirica said:

Despite his extraordinary talents and accomplishments, Judge Alito is modest and unassuming. His thoughtful and inquiring mind, so evident in his opinions, is equally evident in his personal relationships. He is concerned and interested in the lives of those around him. He has an impeccable work ethic, but he takes the time to be a thoughtful friend to his colleagues. He treats everyone on our court, and everyone on our court staff, with respect, with dignity, and with compassion. He is committed to his country and his profession. But he is equally committed to his family, his friends, and his community. He is an admirable judge and an admirable person.

Judge Barry said:

Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency.

So contrary to what his misguided critics have alleged, Judge Alito is fair and open-minded, and will approach cases without any bias and without a personal agenda.

Unfortunately, Judge Alito's record—as you have heard for the last 2 days and as you heard 2 weeks ago in the hearing—has been wildly distorted. Contrary to these critics' claims, Judge Alito has ruled for plaintiffs as well as defendants in civil rights, ADA, and employment discrimination cases. I think a statistical analysis of how many times a certain kind of plaintiff wins or loses is not the best way to judge a judge's record. It is wrong to think there should be a scorecard on how often plaintiffs or defendants should win, like some basketball game. Who should win depends upon the facts presented in the case and what the law says, just as it should be in a country based on the rule of law.

What is important to Judge Alito is that he rules on the specific facts in the case and the issue before his court, in accordance with the law and the Constitution. Judge Alito does not have a predisposed outcome in a case. He does not bow to special interests, but sticks to the law regardless of whether the results are popular or not.

Similar to Chief Justice Roberts, Judge Alito rules for the ''big guy'' when the law and the Constitution say the ''big guy'' should win. He rules for the ''little guy'' when the law and the Constitution say the ''little guy'' should win. That is precisely what good judging is all about, and that is precisely the kind of Justices who ought to be on the Supreme Court and, for most of the time in our history, have been on the Supreme Court—I think it will be 110 of them when Alito gets there.

The claims that Judge Alito is somehow hostile to civil rights, minorities, women, and the disabled are really off the mark, and those arguments are intellectually dishonest. It is easy to cherry-pick cases and claim that a judge is out of the mainstream. His fellow colleagues on the Third Circuit, though, give you a completely different picture of Judge Alito than what you have seen painted here in the last 2 days. Fellow colleagues on the Third Circuit testified about Judge Alito's fairness and impartiality with respect to all plaintiffs.

For example, Judge Garth testified:

I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.

Judge Higgenbotham, Jr., a liberal judge, said:

Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda.

Kate Pringle, a former Alito law clerk and Democrat who has known the judge since 1994, testified that:

[Judge Alito] was not, in my personal experience, an ideologue. He pays attention to the facts of cases and applies the law in a careful way. He is conservative in that sense. His opinions don't demonstrate an ideological slant.

I found Judge Lewis's testimony to be particularly compelling. Judge Lewis described himself to the committee this way. These are his words: ''openly and unapologetically prochoice'' and ''a committed human rights and civil rights activist.'' That is how he described himself, Judge Lewis.

He testified about Judge Alito:

[I]t is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues.

Judge Lewis continued:

And I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

Judge Lewis further said:

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today. . . . My sense of civil rights matters and how courts should approach them jurisprudentially might be a little different. . . . But I cannot argue with a more restrained approach. As long as my argument is going to be heard and respected, I know that I have a chance. And I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

Judge Lewis concluded:

I am here as a matter of principle and as a matter of my own commitment to justice, to fairness, and my sense that Sam Alito is uniformly qualified in all important respects to serve as a justice on the United States Supreme Court.

So who do you believe has accurately depicted Judge Alito's qualifications and record? The speeches of opponents today and yesterday? Or the people who have worked with the judge, day in and day out for years, who know him personally, and who have seen him up close and in the trenches? I will pick those people who have worked with Judge Alito for 15 years, particularly because they come from different political backgrounds and different approaches to the law and the Constitution, as opposed to the partisan, liberal outside interest groups that have probably never even met Judge Alito. I, then, know whom I believe.

Not only that. If one wipes away the distorted and deceptive characterizations, as well as the false insinuations and calculated smears, Judge Alito's record plainly shows that he is a dedicated public servant who practices what he preaches: integrity, modesty, judicial restraint, devotion to the law, and devotion to the Constitution.

Let me briefly address this issue which has been brought up that somehow Judge Alito's appointment is going to upset the balance of the Court. As I said before, history will take care of the proper ''balance'' on the Court. But some of my colleagues—or maybe speaking for their outside liberal interest groups—have taken the position that Judge Alito has to share Justice O'Connor's judicial philosophy and voting record in order to take her seat on the Court. They argue that Judge Alito should not be confirmed, regardless of whether he is qualified or not, because he does not appear to be Justice O'Connor's judicial philosophy ''soul-mate'', and he would change the ideological balance of the Court.

Well, the last time I checked, the Supreme Court does not have seats that are reserved for a conservative or a liberal or a moderate or a Catholic or a Jew or a Protestant, one philosophy or another philosophy—no! The Senate has never taken the position, moreover, that like-minded individuals should replace like-minded Justices leaving the Court. And until just recently, I never heard the argument from the other side of the aisle. That kind of reasoning is completely antithetical to the proper role of the judiciary in our system of government.

The reality is that the Senate has historically confirmed individuals to the Supreme Court who are determined to be well qualified to interpret and apply the law. It has not been the Senate's tradition to confirm individuals to promote special interests or represent certain causes. That is not what the Constitution says for the Senate to do. In fact, the Court's composition has changed with the elected branches over the years. Almost half of the Supreme Court Justices have been replaced by individuals appointed by a President of a different political party.

The truth is that the Senate has not ever understood its role as maintaining any perceived ideological balance on the Court. In fact, the Senate outright rejected that kind of thinking when Ruth Bader Ginsburg came before us. She was a known liberal, a former general counsel for the ACLU, and she was overwhelmingly approved by the Senate by a vote of 96 to 3. She replaced whom? A conservative justice, Justice Byron White. Yet there were not any arguments from the other side of the aisle or from this side of the aisle that she would upset the balance of the Court. And she did—change the balance of the Court, radically swinging it to the left.

I certainly did not agree with Justice Ginsburg's liberal judicial philosophy, but I voted for her. The fact is that the Senate confirmed Justice Ginsburg because President Clinton won the election. He made a promise in that election who he was going to appoint to the Supreme Court. He had a right to nominate who he wanted based upon the results of that election—the same thing for George Bush in the 2000 election and the 2004 election. Moreover, and more importantly, though, Justice Ginsburg had the requisite qualifications to serve on the Court, and she was not a political hack. So she was confirmed.

This was the same for Justice Breyer. I knew that Breyer was a liberal and that I probably would not agree with his judicial philosophy, but he was qualified. So I voted for him. The Senate confirmed Justice Breyer by a vote of 87 to 9. The President had made his choice. The Senate found him to be qualified, and we confirmed him. Republicans certainly did not put up any roadblocks to the Ginsburg and Breyer nominations. I would say that Judge Alito is no more out of the mainstream than Justices Breyer and Ginsburg.

The Democrats and liberal outside interest groups are intent on changing the rules of the game because they did not win at the ballot box in 2000 and 2004, or maybe over the last 10 years. The way the Democrats want to operate now is not the way we have operated in the past. But the truth is, by politicizing and degrading the nominations process, and the nominees themselves, we will end up driving away our best and brightest minds from volunteering for public service. It is disappointing to me to see a decent man and his family have to endure hurtful allegations and insinuations which are just plain false and, moreover, meanspirited.

It is disappointing to me that so many of my colleagues are going down this path, creating a standard that can only harm the independence of the judiciary, and severely distort our system of government.

Before I conclude my remarks, I want to quote from a letter I received from an Iowa constituent. I will only quote it in part, but I will include it for the RECORD. Her name is Joan Watson-Nelson, and she wrote about her very personal impressions of Judge Alito when they attended high school together in the late 1960s in New Jersey. I don't know exactly how she got to Iowa. But she is there and she wanted me to know how she remembered Sam Alito.

She wrote:

I remembered [Samuel Alito] because he stood out in his class and in the school. He was one of the leaders of the school. . . . I remembered him being very bright, well prepared, and brilliant. He appeared to be an individual with vision. . . . . He stood out as a young man with a great deal of integrity. Many of his teachers from high school are gone now. But I know if they were here and could write letters on his behalf, they would have many stories to tell about the kind of student he was both inside and outside the classroom.

The letter continues:

I am not a very political person. I have some issues that I believe in deeply and others that I do not have a deep commitment about. I am sure that Sam and I do not agree on all the issues that will be placed before him. The abortion issue is likely to be one of those, as I understand from the media that he may be against abortion. However, I do strongly believe that he will listen to the arguments placed before him, research the law, and decide honorably.

She concludes her letter this way:

It has been nearly 40 years since he graduated from high school.

I think the implication is she hasn't even talked to him in the last 40 years. She says:

And although I have a good memory for details, the specific details of my involvement with Sam are not as clear as I would like to have them be in my endorsement for him. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court justice. I hope that with your hearings on his appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons. What I learned about the Supreme Court branch of government—

Talking about when she was in school—

is that this part of the ''checks'' in our system is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

I think this is a very nice testimonial about the man we are going to vote on and hopefully confirm to become the next member of the Supreme Court. I appreciate Ms. Watson-Nelson's letter letting us know about her personal experience with Sam Alito. She hit the nail on the head. The Supreme Court needs to get out of the business of politics, and we need to stop discrediting good nominees for political reasons. She, like most Americans, knows what is going on.

So, it is clear to me, the people who know Judge Alito personally believe, without any reservation, that he is a judge who follows the law and the Constitution without preset outcomes in mind. They believe he is a man of great intellect and insight. They believe he is a fair and open-minded judge committed to doing what is right, rather than committed to implementing a political agenda or a personal agenda. They believe he is a man of integrity, modesty, and restraint.

I am pleased to support Judge Alito's nomination. Judge Alito will be a great Justice, not a politician on the bench. He won't impose his personal views or be a judicial activist, but will make decisions as they should be decided—in an impartial manner, with the appropriate restraint, in accordance with the laws and the Constitution. Judge Alito will carry out the responsibilities of a Justice in a principled, fair, and effective manner. I am proud to cast my vote in support of this decent and honorable man.

I wish this story would end with qualifications, integrity, and judicial restraint, because only those considerations should matter. But it looks as though the most partisan and political among us won't let that happen. There may be some who will vote against Judge Alito's confirmation, not because of qualifications or integrity, and not even because they want somebody to legislate from the bench or treat the Constitution as a blank slate that judges can freely draw upon.

No, it appears some Senators will vote against this nominee because they think doing so is a good political issue. Instead of applying the same standard we Republicans applied when the Senate overwhelmingly confirmed Justice Ginsburg, the most liberal Justice on the Court, these partisans will change the rules in the middle of the game once again. They will vote against Judge Alito with an eye toward the next election and the demands of their most extreme and activist supporters.

The Washington Post had it right when it editorialized on January 15:

A Supreme Court nomination isn't a forum to refight a presidential election.

I would go a step further than that editorial. A Supreme Court nomination is not a forum to fight any election. It is the time to perform one of our most important constitutional duties and decide whether a nominee is qualified to serve on the Nation's highest court.

I hope my colleagues will cast their vote based on Judge Alito's outstanding qualifications, rather than on the distorted claims of liberal outside-interest groups. I urge my colleagues to rise above partisan politics and support this worthy nominee, Samuel Alito. Samuel Alito deserves our overwhelming vote of approval, and it would be a great shame if he doesn't get it.

I ask unanimous consent to print in the RECORD the letter from which I quoted.

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

DEAR SENATOR GRASSLEY: I spoke with you briefly at the Iowa Farm Bureau annual meeting on November 30th regarding Sam Alito. You requested that I follow up our discussion with a letter about how I felt about him.

He graduated from Steinert High School (AKA Hamilton High School-East) in 1968 and I graduated from Steinert in 1969. I remember well that he was one of 4 Valedictorians that year, a first for the school. There were 2 men and 2 women. I knew one of the women well and I remembered him because he stood out in his class and in the school. He was one of the leaders of the school. He was student council president at Steinert his senior year, and I think he was also student council president at Reynolds Jr. High as well. I had worked with him on the school newspaper staff my Junior year, the year he was the editor of the paper.

I remember him as being very bright, well prepared, and brilliant. He appeared to be an individual with vision. His high school ''crowd'' of kids were the leaders of the school and his class. I knew some of his crowd well during my high school years. He stood out as a young man with a great deal of integrity.

Many of his teachers from high school are gone now. But I know if they were here and could write letters on his behalf, they would have many stories to tell about the kind of student he was both inside and outside the classroom. The teachers at Steinert at the time Sam and I were in high school were a family and they viewed the student body as part of that family. His first principal at Steinert was my father, Richard F. Watson. When we discussed that Sam was up for the Supreme Justice opening, he remembered him and hoped that he would be approved.

I am not a very political person. I have some issues that I believe in deeply and others that I do not have a deep commitment about. I am sure that Sam and I do not agree on all of the issues that will be placed before him. The abortion issue is likely to be one of those, as I understand from the media that he may be against abortion. However, I do strongly believe that he will listen to the arguments placed before him, research the law, and decide honorably.

The best summary of the type of person that I believe Sam to be is that I believe that he has many of the same qualities that I have observed in you, Senator, over the years that you have been our State senator. Those qualities and values are the reason that I continue to vote for you and support you. I think that this is the best endorsement that I can give to Sam. It has been nearly 40 years since he graduated from high school. And although I have a good memory for details, the specific details of my involvement with Sam are not as clear as I would like them to be in my endorsement for him. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court Justice.

I hope that with your hearings on his appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons. What I learned about the Supreme Court branch of our government is that this part of the ''checks'' in our system that is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

Sincerely,

JOAN WATSON-NELSON.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Mississippi.

Mr. LOTT. Mr. President, parliamentary inquiry before I begin: I know we have a balance, going back and forth in this debate. Have any prior arrangements been made with regard to others proceeding, or may I go at this time?

The PRESIDING OFFICER. The Senator may proceed until 2.

Mr. LOTT. Mr. President, I rise today to speak in favor of the nomination of Judge Samuel Alito for Associate Justice of the U.S. Supreme Court.

Before I proceed to my discussion of my views of Judge Alito, I take a moment to thank Senator ARLEN SPECTER for the good work he has done on the Judiciary Committee over the last few months. He has had a loaded calendar, a lot of important legislation, important hearings, and the process of confirming two Supreme Court Justices. It has been a while since any chairman of the Judiciary Committee or any committee has had this kind of workload over just a few months. Senator SPECTER has done an excellent job in the way he has handled it.

I also recognize Senator GRASSLEY and his participation on the committee and the statement he just gave. It is obvious he has done his homework. He handled himself well in the hearings, and he has even developed what seems to be a personal affinity for Judge Alito. That will affect a lot of other Senators' thinking about this, and a lot of the American people.

I commend those on the committee who have treated this process with the dignity and respect it certainly deserves. The Chair will note, I said to ''those,'' meaning not necessarily all of the members of the committee.

There is not a lot I can say here today that others won't say about his

record or about this issue. But I believe this is one of the most important functions we have in the Senate; that is, our advice and consent, the confirmation process for our Federal judiciary. There is no question that it was intended we have three equal branches of Government: the judiciary, the executive, and the legislative. We all have responsibilities under the Constitution and under the law, and those have evolved over the years. Separation of power should not mean we become the body or the part of Government that becomes obstructionist or is always looking for a way to take on the executive or the judiciary. This is an important responsibility, and it is important every Senator have a chance to express his or her views on this topic.

This is such an important issue that it is good for the country, anytime we have a debate about the judiciary and what is the role of the Congress, the executive branch, the judiciary, the whole process: How should judges be selected and how should the hearings be held and what should they do when they get on the Court. This is good for the country, and we should look at it that way.

I do know that it has been a constant topic of discussion in much of the country since last summer with the process that led to the confirmation of Chief Justice Roberts and now the discussion about Judge Alito. I had a call from a constituent in Jackson, MS. She expressed her support for the fact that the Judiciary Committee reported out this nomination and thought we were going to vote today, which we should be voting today on his confirmation as an Associate Justice. It said to me, once again, this is not a person involved in the judiciary, but people are paying attention to what we say and what we do. We should not trivialize in any way this important process.

Over the years I have asked myself, what should I do in analyzing Federal judicial nominations, particularly the Supreme Court, since they clearly can have a long-term effect. When we confirm these men and women for life terms, it is serious. We need to always be thinking about it. When I first came to the Senate after years in the House, I asked my senior colleague from Mississippi, a respected member and now chairman of the Appropriations Committee, to talk with me about what should be the criteria in debates for confirming judges. He gave me good advice, and it was pretty simple. He basically said that under our advice and consent responsibility, we should look to see if the nominee is qualified by character, education, experience, and temperament. Then if the nominee meets the basic criteria or qualifications in those areas, he or she should be confirmed. End of discussion. Not a ruling on a particular case, not a personal view on any subject, not one based on religious faith or any number of other issues. Are they qualified by character, which means do they have good integrity and ethics, are they educated for the job, do they have good experience, and do they have the right temperament to serve. That is the way it should be.

When I have looked at the issue, I am absolutely satisfied we have one of the most qualified nominees for the Supreme Court, probably one of the most qualified in at least 70 years, when we look at all he has done. I have applied this principle during Democratic administrations and Republican. Have I occasionally voted against nominees? Yes, for good and valid reasons. I voted against one because I thought he had a conflict of interest. I voted against one because I thought he had been a recess appointment inappropriately. I don't think Federal judges should, generally get recess appointments, although it has been done in one case where I clearly felt it was fair. But it is not something I would want us to make a practice of.

I voted for Justice Ginsburg. A lot of people in my State said: Why? I voted for other so-called liberal judges I philosophically had problems with, but in the case of Justice Ginsburg, I thought she was qualified by character, education, experience, and by her temperament. I am sure I don't agree with an awful lot of the decisions she has made on the Supreme Court, but she is qualified.

There is one other thing. It is called elections. When we elect a President, we should know what is going to be their position on appointing people to the Federal judiciary. This President, George W. Bush, made it clear he was going to be looking for strict constructionists, men and women of good character who would not write the laws but would interpret the laws. He talked about it. Nobody in America should be surprised that he would nominate a candidate such as Judge Alito. He certainly is experienced. He is a strict constructionist. He is qualified.

Some people are offended that the President would suggest what appears to be a conservative for the Supreme Court. Why? What did they expect? That is why I voted for Justice Ginsburg and a lot of President Clinton's nominees for the Federal judiciary, because he won the election. These were his choices. While I might disagree with him philosophically, I couldn't disagree with him as far as their qualifications. Even the very active Democratic Governor of Pennsylvania, Mr. Rendell, has talked about elections and their meaning in this process. This President has selected this nominee and he is entitled to that and, basically, this judge should be confirmed. That was an interesting comment for a former chairman of the Democratic National Committee. But he took the right position, and I appreciate the fact that he would do that.

When you look at Judge Alito's background, it becomes clear he is highly qualified. He is a graduate of Princeton and Yale Law School. Some people might try to use that against him. I guess he couldn't get into Vanderbilt or the University of Mississippi, but Princeton and Yale are not bad institutions.

He was a member of Phi Beta Kappa. He was an editor of the Yale Law Review. He clerked for Judge Leonard Garth of the Third Circuit. He was an assistant U.S. attorney for the District of New Jersey. He was Assistant to the Solicitor General of the United States beginning in 1981 where he argued 12 cases before the Supreme Court on behalf of the Federal Government. After serving as Deputy Assistant Attorney General in the Office of Legal Counsel, he was nominated for U.S. attorney for the District of New Jersey. He was unanimously confirmed by the Senate. Then, of course, he was nominated by President George H.W. Bush in 1990 to the Third Circuit Court of Appeals.

So he has good character. I think most people would agree to that. He is clearly well educated. It is hard to disagree with that. He clearly is brilliant. Maybe sometimes he is too smart for a lot of us; he knows the law, and he can talk about cases by name without reference to notes. He clerked and has worked as a Federal judge in the Third Circuit. He was on the prosecution side as assistant U.S. attorney and as U.S. attorney. So these are all good qualifications.

Then he went on the Third Circuit, a very important and active circuit, where he has served 15 years. He cast approximately 5,000 votes, and he participated in the decisions of more than 1,500 Federal appeals and has written more than 350 opinions—a lot of work and a lot of good work.

If there was a problem with this judge and his opinions, do you really think the Judiciary Committee could not have found some cases or more phrases when he participated in all of these votes and wrote 350 opinions? I have been very impressed by the willingness of his colleagues, but not just from New Jersey, not just those who served with him in previous administrations, but six current and former Federal judges with all kinds of backgrounds and philosophies—people who admit, I am a Democrat, a liberal, but I know this man, his demeanor, how he handles himself when we were in conference—where judges come out with these mystical decisions they develop in those quarters. That is where you see the real man. When you have people who have spoken up and made it clear about the quality of this nominee, I think that is very important.

The ''holy grail,'' the American Bar Association, has rated him well qualified. There again, a lot of people used to say that is the most important thing of all. Well, he got their top rating. Surely, that would affect us. Regardless of ideological, philosophy, or positioning, the people who know him best have spoken up very aggressively in his support. That is very convincing to me.

I thought during the hearings he handled himself quite well. He answered over 600—maybe 700 questions, when he was given a chance. The statements and questions were a lot longer than the answers were allowed to be. I thought his responses were good and studied. He met the so-called Ginsburg standard. He would not say how he might rule on a particular case. How can you do that? You have to know the facts and you have to look at precedents and you have to go through all these hoops that lawyers enjoy wrestling with and judges have to comply with. I watched it. My wife thought I was strange for sitting there watching these committee hearings, but I felt it was part of my responsibility. I wanted to see what the Senators asked him and how he responded. I thought he handled himself well on his answers and how he responded on substance.

I was upset, quite frankly, when it turned from substance to what got close to character assassination, smear. It really got personal and ugly. I was embarrassed about that. I was ashamed, quite frankly. I realize that sometimes our spouses have to put up with a lot for those of us who are in government and politics and on the judiciary. But I thought it was a defining moment when the judge's wife was driven to tears.

I have appreciation for the fact that one of the Senators was saying, We are sorry that you had to put up with this. We know you are a man of character and integrity. I don't think it needs to go that far.

Do we get carried away around here sometimes on both sides of the aisle? Sure. It is a tough, political, and partisan political place. But how much is enough? How low will we sink? Every year I have been in the Senate we have drifted further and further down in how we deal with these Federal judicial appointments. Hopefully, we will finally reach the bottom and we will go back up.

There is no good reason to vote against this good man to be on the Supreme Court, even if you might disagree with him on some of his decisions. But he will be careful and studied and he will pay attention to the precedents—more so than I probably would like him to. But it is time to begin to try to go back and approach these nominations differently. Again, I am not absolving any of us for having misbehaved sometimes in the way we handle these issues.

The American people are watching, and they have to feel for this man. They were unhappy with what they saw from a lot of Senators on the Judiciary Committee. They felt that he went through more than he should have, in terms of personal attacks. They would like for us not to go quite so far.

I was encouraged, frankly, when we had the vote on Judge Roberts, to be the Chief Justice. I was pleased that it was as bipartisan as it was, and he received 78 votes. But now I see that slipping away in this case.

Some say: Wait a minute, this is extraordinarily important because this may tip the balance, and that Justice Sandra Day O'Connor became somewhat of a swing vote and probably would be interpreted by some people as being a moderate in some respect.

Well, it may tip the balance. From my standpoint, I sure hope so. But I was not paying any attention to balance when I voted for Justice Ginsburg. I was voting on the merits of that particular individual.

I don't think it is fair to Judge Alito to oppose him because he is conservative and may tilt the balance of the Supreme Court. These things swing back and forth. The pendulum has been way over there in the Supreme Court for a long time and, finally, it has become more moderate. Maybe it will become more conservative.

I think I have told the story in the Senate before about how I was talking to a personal friend, now a Federal judge. He was inquiring in bemusement, and incredulously:

Why is it that the Federal judiciary is held in such low regard?

I could not believe he even asked. I said:

Your Honor, it is because of the dumb decisions that you all quite often make.

The people are outraged with decisions such as the Kelo v. City of New London case, dealing with eminent domain.

Time and time again, people see what is happening in Supreme Court rulings. They get in here when they should not and don't get in there when they should. In many instances, they interpret the law wrongly or start to try to make laws. And it is not just the Supreme Court. I think over the years—recently, at least—if you look at the Supreme Court, they have been pretty good. But the eminent domain decision just absolutely floored me. We have to correct that mistake. When you get down to the rest of the Federal judiciary, they are into all kinds of stuff all the time—social engineering, intervention when they have no business intervening, and they have lost a lot of respect from the American people.

That said, I want the Federal judiciary and the Congress and the President to be respected for the special institutions they are. So this is an important decision.

I am pleased the President nominated Judge Alito. I think that his experience over these years has clearly qualified him for it. He has 30 years of experience, and he went though 18 hours of questioning. He is a good man with a great background, with an American dream story, a first generation American from another country. He is everything I thought we should be looking for. So I am pleased and honored to be able to come and speak on behalf of his nomination and urge his confirmation, and I will vote for him.

In conclusion, let me say again that there are some who say we may still have a filibuster. We should not do that. We cannot do that. That is not fair to the process, not fair to this nominee, not fair to the President. I hope our colleagues will not impose a filibuster here and force action by the Senate to stop that sort of thing from happening.

I also want to say again that I think we have sort of lost our grip on how we treat these nominees. We need to find a way to pull back. It has gotten too ugly, too personal, and I think it undermines the credibility of the judiciary and those of us who sit in judgment on these men and women. I repeat again that we have all been a party to this, including me—I don't deny it—over the years. But at some point there comes a time when you say to each other, regardless of philosophy or region or party, let's see if we cannot do a better job, with more dignity and decorum, and that is more focused on the qualifications and character of the men and women and not on politics, partisanship, or ideology. I would like to be a part of making that happen.

Every now and then, I have colleagues say: What can we do about the atmosphere? Well, it begins with us. It begins with making up our minds that we are going to be more communicative and we are not going to be quite so partisan. I have been as partisan as anybody around here. I served in the House, and it tends to make you a partisan warrior when you have been in the minority. Some people say maybe you get to be kind of arrogant and mean when you get to be in the majority. We can make a difference. I hope we find a way to do it, and do it soon.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Mr. President, it is my understanding at this time that there is an allocation of time reserved for the Senator from Virginia, and I shall proceed, although we are slightly off schedule. I don't wish to encroach on others, but I will proceed and watch the floor very carefully.

The PRESIDING OFFICER. The Senator will suspend for a moment. I have been advised there are only 2 minutes left of the majority time for this allocation.

Mr. WARNER. Then I will proceed, if I may, and ask unanimous consent to speak for not to exceed 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object, Mr. President, we certainly hope there will be no objection. My friend and colleague from Connecticut is roughly scheduled on the hour, but that seems to be a reasonable request.

We could add the other 5 minutes at the end of the hour if that would be agreeable to the Senator from Virginia.

Mr. WARNER. Mr. President, I think that would work out. Perhaps the intervening hour will be such that we won't need that additional 5 minutes because I think the managers and leadership have tried to carefully manage the time. I am just able to get started now because my colleagues gave very good speeches, and we all enjoyed it.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, article II, section 2 of the U.S. Constitution explicitly provides for the responsibilities of the executive branch and Government and the Senate with respect to judicial nominations. The Constitution reads in part that the President ''shall nominate and, by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all of the officers of the United States.'' Thus, the Constitution provides the President of the United States with the responsibility of nominating individuals to serve on our Federal bench.

The Constitution provides the Senate with the responsibility of providing advice to the President on those nominations and with the responsibility of providing and withholding consent on those nominations. In this respect, article II, section 2 of our Constitution places our Federal judiciary in a unique posture with respect to the other two coequal branches of our Federal Government.

Unlike the executive branch and unlike the Congress, the Constitution places the composition and continuity of our Federal judiciary entirely within the coordinated exercise and responsibilities of the other two branches of the Government. Only if the President and the Senate fairly and objectively and, if I may say, in a timely manner exercise their respective constitutional powers can the judicial branch of Government be composed and maintained so that our courts can function and serve the American people.

For this reason, in my view, a Senator has no higher duty than his or her constitutional responsibilities under article II, section 2—the advise and consent clause.

With respect to the Senate's advice responsibilities under article II, section 2, I believe our Founding Fathers explicitly used the word ''advice'' in our Constitution for a reason. This was to ensure consultation between a President and the Senate prior to the forwarding of a nominee to the Senate for consideration. Adequate consultation prior to the forwarding of a nominee is of utmost importance. And, I compliment our distinguished President for recognizing that in the case of now, Justice John Roberts, and with respect to this nomination.

But, let's not forget that while the Constitution calls for the Senate to provide advice to a President on whom he should nominate, the decision of whom to nominate solely rests with the President of the United States.

Alexander Hamilton made this point crystal clear in the Federalist Paper No. 66 when he wrote:

> It will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President.

That is precisely why we are here in these closing days of a very prolonged procedure with regard to Judge Alito.

I am privileged to indicate that I shall strongly support him at the time the vote is taken and cast my vote for him.

With respect to the issue of consent, I believe it is imperative that when a Senator considers whether to grant or withhold consent, he or she should recognize article II, section 2 and Alexander Hamilton's statement in Federalist No. 66. Accordingly, during the course of my 28 years in the Senate, I have always tried to fairly and objectively review a judicial nominee's credentials prior to deciding whether I will vote to provide consent on a nomination. I look at a wide range of factors, primarily: character, professional career, experience, integrity, and temperament for lifetime service on our courts. While I certainly recognize political considerations, it is my practice not to be bound by them.

These same fair and objective factors that I have used during my 28 years in the Senate have guided my consideration of Judge Alito's nomination.

When Judge Alito's nomination was first announced, I wasn't overly familiar with the nominee. But over the past few months, I have reviewed his record thoroughly. I met with the nominee twice—the first time prior to his confirmation hearings before the Senate Judiciary Committee and the second time after the hearings. Each time I asked him a number of indepth questions. I have also reviewed a number of his judicial opinions and followed the confirmation hearings before the Judiciary Committee. In addition, many people have written, emailed, called my office, or spoken to me personally about this nominee, and I have respectfully considered their views.

Having now completed my review of Judge Alito's nomination, I can say, without equivocation, that of the numerous judicial nominees I have reviewed during my nearly three decades in the Senate, Judge Alito's credentials and qualifications place him as very well qualified.

Judge Alito has an impressive record of legal accomplishments.

He received his bachelor's degree from Princeton University and attended Yale Law School. While at Yale, he served as an editor on the Yale Law Journal. Following graduation from law school, he worked as a law clerk for a Federal circuit court judge, Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit.

Subsequent to his clerkship, Samuel Alito worked as an assistant U.S. attorney, as an assistant to the Solicitor General of the United States, and in the Office of Legal Counsel in the U.S. Department of Justice. In 1987, Mr. Alito was unanimously confirmed by the Senate to serve as the U.S. attorney for the District of New Jersey. Three years later he was nominated and unanimously confirmed by voice vote to serve as a judge on the U.S. Court of Appeals for the Third Circuit, and he has served on this court for the last 15 years.

Without a doubt, Judge Alito has the requisite legal and professional experience to serve on the Supreme Court. Indeed, the American Bar Association, whose rating system of Federal judges is often referred to as the gold standard in the Senate, recently awarded Judge Alito a rating of well qualified—its highest rating.

But in addition to his impressive record of legal accomplishments, Judge Alito has also demonstrated—during his confirmation hearings and over the past 15 years on the Federal bench—a deep respect for legal precedent and for the constitutional responsibility of the legislative branch to write our laws. These qualities of Judge Alito were confirmed by the remarkable testimony before the Judiciary Committee of several current and retired Federal judges, appointed by both Republican and Democratic Presidents, who worked closely with Judge Alito on the Federal bench.

In my view, Judge Alito's strong record and experience, coupled with his appearance before the Judiciary Committee, eliminate any question of the existence of ''extraordinary circumstances'' that would justify denying him an up-or-down vote.

Judge Alito is an outstanding judicial nominee who I am proud to support for confirmation. I believe he will serve on the U.S. Supreme Court with distinction, and I commend our President on making such a fine nomination.

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

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

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. 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. LIEBERMAN. Mr. President, pursuant to the understanding between the Senator from Virginia and the Senator from Massachusetts, I now ask unanimous consent that there be an extra 5 minutes added at the end of this hour for this side of the aisle.

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

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to discuss the nomination of Samuel Alito to be Associate Justice of the Supreme Court. This is the sixth opportunity I have had as a Senator to consider a President's nominee to the High Court. It is surely one of the most awesome and important responsibilities of Members of this body because of the uniquely powerful and autonomous role the Supreme Court has in our governmental system and because, once confirmed, Supreme Court Justices serve for life, with accountability only to the Constitution, as they read it.

Similar to most of my colleagues, I judge the nominees based on four factors: their intellect and ability, their experience, their character, and their judicial philosophy.

On the first three factors—intellect, experience, and character—I conclude that Judge Alito more than passes the test. But on the fourth factor, judicial philosophy, I am left with too many doubts to vote to confirm this nominee for a lifetime of service on the U.S. Supreme Court.

Let me now go over these four areas of consideration.

First, intellect and ability. From the meeting I had with Judge Alito, the legal quality of his opinions, over 15 years as a judge, and his testimony before the Judiciary Committee, I believe Judge Alito has shown that he is a person of considerable intellect and ability.

Second, experience. Judge Alito's curriculum vitae itself depicts his excellent and relevant experience as a law clerk, a Federal Government attorney, a U.S. attorney, and an appellate judge on the Third Circuit.

Third, his character. Judge Alito, I know, was questioned aggressively at the Judiciary Committee's confirmation hearings and elsewhere with regard to his character, but I thought he emerged with his integrity and honor intact. The ABA standing committee confirmed that judgment when it concluded that ''he is an individual of excellent integrity,'' and that was based on more than 300 interviews with professional colleagues.

Fourth is judicial philosophy, and here is where, for me, the problems with this nomination begin and, in some sense, ends. Judge Alito brings to this nomination process a more lengthy record of judicial opinions than any of the previous five nominees to the U.S. Supreme Court whom I have had the privilege to consider. In his 15 years on the Third Circuit Court, Judge Alito has written more than 350 opinions. Together, these opinions leave me with profound doubts about whether Judge Alito would protect and advance the special role the Constitution gives the Supreme Court as the single institution in our Government that our Founders freed forever from popular political passions so that it could protect the rights our founding documents gave to every American.

Personal freedom and equal opportunity are America's core ideals, and our courts have been and must be the great advancers and protectors of those ideals. To me, that work defines the vital mainstream of American jurisprudence.

Based on his personal statements during the 1980s when he was a Government attorney, and particularly on his 15 years of judicial opinions, I am left with profound concerns that Judge Alito would diminish the Supreme Court's role as the ultimate guarantor of individual liberty in our country.

This is not about a single issue but about an accumulation of his opinions that leads me to a preponderance of doubts. For example, in civil rights cases, Judge Alito has repeatedly established a very high bar, an unusually high bar for entrance to our courts for people who believe they have been denied equal opportunity and fair treatment based on race or gender.

In one case, Bray v. Marriott Hotels, the majority of his colleagues on the court said:

> Title VII of the Civil Rights Act would be eviscerated if our analysis were to halt where the dissent of Judge Alito suggests.

Judge Alito's narrow reading of the commerce clause, as exemplified by his dissent in the case of United States v. Rybar, casts a shadow on Federal legislation passed to protect the rights of individual Americans which has been and will be based on the commerce clause. When asked at his confirmation hearings about the question of personal privacy, Judge Alito accepted the 1965 decision of Griswold v. Connecticut as settled law. But when asked over and over, he refused to say the same about the 1973 decision in Roe v. Wade.

On that most divisive and difficult question of abortion, I personally believe that Roe achieved a just balance of rights and reflected a societal consensus that has continued and deepened in our country for more than three decades. I was left with serious concerns that Judge Alito would not uphold the basic tenets of Roe, and that is a very troubling conclusion.

Every time I have voted to confirm a nominee to the U.S. Supreme Court, as I have with Justices Souter, Breyer, Ginsburg, and Roberts—two appointed by Republican Presidents and two appointed by a Democratic President—I did so knowing, as we all do, that I was taking a risk because I could never know exactly how the particular Justice would rule on the many cases that would come before him or her in a lifetime on the bench. But I ultimately concluded, based on their records and their testimony, that those four Justices would more likely than not uphold the unique responsibility the Supreme Court has as the most important guardian of freedom, opportunity, and privacy for every single American.

Unfortunately, I have not been able to reach the same conclusion about Judge Alito, and so I will respectfully vote ''no'' on his nomination.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from Connecticut for his excellent statement.

I spoke on this issue yesterday. I wish to include in the RECORD some letters that I have received from the representatives of the working community. I will include them in the RECORD. The first letter I am going to include in the RECORD is a letter I received from the AFL–CIO. Included in the comments are these words:

> As the enclosed memorandum explains more fully, Judge Alito's decisions and dissents show a disturbing tendency to take an extremely narrow and restrictive view of laws passed by Congress to protect workers' rights, resulting in workers being deprived of wage and hour, health and safety, anti-discrimination, pension, and other important protections. On a number of occasions, Judge Alito's colleagues on the Third Circuit have criticized his opinions for their excessively narrow view of worker protection and civil rights statutes. Judge Alito holds federal agencies to an unrealistically high standard when they seek to enforce worker protection laws, often reversing them on hypertechnical grounds and depriving workers of important protections as result.

It continues:

> Working families are struggling mightily against an assault on our hard-won gains in the legislative arena and at the bargaining table. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated, and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need and deserve Supreme Court Justices who understand and respect the importance of hard-fought rights and protections, not Justices who take an unduly narrow view of the law, and of our rights. Judge Alito's judicial philosophy is one that appears at odds with workers' interests. Given the current composition of the Supreme Court, and the absence of even a single Justice with a worker advocacy background, we cannot afford to have the Court further skewed against working families' interests.
>
> In recent years, many cases have been decided in the Supreme Court by a one-vote margin. The Supreme Court, decided, by one-vote margins, two cases involving the question of whether certain groups of workers were protected under the National Labor Relations Act. Millions of state employees were deprived of their ability to seek relief in court under the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act because of decisions decided by a one-vote margin. The Court issued a decision restricting States in their ability to adopt their own workplace safety laws, again by a one-vote margin. By a one-vote margin, the Supreme Court excused employers from having to pay backpay when they are found to have discriminated against union supporters who happen to be undocumented workers. The importance of this nomination to the rights and protections of working families is clear.

There is an excellent letter I received from AFSME. It points out:

> As a judge on the 3rd Circuit Court of Appeals in Philadelphia, Lilts's extreme views can be seen in his rulings where he consistently limits Congress' authority to enact

laws that protect the rights of workers and individuals. . . .

Then it says:

In one such case, Alito denied a female police officer's sexual harassment claims despite overwhelming evidence that she had indeed been victimized.

Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Family and Medical Leave Act did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision of the FMLA. Several courts since then, including the very conservative Fourth Circuit Court of Appeals, have concluded that state employees shall have access to the entire range of protections under the FMLA, thus rejecting Alito's earlier ruling.

Perhaps most disturbing about Judge Alito's judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Rights Act of 1964. . . .

It continues:

While Alito's 15 years as a Judge raises major concerns, the time he spent as Presidential appointee in the Reagan White House is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers. . . .

Alito wrote that protecting Americans is not the federal government's job. He said in his memo, ''After all, it is the states, and not the federal government, that are charged with protecting the health, safety and welfare of their citizens. This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.

That is a letter from Mr. Gerald W. McEntee.

There is a similar letter from the United Auto Workers.

I ask unanimous consent those letters be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. KENNEDY. Whoever is confirmed to succeed Justice Sandra Day O'Connor will have enormous power to affect Americans' daily lives. We have a constitutional duty to ensure Justice O'Connor's successor has demonstrated a core commitment to upholding the fundamental rights and freedoms on which our Nation was founded.

Our decision whether to confirm a Supreme Court nominee affects the rights and freedoms not only of our generation, but those of our children and grandchildren as well.

The Court's decisions affect whether employees' rights will be protected in the workplace. I have just referred to three letters that I have received. I have received many others that have been quite specific, pointing out the different areas where the judge has basically turned his back on the employees' rights and workers' rights.

They will affect the ability of Americans to be secure in their homes from unwarranted searches and seizures. They affect whether families will be able to obtain needed medical care under their health insurance policies. And they affect whether people will actually receive the retirement benefits they were promised. They affect whether people will be free from discrimination in their daily lives. They affect whether Americans' most private medical decisions will remain a family matter or will be subject to government interference. And they affect whether students will be given fair consideration when they apply to college. They affect whether persons with disabilities will have access to public facilities and programs. They affect whether we will have reasonable environmental laws that keep our air and water clean.

There they are. These are the issues which the Supreme Court has ruled on very recently. We wonder about the Supreme Court Justices, what judgments and decisions are they making that are so important to the average family. Why should an average family in America who is watching this debate think this nominee and his decisions are going to affect them? That is a reasonable question.

Here you are. Employees, if you are a worker, you may question whether employees' rights will be protected in the workplace. I have just outlined several examples where there have been Supreme Court Justices who have denied workers fair consideration.

The ability of Americans to be secure in their own homes from unwarranted searches and seizures, we went through the Groody case, Justice Alito permitting the strip-searching of a 10-year-old girl who was clearly not included in the warrant that was approved by the judge. He was criticized, not by those of us who have expressed reservations about the nominee, but criticized by a judge on the Third Circuit, talking about how Judge Alito's actions were out of order.

They affect whether families will be able to obtain medical care under their health insurance policies. Remember the debates we had on the Patients' Bill of Rights? We had legislation that passed here, passed the House. We came very close to getting legislation—doesn't each HMO have to provide the types of coverage they have committed themselves to or do they not? Does that violate ERISA or doesn't it violate ERISA? These are important judgments. But it comes down to whether individuals are going to get the health care coverage they thought they were going to get. That is going to be decided by the Supreme Court of the United States.

They affect whether people will actually receive the retirement benefits they were promised. The retirement pensions are in free fall in the United States of America at the present time; absolutely free fall. They say for retirement you need to have your savings—that is part of it—you need the Social Security and Medicare, and you need to have your retirement. Those are the three legs on the stool for a dignified retirement.

These are the issues involving pensions. We have now seen 700 pension funds collapse over the period of the last 4 years, and $8 billion that workers had put aside has effectively been lost. These issues will come up. What are the obligations of companies in order to pay back workers? Those issues eventually come before the Supreme Court—whole lifeline savings. Those issues come up before the Supreme Court.

Mr. President, I see my friend from West Virginia who had been scheduled during this time. I have had an opportunity to speak previously. There are some additional comments I would like to make, but certainly the Senate looks forward to the words of the Senator from West Virginia. I yield at this time.

EXHIBIT 1

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Washington, DC, December 14, 2005.

DEAR SENATOR: The AFL–CIO, a federation of 53 national and international unions representing over nine million working women and men, has reviewed Judge Samuel Alito's record on the U.S. Court of Appeals for the Third Circuit in cases of importance to working families. Based on this review, we are compelled to oppose his nomination to be an Associate Justice on the United States Supreme Court.

As the enclosed memorandum explains more fully, Judge Alito's decisions and dissents show a disturbing tendency to take an extremely narrow and restrictive view of laws passed by Congress to protect workers' rights, resulting in workers being deprived of wage and hour, health and safety, anti-discrimination, pension, and other important protections. On a number of occasions. Judge Alito's colleagues on the Third Circuit have criticized his opinions for their excessively narrow view of worker protection and civil rights statutes. Judge Alito holds federal agencies to an unrealistically high standard when they seek to enforce worker protection laws, often reversing them on hypertechnical grounds and depriving workers of important protections as a result.

We are also very concerned about Judge Alito's views on the scope of Congressional power, given some of his rulings in this area, and his views about voting rights, given his criticism of the Warren Court and its reapportionment decisions. It is critical that Senators explore these and other areas thoroughly at Judge Alito's upcoming confirmation hearings in order to understand his views and his judicial philosophy on these important issues.

Working families are struggling mightily against an assault on our hard-won gains in the legislative arena and at the bargaining table. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need and deserve Supreme Court justices who understand and respect the importance of our hard-fought rights and protections, not justices who take an unduly narrow view of the law, and of our rights. Judge Alito's judicial philosophy is one that appears to be at odds with workers' interests. Given the current composition of the Supreme Court, and the absence of even a single justice with a worker advocacy background, we cannot afford to have the Court

further skewed against working families' interests.

In recent years, many cases have been decided in the Supreme Court by a one-vote margin. The Supreme Court decided, by one-vote margins, two cases involving the question of whether certain groups of workers were protected under the National Labor Relations Act. Millions of state employees were deprived of their ability to seek relief in court under the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act because of decisions decided by a one-vote margin. The Court issued a decision restricting states in their ability to adopt their own workplace safety laws, again by a one-vote margin. By a one-vote margin, the Supreme Court excused employers from having to pay back pay when they are found to have discriminated against union supporters who happen to be undocumented workers. The importance of this nomination to the rights and protections of working families is clear.

The AFL–CIO urges you to oppose Judge Alito's nomination and to insist on a more moderate nominee with a record demonstrating greater respect for workers' rights.

Sincerely,

JOHN J. SWEENEY,
President.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, December 19, 2005.

DEAR SENATOR: Next month the Senate is expected to consider the nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. Based on our review of his past writings and judicial decisions, the UAW opposes his confirmation.

While serving on the Third Circuit Court of Appeals, Judge Alito's opinions have consistently reflected a narrow, constricted interpretation of statutes protecting worker rights. In particular, his opinions have excluded state employees from coverage under the Family and Medical Leave Act, denied overtime to newspaper reporters, vacated OSHA citations, absolved corporate officers from liability for unpaid wages, and exempted a company from having to notify workers about an impending plant closing. He even issued a solitary dissenting opinion that would have criminalized ''no docking'' rules that have been a common industrial practice.

In addition, Judge Alito's opinions in race and gender employment discrimination cases have reflected a restrictive interpretation of civil rights laws that would make it much more difficult for women and minorities to obtain remedies when they are the victims of discrimiation. We are especially troubled by Judge Alito's statement in a 1985 job application that he was ''particularly proud'' of his work in the Reagan Administration to restrict affirmative action and limit remedies for racial discrimination. We are also disturbed by his 1985 writings disagreeing with the concept of ''one man, one vote''.

The UAW believes that nominees to the Supreme Court must demonstrate that they hold views that are within the judicial mainstream, and are committed to supporting the rights of workers, minorities and women. Unfortunately, we believe that Judge Alito fails to meet this essential test. Accordingly, the UAW urges you to oppose his nomination to the Supreme Court.

Thank you for considering our views on this important issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO,
Washington, DC, December 19, 2005.

DEAR SENATOR: On behalf of the 1.7 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to announce our opposition to the nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. We have reviewed his record and determined that his views are far too extreme and out of the mainstream of judicial philosophy. His presence on the Supreme Court therefore would further divide the country and disenfranchise even more average citizens and working Americans.

We believe that working people who are already seeing their rights and protections under attack would not fare well if Judge Alito was elevated to the Supreme Court. Judge Alito has authored a number of decisions and dissenting opinions contrary to the rights of employees and individuals. Of particular concern to our members is Judge Alito's established practice of ''closing the court-room door'' to victims of civil rights violations by substantially increasing the burden of proof placed on plaintiffs prior to their cases ever getting to a jury of his or her peers. In evaluating plaintiffs' discrimination claims, he has also repeatedly taken a high-handed approach in dismissing the merit and weight of their evidence and has been chastised by his colleagues on the Third Circuit for doing so.

As a judge on the 3rd Circuit Court of Appeals in Philadelphia, Alito's extreme views can be seen in his rulings where he consistently limits Congress' authority to enact laws that protect the rights of workers and individuals, including the Americans with Disabilities Act (ADA) and the National Labor Relations Act. And, although the majority of his fellow judges disagreed with him, Alito set a standard so high that victims of sex discrimination would find it virtually impossible to prove their case. In one such case, Alito denied a female police officer's sexual harassment claims despite overwhelming evidence that she had indeed been victimized.

Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Family and Medical Leave Act (FMLA) did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision of the FMLA. Several courts since then, including the very conservative Fourth Circuit Court of Appeals, have concluded that state employees should have access to the entire range or protections under the FMLA, thus rejecting Alito's earlier ruling.

Perhaps most disturbing about Judge Alito's judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Right Act of 1964, which bars various forms of discrimination in employment. Even when plaintiffs in these cases come forward with substantial evidence of title VII violation, Judge Alito voted—often in dissent—to deny relief without even letting juries decide whether discrimination occurred. In addition, in reviewing a plaintiff's evidence, he has on several occasions improperly assumed the role of jury or trial judge by casting judgment on the weight and merits of the evidence and the credibility of a witness' testimony.

As U.S. citizens, we are concerned on several other fronts as well. Alito consistently ruled against victims of discrimination based on a disability. His philosophy would restrict Congress' power to enact disability rights laws and few if any such cases would survive under Judge Alito. Also, he ruled to significantly reduce the ability of citizens to bring suit against polluters under the Clean Air Act.

While Alito's 15 years as a Judge raises major concerns, the time he spent as a Presidential appointee in the Reagan White House is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers by making odometer fraud more difficult. Alito wrote that protecting Americans is not the federal government's job. He said in his memo, ''After all, it is the states, and not the federal government, that are charged with protecting the health, safety, and welfare of their citizens.'' This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.

Judge Alito clearly is a staunch advocate of the federalism movement which poses a tremendous threat to employees of state governments. State and local governments, like private sector companies and non-profit organizations, are also employers. And, as employers they should be required to adhere to the same laws and regulations that all other employers are subject to. Unfortunately, Judge Alito and the federalism movement seek to limit the power of the federal government to protect individuals who happen to be employees of state governments, in effect, making state employees second class citizens.

We strongly urge the Senate to insist that all of the relevant information about Judge Alito be released, particularly the Solicitor General and the Office of Legal Counsel memoranda. We believe that there are underlying reasons why the Administration continues to resist releasing this vital information.

Judge Alito's record is extremely troubling to AFSCME and the workers we represent. He is one of the most extreme federal judges in the whole country. If confirmed, Alito would tilt the court further to the right and place in jeopardy decades of progress protecting individual rights and freedoms.

For the forgoing reasons, AFSCME strongly urges the Senate to reject Judge Alito's nomination. President Bush should nominate an individual that does not pose such an enormous threat to the rights and freedoms of working men and women.

Sincerely,

GERALD W. MCENTEE,
International President.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank my colleague from Massachusetts, my colleague and my friend, Senator KENNEDY.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The time of the minority is open until 5 minutes after 4 p.m. The Senator has 41 minutes.

Mr. BYRD. Mr. President, I take this opportunity to offer a few observations on the manner in which the Senate has conducted its inquiry into the qualifications of Judge Samuel A. Alito, Jr., to serve on the U.S. Supreme Court.

Regardless of any Senator's particular view of Judge Alito, I think we can all agree that there is room for improvement in the way in which the Senate and, indeed, the Nation have undertaken the examination of this

nominee. Let me be clear. I mean no criticism of the chairman of the Senate Judiciary Committee or any particular member of that committee.

I feel compelled to address this issue, not to point fingers, not to scold, not to assign blame, but only to address specific, sincere, heartfelt concerns that have been brought to my attention, by the people of West Virginia in particular. Many people, including foremost, as I say, the people of West Virginia, in no uncertain terms were, frankly, appalled by the Alito hearings. I don't want to say it, but I must. They were appalled.

In the reams of correspondence that I received during the Alito hearings, West Virginians—the people I represent—West Virginians who wrote to criticize the way in which the hearings were conducted used the same two words. People with no connection to one another, people of different faiths, different views, different opinions, independently and respectively, used the same two words to describe the hearings. They called them an ''outrage'' and a ''disgrace.''

These were not form letters, ginned up by special interest groups on either the right or the left. These were handwritten, contemplative, old-fashioned letters written on lined paper and personal stationery. They were the sort of letters that people write while watching television, in the comfort of their living rooms, or sitting at the kitchen table.

It is especially telling that many who objected to the way in which the Alito hearings were conducted do not support Judge Alito. In fact, it is sorely apparent that even many who opposed Judge Alito's nomination also opposed the seemingly ''made for TV'' antics that accompanied the hearings.

It is not just the Senate as an institution which is to blame. The virulence of some outside groups from both sides of the political spectrum added fuel to the fire. Multimillion-dollar advertising campaigns either to proclaim or to denigrate Judge Alito's fitness for the position raged across the airwaves.

A solemn constitutional responsibility is not helped when it takes on such a tone.

And then there were the media and the media's contribution to the deterioration of this very important constitutional process.

Was it necessary to subject Mrs. Alito to the harsh glare of the television klieg lights as she fled the hearing room in tears, fighting to maintain her dignity in response to others with precious little of their own? Have we finally come to the point where our Nation's assessment of its Supreme Court nominee turns more on a simple-minded sound bite or an exploitive snapshot than on the answers provided or withheld by the nominees?

Obviously, something is wrong with our judicial nomination process, and we in the Senate have the power to fix it.

The Framers of such a great document presumably had something better in mind when they vested the Senate with the authority to confirm Justices of the Supreme Court. In fact, we know they did. In 1789, Roger Sherman of Connecticut defended the role of the Senate in confirming Presidential appointments. He wrote: It appears to me that the Senate is the most important branch in the government . . . The Executive magistrate is to execute the laws. The Senate, being a branch of the legislature, will naturally incline to have them duly executed and, therefore, will advise to such appointments as will best attain the end.

Alexander Hamilton also had high hopes for the Senate's ability to render its advice and consent function. He proclaimed: It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union.

Exactly what did the Framers mean when they gave the Senate the power to ''consent'' to the confirmation of the judicial nominees?

Historically, a majority of the Framers anticipated that the Senate's confirmation or rejection of a judicial nominee would be based on the fitness of the nominee, not on partisan politics or extraneous matters.

Based on these assumptions, the Framers presumably did not expect the Senate to spend its allotted time on a nominee staging partisan warfare instead of examining his or her qualifications.

Yet the Framers probably also would never have expected that a Senator of a nominee's own party would refuse to ask the candidate meaningful questions. They certainly did not intend for Senators of the nominee's own party to sit silently in quiet adulation, refusing to seek the truth, while smiling indulgently; thus, accomplishing nothing.

The Framers expected the Senate to be a serious check—a serious check—on the power of the President. The Framers clearly thought that the Senate's confirmation process ought to be fair, ought to be impartial, ought to be thorough, and ought to exhibit appropriate respect for solemn duty and the dignity of both the process and the nominee.

I regret that we have come to a place in our history when both political parties—both political parties—exhibit such a ''take no prisoners'' attitude. All sides seek to use the debate over a Supreme Court nominee to air their particular wish list for or against abortion, euthanasia, Executive authority, freedom of the press, freedom of speech, wiretapping, the death penalty, workers' rights, gun control, corporate greed, and dozens of other subjects. All of these issues should be debated, but the battle lines should not be drawn on the judiciary. They should be debated by the people's representatives in the legislative branch.

However, too many Americans apparently believe that if they cannot get Congress to address an issue, then they must take it to the Court. As the saying goes, ''If you can't change the law, change the judge.''

This kind of thinking represents a gross misinterpretation of the separation of powers. It is the role of the Congress—the role of the legislative branch—to make and change the laws. Supreme Court Justices exist to interpret laws and be sure that they square with the Constitution and with settled law.

A better understanding of the Court's role would do much to diminish the ''hype'' that now accompanies the judicial nomination process. The role of the Senate in the Alito debate is not to push legislation or to score points for those who either support or oppose specific legislative proposals. The purpose of the current debate is to evaluate the fitness of Judge Samuel Alito to sit on the highest Court of our land, which includes his temperament, his intellectual ability, and his record.

In a perfect world, this heavy constitutional responsibility of the Senate would have little to do with party affiliation.

Unfortunately, during the first administration of George Washington, as far back as 1795, a bruising confirmation battle over the nomination of John Rutledge to be the Chief Justice of the Supreme Court established that the same Senators would consider not merely the qualifications but also the political views of a nominee in deciding whether to support or reject his nomination.

I am a Senator who takes this Constitution seriously. I refuse simply to toe the party line when it comes to Supreme Court Justices. And I will make up my own mind after careful contemplation. The President of the United States said partly in jest that he wanted to call me to lobby me on the nomination. I said: Mr. President, I don't lobby very easily. I take my Constitutional duties seriously. I will listen to what anybody has to say, and then, Mr. President, I will make up my own mind.

I am a registered Democrat. Everybody knows that. But when it comes to judges, I hale from a conservative State. Similar to a majority of my constituents, I prefer conservative judges. I have been saying that for years and years. That is, judges who do not try to make the law.

I was once approached by President Richard Nixon to inquire about my interest in being a U.S. Supreme Court Justice. I was proud to be considered. Whether I would have been nominated, I have no way of knowing. But as I said to my wife: I don't think I would like that position. I would not like that kind of cloistered life. I like the rough-and-tumble of the legislative branch. She said: Then you had better let the President know that.

I said the same thing to Senator John Pastore, and he responded in the same way. He said: You had better let the President know that.

I declined so that I might continue to serve the people of West Virginia, regardless of what the President may have in his heart and in his mind. This is not to say that I would vote for any judge just because he is a conservative. No. No, sir. If I think a conservative judge is unqualified, I will not vote for him, nor would any other Senator vote for a nominee in that situation.

I have voted against judges on both sides of the political spectrum, who leaned too heavily on their political views rather than on existing law, precedents and on the Constitution and who seemed to have a political agenda.

Much has been made of the fact that Judge Alito has expressed support of the concept of the ''unitary executive.'' Many are afraid his support for this concept means that he favors a broad expansion of Presidential power. And I shared some of that concern. Judge Alito, however, has stated repeatedly that his support for the concept of the unitary executive does not refer to broadening the scope of the power of the President.

Instead, Judge Alito says that this theory refers to the way in which the President utilizes his existing power to faithfully execute the law as it applies to administrative agencies within the executive branch. In describing the unitary executive in his speech before the Federalist Society, Judge Alito stated article II, section 3 of the Constitution provides that the President ''shall take care that the laws be faithfully executed.'' ''Thus,'' he said, ''the President has the power and the duty to supervise the way in which the subordinate executive branch officials exercise the President's power of carrying Federal law into execution.''

Before the Judiciary Committee, Judge Alito was asked point blank whether he thought the concept of the unitary executive refers to expanding the scope of Presidential power, or instead to the President's control over the executive branch. As I understood it, Judge Alito confirmed he was speaking of the latter.

Judge Alito was also asked whether he would support an expansion of the scope of Presidential power. Specifically, he was asked if he thought the President should have more power than he is expressly given under the Constitution and by law. Judge Alito stated several times that he would not support that point of view, and he noted, again, that the ''scope'' of the power of the President has nothing to do with the unitary executive.

I met with Judge Samuel Alito. I spent close to 2 hours with him. I asked him what he thought about the establishment clause and the free exercise clause and the power of the purse and the congressional power over the purse. I told him that I believed the Supreme Court has gone too far in prohibiting the free exercise of religion in this country. He listened respectfully and said that he understood. He did not pledge to overrule precedent, but he made it clear that he understood and respected my viewpoint.

I also advised him of my view that the executive branch is continually and improperly seeking to grab power, more power and more power, and that the separation of powers requires the judiciary to be ever vigilant in stopping the abuse of power by the President and in protecting the powers of the other two branches.

I urged Judge Alito, as I urged Judge Roberts before him, to recognize the importance of maintaining the equality of the three branches of our Government, protected by our Constitution. I stressed that he ought to be a Justice who will not forget the people's branch, the legislative branch, the first branch, the primary branch mentioned in the Constitution under article I; the executive is mentioned later on in article II.

I requested he not rule in a way that would expand the authority of an already expansionist executive. I reiterated that the Framers did not place the greatest power in the executive but, instead, the Framers put the greatest power in the people—the people, like you and me. The first three words in the preamble of the Constitution are, we all know, ''We, the People.'' The Framers ensured that the people, through us, their elected representatives in the Congress, would have the greatest power in our Government. In response, Judge Alito told me he respected the separation of powers and would not rule in support of a power-hungry President. I liked that answer. I liked Judge Alito. He struck me as a man of his word, and I intend to vote for him.

I believe strongly that the Senate has a responsibility to provide its advice and consent with respect to a particular nominee based on the merits or demerits of that nominee, not on focus groups, celebrity endorsements, binders filled with innuendo and slanted analysis or White House photo opportunities.

In truth, there is absolutely no way of knowing what any nominee for our Nation's highest Court will do after that nominee is confirmed. One could cite many examples of Justices who surprised the President who nominated them, as well as the Members of the Senate who supported or opposed their confirmation. Once a man or woman has achieved the high honor of a lifetime appointment to our Nation's highest Court, a transformation may occur. The awesome responsibility of protecting our Constitution and preserving the checks and balances for succeeding generations of Americans must elevate and sharpen one's judicial temperament in profound ways. The duty to preserve the freedom of our citizens as enshrined in our magnificent Bill of Rights must ennoble even an already noble mind and character.

In the end, the heavy duty borne by Members of the Senate to evaluate and reject or approve the President's nominees for the High Court should come down to each Senator's personal judgment of the man or woman before us, augmented, of course, by such judicial records and writings as may exist. I may not know exactly what kind of Justice Samuel Alito will be. No one does. No one does. My considered judgment, from his record, from his answers to my own questions, from his obvious intelligence, and from his obvious sincerity, leads me to believe him to be an honorable man, a man who loves his country, loves the Constitution, and a man who will give of his best. Can we really ask for more?

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise today to explain why I will vote against Judge Samuel Alito's nomination for Associate Justice to the U.S. Supreme Court.

After reviewing his record, I believe Judge Alito will move the Supreme Court too far to the conservative side of American jurisprudence. I believe Judge Alito's judicial philosophy will also dangerously increase Executive power, injuring the checks and balances built into our Constitution that protect all of us. Judge Alito's confirmation may roll back important civil rights protections, protections which were achieved in our country through the sacrifices of many and are crucial to the future of the United States.

I hope, if Judge Alito is confirmed, history will prove my concerns wrong. But given his record, including his extensive written record, I cannot in good conscience support him.

I thank the Senate Judiciary Committee. It held fair, serious, and dignified hearings. Chairman SPECTER, Ranking Member LEAHY, the members of the committee, and the majority and minority staff have again earned our gratitude.

Judge Alito's confirmation vote is particularly important for our country because this seat on our Supreme Court has been held by a champion of justice and mainstream America for a quarter century: Justice Sandra Day O'Connor. Our Nation owes Justice O'Connor a great debt of gratitude. Justice O'Connor served as an exemplary role model for all of us, including women succeeding at the very highest level of our National Government.

Unfortunately, this nomination signals an undesirable retreat from diversity on the U.S. Supreme Court. Women make up more than half of the people of our country. Yet women have been represented in the Supreme Court in our entire history for more than two centuries by only two female Justices—Justice O'Connor and Justice Ginsburg. Now Justice Ginsburg is left to be the only role model on the Court for the hopes and aspirations of women and for all of us in America who believe that all men and all women are truly created equal.

I regret that result, especially after it was the radical right of America that derailed the nomination of Harriet Miers. We all know there are thousands of highly qualified women lawyers and judges across America, and they could have provided exceptional service to the United States on the Supreme Court. Regardless of the merits or demerits of Judge Alito, I am saddened, at the daybreak of the 21st century, that the United States has retreated from a cause that rightfully embraces the inevitability of the equality of women in our society.

Beyond the principle of gender diversity, Justice O'Connor consistently defined the center of the Supreme Court on many issues. She used her wisdom and her judgment to advance reasonable, commonsense, and mainstream legal doctrines that affect the lives of all Americans. That is why the choice of the replacement for Justice O'Connor is so important for our collective future.

The confirmation of a Supreme Court Justice is a solemn task. It is among the most important constitutional duties of the Senate. I have evaluated Judge Alito's qualifications using the same criteria I used to evaluate Chief Justice John Roberts for whom I voted. I have reviewed Judge Alito's record for evidence of his fairness, impartiality, and his proven record of upholding the law. However, I have decided that my concerns require that I vote against him.

My concerns with Judge Alito start with the 1985 memorandum he included with his job application to the White House. Judge Alito was then 35 years old. To me, this document is a very powerful document. It is evidence of how Judge Alito the man views the law and the Supreme Court. The document is very carefully written. It is packed full of Judge Alito's political and jurisprudential ideas which he has adhered to over the years. In that memorandum, Judge Alito declared he strongly disagreed with the opinions of the Warren Court. Those opinions are now and then widely accepted. They encompass important constitutional protections such as opinions on reapportionment in Baker v. Carr, the case that established the principle of one person, one vote. They concern well-established rules about the relationship between church and state. I find Judge Alito's views to be outside the mainstream of legal thought in 1985.

Since that time, based upon his decisions as an appellate judge and in his other writings, Judge Alito has ruled consistently with the legal philosophy he described in 1985. I believe that legal philosophy is wrong for our Nation. Specifically, I believe Judge Alito's legal philosophy about the structure of our government under our Constitution will harm our country if ultimately adopted by the Supreme Court.

The Framers of our Constitution were geniuses. They created a legal structure for our country that has endured and prospered for more than two centuries. The Framers were not successful because they were abstract thinkers; they were successful because they were practical thinkers, practical Americans. The Framers knew human nature. Their view of human nature focused on the common frailties of people placed in positions of great power, human desires to gather more power, human tendencies to credit one particular view of the world above all others, and a very human unwillingness to understand the perspectives of others.

Out of their genius, the Framers created a system of checks and balances. The Framers made rules which require that the power must be shared. They created a system with three coequal branches. They then distributed the powers of Government among and within the three branches. They created a system with explicit and implicit limits for the power of each branch. They created a system where the people who govern the United States are in constant tension with and against each other, always limiting and checking excesses that are all too human.

Judge Alito's judicial philosophy will diminish our system of checks and balances. He will expand the powers of the executive branch to an extent that is dangerous to us all. I believe Judge Alito would grant the Executive power to overwhelm the congressional and judicial branches.

Let me cite a few examples from his record.

First, I am troubled by Judge Alito's 1984 brief in the Mitchell case in which he asserted absolute immunity for high Government officials accused of illegal wiretapping.

I am troubled by his support in 1986 for the idea that Presidential signing statements—a President's remarks accompanying the signing of a bill—can change the intent of Congress, which debated and passed the bill into law. A President executes the law; a President does not rewrite or alter the law.

I am troubled by Judge Alito's firm belief in a unitary executive—in an unwillingness to acknowledge checks and balances that exist within the executive branch itself.

I am troubled by Judge Alito's pattern of great deference to the executive branch. Judge Alito's judicial philosophy in this area is particularly striking against the backdrop of current events. The current administration has adopted a widespread, concerted legal strategy to increase Executive power under our Constitution. It is wrongly pushing beyond the well-established edges of Executive power in many cases, based on a carefully calculated position that the current concentration of political power allows the executive branch to transcend the rule of law. This is not a ''strict construction'' of our Constitution; it is the opposite. It is an activist legal strategy to expand beyond reason our constitutional law that has served our country very well for more than 200 years.

Let me be clear. My concerns are not based exclusively on my view of the current President or my ideas about how he would or would not wield dominant Executive power. We are talking about changes in the Court that could affect our Government for decades, as Presidents of both parties take office and govern.

Dominant Executive power is not a ''safe bet'' for anyone, regardless of one's views of the current President. When considering a potential Supreme Court Justice, we must look beyond the politics of our time and we must protect the basic structure, the system of checks and balances among coequal branches. Administrations of varied ideology and vision must recognize that system of checks and balances.

I briefly want to turn to civil rights.

When I rose on this floor on September 27 of last year to speak on behalf of Chief Justice Roberts, I spoke of the ''age of diversity'' in this country. I spoke of this country's long history of slavery and our lengthy struggles—including our own Civil War—to put behind us the unequal treatment of our citizens.

I talked about Brown v. Board of Education and the central role our Supreme Court played to guide our country on to the path of equality and equal treatment for all. I spoke of the growing diversity of people in our country, and of the need to foster all the powerful strengths our diversity brings to our Nation—a richness of cultures and spirit, a wealth of ideas, and a widely varied community bound together by the common values of truth, honesty, and fair dealing among ourselves.

My life experiences and my years of public service convince me that recognizing and encouraging the strengths of diversity is the true constitutional path for our country. I also believe in the very practical wisdom of this approach. In fact, I believe it is the only way our country will thrive and prosper over the long run. I will vote against Judge Alito because I am convinced he is unlikely to support these principles of diversity.

Here is only a small part of the evidence that Judge Alito will lead our Nation in the wrong direction on issues of equal opportunity and diversity:

In Riley v. Taylor, Judge Alito was overturned by the entire Third Circuit when he, alone, concluded it was proper to exclude all Black jurors from sitting in judgment of a Black man.

In Sheridan v. E.I. DuPont de Nemours, Judge Alito registered the lone dissent among 13 judges, voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial.

In PIRG of New Jersey, Judge Alito again denied access to the courts for a group of environmental plaintiffs who had won below.

In Doe v. Groody, Judge Alito would have upheld the strip search of a 10-

year-old girl, denying her access to relief in the courts.

And in Chittester, Judge Alito would have precluded State employees from seeking damages in court under the Federal Medical Leave Act.

Analyses discussed during the Judiciary Committee hearing show Judge Alito almost never ruled for African Americans in employment discrimination cases. Analyses also show Judge Alito rarely sided with individuals in their cases against large and powerful institutions and corporate interests.

I believe Judge Alito will continue to rule that way on the U.S. Supreme Court. I think that is wrong because it will usher in an era of insensitivity to the weakest and the poorest among us. I hope and I pray I am wrong.

In conclusion, I believe Judge Alito will move the Supreme Court too far to the conservative side of American legal jurisprudence. Judge Alito's judicial philosophy will dangerously increase Executive power, injuring the checks and balances built into our Constitution to protect us all.

And Judge Alito's confirmation will roll back important civil rights protections—protections that were achieved in our country through the sacrifices of many and which are critical to our Nation's future.

I, therefore, will vote against this nomination.

Mr. President, I ask unanimous consent that two letters be printed in the RECORD concerning Judge Alito. One is a letter from the League of United Latin American Citizens, and the other is a letter from the Colorado Hispanic Bar Association, in which they raise their opposition to the confirmation of Judge Alito.

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

LEAGUE OF UNITED
LATIN AMERICAN CITIZENS,
Washington, DC, January 13, 2006.

Re Nomination of Samuel A. Alito to the United States Supreme Court

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS: We write to you as representatives of the millions of American members of the immigrant, Latino, and faith communities who are extraordinarily concerned about the nomination of Judge Samuel Alito to the Supreme Court. We believe that all Americans should be able to count on the Supreme Court to uphold their rights, opportunities, and legal protections, and we are worried that Judge Alito's record demonstrates that millions of Americans would not be able to count on him or the Court if he were confirmed.

While we have many concerns about Judge Alito's record, we are especially troubled by recent reports that Judge Alito, during his time in the Reagan administration, contended that undocumented immigrants and nonresident aliens from other countries have limited or ''no due process rights'' under the Constitution. Judge Alito advocated this view in a memo he wrote in 1986 regarding FBI activities. In a Nov. 29 Washington Post article that focused on this 1986 document, even the very conservative constitutional analyst Bruce Fein, who served with Judge Alito in the Reagan administration, seemed surprised by how extreme Judge Alito's position was. ''He seems to be saying that there is no constitutional constraints [sic] placed on U.S. officials in their treatment of nonresident aliens or illegal aliens,'' Fein told the Post. ''Could you shoot them? Could you torture them? . . . It's a very aggressive reading of cases that addressed much narrower issues.''

This is part of a deeply disturbing pattern of rulings and memos from Judge Alito's record indicating that he gives great deference to the government's police powers and shows little concern for protecting the rights of individuals. He has tried to make it harder for people who believe they have faced discrimination on the job to even have their case heard in court. He has seen no problem in some cases with racial discrimination on juries—or with keeping Spanish speakers off juries in a case where some evidence was in Spanish. He has also tried to undermine the Family and Medical Leave Act, which allows people to keep their jobs and take care of family members in need.

Three times, President Bush has passed up the opportunity to nominate a Latino to the Supreme Court. At the very least, we had hoped he would avoid nominating someone hostile to the basic interests of our communities, but it appears Judge Alito may be such a nominee. That Judge Alito has actually expressed views so extreme that they would deprive many immigrants of basic human rights is extremely troublesome. Such views are legally wrong, and they run counter to our basic moral values.

Our rights are too important to entrust to someone who has seemingly indicated he thinks they don't exist. We urge you to hold Judge Alito responsible for his views, and to take our strong concerns into account when you vote on whether to confirm him to the Supreme Court.

Sincerely,
Center for New Community.
Hispanic Association of Colleges and Universities.
Hispanic Federation.
The PRLDEF Institute for Puerto Rican Policy.
Latino Caucus in Official Relations with the American Public Health Association.
Labor Council for Latin American Advancement.
League of United Latin American Citizens.
National Farm Workers Ministries.
National Hispanic Environmental Council.
National Latina Institute for Reproductive Health.
National Latina-o Law Students Association.
National Network for Immigrant and Refugee Rights.
National Day Laborers Organizing Network.
SisterSong Women of Color.
Reproductive Health Collective.
United Farm Workers of America.

CHBA, COLORADO HISPANIC BAR ASSOCIATION,
January 10, 2006.

Senator KEN SALAZAR,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SALAZAR: The Colorado Hispanic Bar Association (CHBA), expresses its opposition to the confirmation of Samuel Alito as Associate Justice of the United States Supreme Court. After review of his opinions written during his tenure on the United States Court of Appeals for the Third Circuit, the CHBA is concerned that Judge Alito has not displayed sufficient respect for two fundamental legal principles: (1) the role of the jury to resolve disputed questions of fact; and (2) the restraints that stare decisis imposes upon a judge's decision-making. Both of these principles recognize the important—but limited—role that an individual judge plays in our justice system. Judge Alito's resistance to these tenets is troubling and counsels against his confirmation to the highest court in the land. Although a detailed discussion of Judge Alito's writings is beyond, thee scope of this message, the CHBA offers a few examples to illustrate its concerns.

In a 1996 case brought under Title VII of the Civil Rights Act of 1964, an employee alleged that her employer had discriminated against her on the basis of sex. *Sheridan* v. *E.I. DuPont de Nemours & Co.*, 100 F.3d 1061 (3rd Cir. 1996). At issue was the minimum evidentiary showing the plaintiff must make in order to permit the jury to decide her case. All of the reviewing judges agreed that the plaintiff had presented both a prima facie case of illegal discrimination and enough evidence to permit the jury to disbelieve the employer's proffered nondiscriminatory reason (for the adverse employment action) as merely a pretext. In an en banc proceeding, the Third Circuit held, by an 11-to-1 vote, that the plaintiff presented sufficient evidence to permit the jury's verdict in her favor to stand. The court emphasized that ''determining whether the inference of discrimination is warranted must remain within the province of the jury . . . not the court.'' Id. at 1071–72. Alone among the 12 judges, Judge Alito dissented and expressed an extreme view of the plaintiff's evidentiary burden, requiring something akin to the largely discredited ''pretext-plus'' requirement. Id. at 1070, 1078–88. Rather than defer to the jury's role as factfinder, Judge Alito would have thrown out the jury's verdict and granted judgment as a matter of law to the employer.

In another Title VII case, Judge Alito, again in dissent, showed similar disregard for the jury's role, voting to keep the case from the jury. *Bray* v. *Marriott Hotels*, 110 F.3d 986 (3rd Cir. 1997). Referring to Judge Alito's analysis of the evidence, the majority of the court explained that a ''factfinder may well agree with that interpretation, but that is not for us to decide.'' Id. at 992. His fellow judges also found that ''Title VII would be eviscerated'' under Judge Alito's analysis of the law. Id. at 993.

Moreover, Judge Alito has displayed a tendency to disregard stare decisis (adherence to the rule announced in prior cases). For example, in a death penalty case, the en banc Third Circuit granted the defendant a writ of habeas corpus because the prosecution had violated the Equal Protection Clause by striking black jurors on account of their race. *Riley* v. *Taylor*, 277 F.3d 261 (3rd Cir. 2001). The court noted that its analysis was guided by several prior opinions. See id. at 290. Judge Alito dissented again. According to his colleagues, Judge Alito, rather than following precedent, ''accord[ed] little weight to these authorities.'' Id. The court also took issue with Judge Alito's attempt to analogize the statistical evidence of the use of peremptory challenges to strike black jurors to the percent of left-handed presidents. Id. at 292. The Third Circuit found that Judge Alito had ''overlooked the obvious fact that there is no provision in the Constitution that protects persons from discrimination based on whether they are right-handed or left-handed.'' Id. Further, his fellow judges found that Judge Alito had

''minimize[d] the history of discrimination against prospective black jurors and black defendants which was the raison d'etre of the [U.S. Supreme Court decision barring the use of peremptory challenges on the basis of race].'' Id.

These are but a few examples of Judge Alito's seeming reluctance to recognize the limits of stare decisis and his willingness to invade the jury's province. Judge Alito's opinions reveal a consistent and discomforting inclination to arrogate undue authority to individual judges such as himself. Judge Alito' s activist streak stands in sharp contrast to the cautious pragmatism of Justice Sandra Day O'Connor, whom he would replace on the Court.

The CHBA is particularly troubled by the addition of Judge Alito's unrestrained view of judicial authority to a Supreme Court on which Hispanics are not represented. Given that the Hispanic community has no direct voice on the Court, Hispanics should be very concerned if the Court were to embark on an era in which it feels free to upset settled law and to assume new powers within our justice system. Hispanics expect this institution to operate within the well-recognized limits on its authority. Accordingly, unless and until Judge Alito sufficiently addresses the concerns outlined herein, the CHBA opposes his elevation to the United States Supreme Court.

Thank you for your kind consideration of our message as you perform the Senate's constitutional duty to evaluate carefully the nominees to the Court.

Sincerely,

VICTORIA LOVATO,
President.

Mr. FEINGOLD. Mr. President, making a decision on a Supreme Court nomination is truly among the most important responsibilities of the Senate. I have given the nominations the President has sent to us in the past 6 months serious and careful consideration.

The scrutiny to be applied to a President's nominee to the Supreme Court is the highest of any nomination. I have voted for executive branch appointees, and even for court of appeals nominees, whom I would not necessarily vote to put on the Supreme Court.

The Supreme Court, alone among our courts, has the power to revisit and reverse its precedents, and so I believe that anyone who sits on that Court must not have a preset agenda to reverse precedents with which he or she disagrees and must recognize and appreciate the awesome power and responsibility of the Court to do justice when other branches of Government infringe on or ignore the freedoms and rights of all citizens.

This is not a new standard. It is the same standard I applied to the nomination of Chief Justice Roberts. In that case, after careful consideration, I decided to vote in favor of the nomination. In the case of Judge Samuel Alito, after the same careful consideration, I must vote no.

Judge Alito has an impressive background and a very capable legal mind, but I have grave concerns about how he would rule on cases involving the application of the Bill of Rights in a time of war. Some of the most important cases that the Supreme Court will consider in the coming years will involve the Government's conduct of the fight against terrorism. It is critical that we have a strong and independent Supreme Court to evaluate these issues and to safeguard the rights and freedoms of Americans in the face of enormous pressures.

Confronted with an executive branch that has jealously claimed every possible authority that it can, and then some, the Supreme Court must continue to assert its constitutional role as a critical check on Executive power. Just how ''critical'' that check is has been made clear over the past few weeks, as Americans have learned that the President thinks his Executive power permits him to violate explicit criminal statutes by spying on Americans without a court order.

With the executive and the legislature at loggerheads, we may well need the Supreme Court to have the final word in this matter. In times of constitutional crisis, the Supreme Court can tell the executive it has gone too far, and require it to obey the law. Yet Judge Alito's record and testimony strongly suggest that he would do what he has done for much of his 15 years on the bench: defer to the executive branch in case after case at the expense of individual rights.

Although he has not decided cases dealing with the Bill of Rights in wartime, he has a very long record on the bench of ruling in favor of the government and against individuals in a variety of contexts. Indeed, this is an important distinction between Judge Alito and Chief Justice Roberts. Our new Chief Justice had a very limited judicial record before his nomination. Judge Alito has an extensive record. There is no better evidence of what kind of Justice he will be on the Supreme Court than his record as a court of appeals judge. He told us that himself.

A whole series of analyses by law professors and news organizations has shown that Judge Alito is very deferential toward the government, and one detailed analysis by the Washington Post concluded that he is more deferential than his Third Circuit colleagues and even than Republican-appointed appeals judges nationwide. This vividly demonstrates the concern I have about this nomination. Judge Alito is not simply a conservative judge appointed by a conservative President. His record is that of a jurist with a clear inclination to rule in favor of the government and against individual rights.

In particular, Judge Alito's record in fourth amendment cases shows a recurring pattern. In almost every fourth amendment case in which Judge Alito wrote an opinion, he either found no constitutional violation or argued that the violation should not prevent the illegally obtained evidence from being used. In more than a dozen dissents in criminal or fourth amendment cases, not once did Judge Alito argue for greater protection of individual rights than the majority.

In one case that he was asked about on several occasions at his hearing, Judge Alito, in dissent, argued that the strip search of a 10-year-old girl and her mother passed constitutional muster, even though they were not suspected of any crime or specifically mentioned in the search warrant. Judge Alito's answers to questions at the hearing about this case only reinforced concerns identified by outside scholars that he seems to ignore the serious interests of privacy and personal dignity protected by the fourth amendment and instead relies on technical readings of warrants so that he can authorize the government action.

Cases challenging government power comprise nearly half of the current Supreme Court's docket. A Supreme Court Justice should protect individual freedoms against government intrusion where justified, and, specifically, should appreciate that the fourth amendment serves to limit government power. As Yale Law School Professor Ronald Sullivan testified:

> In the United States, perhaps no right is more sacred—more worthy of vigilant protection—than the right of each and every individual to be free from government interference without the ''unquestionable'' authority of the law. Judge Alito . . . shows an inadequate consideration for the important values that underwrite these norms of individual liberty—the very norms upon which this constitutional democracy relies for its sustenance. . . . [T]his Senate's decision on whether to consent to Judge Alito's nomination will profoundly impact how liberty is realized in the United States.

At the hearing, I and many other Senators repeatedly asked Judge Alito whether the President can violate a clear statutory prohibition, such as the Foreign Intelligence Surveillance Act and the ban on torture. He never answered the question. He returned again and again to a formulaic response that told us nothing at all: he said that the President must follow the Constitution and must follow the laws that are consistent with the Constitution. Any first-year law student could tell you that. That kind of stock phrase, which Judge Alito repeated over and over, tells us absolutely nothing about his view of whether the President can, consistent with the Constitution, violate a criminal law.

Judge Alito did point to Justice Jackson's three-part analysis in Youngstown. That is an appropriate framework, but merely citing Youngstown doesn't tell you anything about how he would apply that framework. Even when presented with the alarming hypothetical of whether a President can authorize a murder in the United States, Judge Alito would say no more.

These practiced and opaque responses gave me no reassurance about Judge Alito's views on these issues. What troubled me even more was that he repeatedly, and in some cases gratuitously, raised issues of justiciability

and the political question doctrine—that is, he seemed to question whether the courts can even weigh in on these serious legal battles between the legislature and the executive. Although he said he thought the courts could address questions involving individual rights, Judge Alito's instinct in discussing these historic issues was to focus on whether the courts even had a role to play. It wasn't to talk about the gravity of the issues at stake for our system of government, but to question whether he as a judge could even participate in the resolution of such critical constitutional conflicts.

I found that very disturbing, and it has played a significant role in my decision to vote against him. Judge Alito's record and his testimony have led me to conclude that his impulse to defer to the executive branch would make him a dangerous addition to the Supreme Court at a time when cases involving executive overreaching in the name of fighting terrorism are likely to be such an important part of the Court's work.

I am also concerned about Judge Alito's record and testimony on cases involving the death penalty. The Supreme Court plays a crucial role in death penalty cases. Judge Alito participated in five death penalty cases that resulted in split panels, and in every single one of those he voted against the death row inmate. A Washington Post analysis found that he ruled against defendants and for the government in death penalty cases significantly more often than other judges. And his testimony gave me no reason to believe that he will approach these cases any differently as a Supreme Court Justice.

To be blunt, I found Judge Alito's answers to questions about the death penalty to be chilling. He focused almost entirely on procedures and deference to state courts, and didn't appear to recognize the extremely weighty constitutional and legal rights involved in any case where a person's life is at stake.

I was particularly troubled by his refusal to say that an individual who went through a procedurally perfect trial, but was later proven innocent, had a constitutional right not to be executed. The Constitution states that no one in this country will be deprived of life without due process of law. It is hard to even imagine how any process that would allow the execution of someone who is known to be innocent could satisfy that requirement of our Bill of Rights. I pressed Judge Alito on this topic but rather than answering the question directly or acknowledging how horrific the idea of executing an innocent person is, or even pointing to the House v. Bell case currently pending in the Supreme Court on a related issue, Judge Alito mechanically laid out the procedures a person would have to follow in State and Federal court to raise an innocence claim, and the procedural barriers the person would have to surmount.

Judge Alito's record and response suggest that he analyzes death penalty appeals as a series of procedural hurdles that inmates must overcome, rather than as a critical backstop to prevent grave miscarriages of justice. The Supreme Court plays a very unique role in death penalty cases, and Judge Alito left me with no assurance that he would be able to review these cases without a weight on the scale in favor of the government.

One important question that I had about Judge Alito was his view on the role of precedent and stare decisis in our legal system. At his hearing, while restating the doctrine of stare decisis, Judge Alito repeatedly qualified his answers with the comment that stare decisis is not an ''inexorable command.'' While this is most certainly true, his insistence on qualifying his answers with this formulation was troubling. Combined with a judicial record in which fellow judges have criticized his application of precedent in several cases, Judge Alito's record and testimony do not give me the same comfort I had with Chief Justice Roberts that he has the respect for and deference to precedent that I would like to see in a Supreme Court Justice.

With respect to reproductive rights, Judge Alito said that he would look at any case with an ''open mind.'' That promise, however, is not reassuring given his prior denunciations of Roe, his legal work to undermine Roe, and his failure to disavow the strong legal views he had expressed in the 1980s when given the opportunity at his hearing. In his 1985 Justice Department job application, Judge Alito wrote that he believed that the Constitution does not protect a right to abortion, and, as an Assistant to the Solicitor General, he wrote a memo advocating a strategy for the Reagan administration to chip away at Roe v. Wade, with the ultimate goal of overturning that decision. Since he refused to say that he changed his mind, despite numerous chances, one can only think that he still believes what he said in 1985. And his opinions as a Third Circuit judge raise a legitimate concern that he will, if given the opportunity, be inclined to narrow reproductive rights.

I want also to say a brief word about ethics. The Vanguard case could have been disposed of fairly easily if Judge Alito had only admitted his mistake up front. Under questioning, Judge Alito finally admitted that there is no evidence that he followed through on his 1990 promise to the Judiciary Committee to recuse himself from any cases involving Vanguard. He also said that some of the explanations that he and his supporters gave for his failure to recuse from the Vanguard case in 2002—such as a ''computer glitch'' or the fact that his promise to the committee was somehow time-limited—were not in fact the true reasons that he failed to recuse himself from the 2002 case.

While I am not basing my vote on this matter, it continues to trouble me. First, it is not clear to me that Judge Alito took his 1990 promise to the Judiciary Committee seriously. Second, Judge Alito failed to clear up the inconsistent explanations before or at the outset of his hearing, even after documents revealed that those explanations were implausible and even though he knew that they were not the real reasons that he failed to recuse himself in 2002.

The concept of recusal, which recognizes that from time to time the public might reasonably believe that judges' biases or interests may cast doubt on the integrity of a judicial decision, is part of ensuring due process and protecting the public's confidence in the integrity of our system of justice. Despite numerous other reports of Judge Alito's honesty and integrity, I am not satisfied that he appreciates the importance of recusal.

His written answer to my question about how he would analyze recusal motions related to the Third Circuit judges who testified on his behalf raises concerns about his approach to conflicts of interest. Judge Alito wrote that he thinks Supreme Court Justices have ''less latitude to err on the side of recusal'' than other judges, because recusal could lead to evenly divided decisions. But when Congress amended the Federal recusal law in 1974, it specifically removed any so-called ''duty to sit'' in favor of a general standard requiring recusal if there is a reasonable basis for doubting the judge's impartiality. The purpose of that change was to enhance public confidence in the impartiality and fairness of the judicial system. In my view, Supreme Court Justices should have no more latitude in interpreting ethics rules than other judges; indeed, the recusal statute specifically applies to Supreme Court Justices.

I would argue that treating recusal issues seriously is even more important for Supreme Court Justices since they are solely responsible for their recusal decisions. There is no judicial review of their decisions, no formal procedure for the full Court review of such decisions, and, when a Justice improperly participates, a tainted constitutional decision cannot be undone. That is why it is so important to have Justices who adhere to the highest ethical standards. Judge Alito repeatedly told us that he seeks to carry out his duties in accordance with both the letter and spirit of all applicable rules of ethics and canons of conduct. He wrote in a letter to the chairman of the Judiciary Committee: ''[M]y personal practice is to recuse myself when any possible question might arise.'' Unfortunately, his description of how he would handle recusal motions as a Supreme Court Justice does not seem consistent with those statements.

It gives me no pleasure or satisfaction to vote against a nominee to the Supreme Court. If confirmed, he may well serve for over 20 years. I would very much like to have confidence that

this new Justice, who plainly has a keen legal mind, would be the kind of impartial, objective, and wise Justice that our Nation needs. But I do not, so I will vote no.

Mr. JEFFORDS. Mr. President, there is no higher legal authority in the United States than the U.S. Supreme Court. It is the final arbiter on the meaning of laws and the U.S. Constitution. The Supreme Court gives meaning to the scope of the right of privacy; whether Vermont's limits on campaign contributions and spending are constitutional; what is an unreasonable search and seizure; how expansive the power of the President can be; and whether Congress exceeded its power in passing a law.

A Supreme Court Justice could serve for the life of the nominee, thus the consequences of confirming a Supreme Court justice last well beyond the term of the President who makes the nomination, a Senator's term, and maybe even the Senator's own life. Therefore, one of the most important votes a Senator takes is the confirmation of a U.S. Supreme Court Justice.

I have carefully considered the appointment of Judge Samuel Alito to the Supreme Court and have concluded I cannot support his nomination.

My first step in evaluating a nominee is to consider whether the nominee is appropriately qualified and capable of handling the position for which he or she has been nominated. Looking over Judge Alito's qualifications, it is clear this minimum standard has been met. Judge Alito has served in the U.S. Department of Justice, has been a U.S. Attorney, and for the last 15 years has been a judge on the Third Circuit Court of Appeals. However, while I use this minimum standard in my evaluation of executive branch nominees, there are additional factors to be considered in my evaluation of a judicial nominee.

The Framers of our Constitution recognized the limits of democracy and created three coequal branches of government. They realized that passion and whim could cause the elected representatives to enact legislation on the cause of the day, which treads near or on constitutional rights. In addition, while the diversity of Congress can stop most of these ideas before they are adopted, no such check exists on the executive branch of our government. Thus, the third branch of government, the judiciary, was created. This branch was to be independent, unaffected by the public's whim and opinion, and serving the law and the public.

The Framers split the responsibility of filling the judiciary between the executive and legislative branches. The President nominates an individual to be a judge, while the Senate has the duty to advise and consent on each nominee. This framework was established to ensure that the executive branch could not exercise so much control over the nominating process that the judiciary would lose its independence and become ideologically driven.

While the Senate's duty is to evaluate a nominee, the Constitution provides no guidance as to what exactly Senators should take into account. This decision is up to each individual Senator. I have already touched on one factor I consider, ''qualified and capable of handling the duties of the position.''

An additional consideration is the judicial philosophy of the nominee. Many of my colleagues argue that this factor should have no part in the Senate's consideration of a nominee to the Supreme Court. However, if judicial philosophy is the determining factor in the choice the President makes from a list of many qualified candidates, the Senate should also be allowed to consider this factor when deciding whether to approve or disapprove the nominee. Not allowing the Senate to consider this factor would shift the careful balance the Framers put in our Constitution away from equal partners toward giving the executive branch an unfair advantage.

In addition to considering the individual's judicial philosophy as a standalone matter, we must also consider the cumulative effect our approving a nominee will have on the Supreme Court. In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court. The Republican stamp on the current Court is undeniable. Consider the prospects for the Court in the coming years based on the ages of the sitting Justices and their years of service:

Justice	Date of birth	Current age	Years on court	Appointment age
Stevens	April 20, 1920	85	30	55
Ginsburg	March 15, 1933	72	12	60
Scalia	March 11, 1936	69	19	50
Kennedy	July 23, 1936	69	17	52
Breyer	Aug. 15, 1938	67	11	56
Souter	Sept. 17, 1939	66	15	51
Thomas	June 28, 1948	57	14	43
Roberts	Jan. 27, 1955	50	<1	50

This information clearly shows that the prospects of the Court becoming more moderate in the near future are unlikely, as the more liberal to moderate members are the more likely to be replaced.

The table also clearly lays out a concern about the shift in the balance of the court by replacing Justice O'Connor with a younger, more conservative Justice.

This concern is also made clear by looking at some important cases where Justice O'Connor provided the critical fifth vote for a moderate, common sense position. These cases include:

Alaska Department of Environmental Conservation v. EPA (2004): The Court held that the Environmental Protection Agency can enforce the Clean Air Act and overrule a State decision to allow a major pollutant emitting facility to build a power generator when the State agency is not doing an adequate job of enforcement.

Stenberg v. Carhart (2000): The Court upheld the principles that, before viability, women can choose to have an abortion, and that any restriction on the right to an abortion must have an exception for the mother's health.

Tennessee v. Lane (2004): The Court held that as part of its enforcement power under the 14th amendment, Congress has the right under the Americans with Disabilities Act to force States to provide physical access to the courts.

McConnell v. Federal Election Commission (2003): The Court upheld as a valid exercise of congressional power the soft money and electioneering communications restrictions enacted by Congress as part of the Bipartisan Campaign Reform Act of 2002.

Upon this backdrop, I have evaluated the decisions and writings of Judge Alito, closely watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination. I am concerned that Judge Alito did not provide complete answers on many important topics such as: Is Roe settled law, or what are the limits of the executive branch's power? On the other hand, Chief Justice Roberts did provide answers to these questions during his nomination hearing and I voted for Justice Roberts. Given the importance of a Supreme Court Justice replacing Sandra Day O'Connor, we should expect even more complete answers than we received from Judge Alito.

After careful deliberation, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our county: Are there limits on the power of the presidency? Can the Congress regulate the activities of the States? How expansive is the right to privacy? What deference should be given to legislative acts of the Congress? While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

Mr. JOHNSON. Mr, President, there are few decisions of more lasting and profound consequence that a U.S. Senator must make than the decision whether to vote to confirm a nominee to a lifetime appointment to the U.S.

Supreme Court. Accordingly, I have reviewed the record and the commentary relative to the Samuel Alito nomination with great care and deliberation. The decision on the Alito nomination is more difficult than was the case for now Chief Justice John G. Roberts inasmuch as Judge Alito's long record raises concerns across a broad range of areas. Clearly, he would not have been my pick for the Supreme Court.

Nonetheless, I must conclude that Judge Alito possesses a high level of legal skill, is a man of solid personal integrity, and that his views fall within the mainstream of contemporary conservative jurisprudential thinking. At the conclusion of Senate floor debate, I will oppose any effort to filibuster his nomination, and I will vote to confirm Judge Alito's nomination to the Supreme Court.

While it is not the role of the Senate to ''rubberstamp'' any President's judicial nominations, it is also true that any President's choice deserves due deference. Judge Alito deserves the same deference that Republican Senators accorded the Supreme Court nominees of President Clinton. I am mindful that Justice Ginsberg, a former counsel to the ACLU, was confirmed with 96 Senate votes in her favor.

I do not believe that simple political ideology ought to be a deciding factor so long as the nominee's views are not significantly outside the mainstream of American legal thinking. I also believe that the judicial nomination and confirmation process in recent years has become overly politicized to the detriment of the rule of law.

I am troubled by Judge Alito's apparent views on matters such as Executive power, his past opposition to the principle of one person, one vote, and his narrow interpretation of certain civil rights laws. Even so, I cannot accept an argument that his views are so radical that the Senate is justified in denying his confirmation.

The PRESIDING OFFICER (Mr. ENSIGN). The minority's time has now expired.

Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have been asked by the majority leader to come to the floor, as manager of the proceedings, in my capacity as chairman of the Judiciary Committee, to see if we can have a vote on Judge Alito. We have informed the Democrats of our interest in having a unanimous consent, but we will not ask for one until their leader is here. He is on his way, and I will await his arrival. In the interim, the acting leader, Senator SALAZAR, is on the floor, so he can always protect their interests. But I shall not move in a way precipitously until Senator REID arrives.

I am advised we do not have any speakers for the Democrats tomorrow. We are now in the second full day of our discussion. The rules of the Senate require either that we speak or we vote. If there are no further speakers for the proceedings, then it would be my inclination we ought to follow regular order, we ought to vote. Either we speak or we vote. So long as there is somebody to speak, there is the right of unlimited debate, as we all know, and we respect that.

This is a lifetime appointment, and it is a controversial appointment. There is no doubt about that. But if we are not going to have debate, then, in my capacity as manager, as chairman of the Judiciary Committee, it seems to me we ought to vote. We have a lot of other pressing business for the Senate.

I have just left the conference of the Republican Party where there had been a plan, months ago, to be out of town so we could make plans for the second session of this Congress. Because the nomination of Judge Alito is on the floor, we have altered those plans, I might say at considerable financial loss since reservations had been made. But our duty is to be here, and we are not complaining about that. We are here to move the business of the Senate along.

There are a number of pressing matters which we could take up tomorrow or yet today, such as the issue of appropriations of some $2 billion for LIHEAP. That is a matter for assistance for fuel in a cold winter. It is a cold day out there today. It is cold in Pennsylvania. It is colder in Vermont. It is colder yet in Maine. We need to resolve that issue.

We also have the PATRIOT Act, which is due to expire on February 3, a week from tomorrow. That is a very important matter both for security in our law enforcement fight against terrorism and also for a balance on civil rights. And we now have a motion to reconsider the cloture vote pending before the U.S. Senate.

There have been discussions about what to do. It is my hope that we would yet approve the conference report. We face the alternative of having the PATRIOT Act expire, which no one wants. We have the suggestion made for a 4-year extension of the current PATRIOT Act which, in my view, is much less desirable than having the conference report enacted. The conference report on a new PATRIOT Act gives much more for civil rights than does the existing act. It is not as good as the Senate bill, the bill that came out unanimously from the Judiciary Committee and was passed by unanimous consent, but the conference report is a lot better than the current bill. So there are other important matters that we could address.

UNANIMOUS CONSENT REQUEST

Now that the distinguished Democratic leader is on the floor, on behalf of the majority leader, I ask unanimous consent that at 5:30 on Monday, January 30, the Senate proceed to a vote on the confirmation of the pending nomination of Samuel Alito.

And before the Chair rules, I would reiterate that we are prepared to debate the nomination through the weekend if Senators have additional comments or have not yet delivered their statements.

Now, Mr. President, I am glad to yield to my distinguished colleague, Senator REID.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, reserving the right to object, we have seven speakers lined up this afternoon. We hope they will all show up. I am confident they will.

LIHEAP is something the distinguished majority leader and I have spoken of several times. We know it is an important issue. We have made commitments to the Senator from Maine, Senator SNOWE, and the Senator from Rhode Island, Senator REED. It is something we need to do as soon as we can.

In regard to the PATRIOT Act, I had a number of conversations, again, with the distinguished majority leader. Also, I spoke yesterday afternoon to Senator SUNUNU, who indicated he has been in conversations with the White House and is confident he is not far away from working out that matter with the other interested parties, one of whom is, of course, the chairman of the Judiciary Committee.

I also have had a number of conversations with the distinguished majority leader as to how we should move forward on the matter relating to Judge Alito, and there are a number of possibilities. I think we are at a point now where we may well enter into a unanimous consent later today. I would hope so.

Based on that, and based on the fact I have not spoken to Senator FRIST yet today—we spoke several times yesterday—I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I inquire of the distinguished Democratic leader whether there will be speakers on his side of the aisle to speak tomorrow, Friday, or Saturday, or Sunday, or Monday, if we are to remain in session without voting on this nomination?

Mr. REID. Mr. President, I am happy to respond to my friend. We will have speakers tomorrow. The weekend will be another item. We will talk about that later, whether that is necessary.

Mr. SPECTER. Mr. President, may I further inquire of the distinguished Democratic leader when his side of the aisle would be prepared to vote on the nomination?

Mr. REID. As I indicated, I have spoken to the distinguished majority leader on several occasions—not today. Yesterday we had a number of conversations, in fact into the evening last night, and I think it would be best for Senator FRIST and me to talk about this rather than now.

Mr. SPECTER. I thank the Democratic leader for those comments. But

Senator FRIST, the majority leader, has asked me to come to the floor. He is engaged now in the Republican conference and has asked me to raise these issues so we can give some idea to our colleagues. We have a lot of Senators who are standing by as to what is going to happen. We have a lot of Senators who are not standing by. Quite a few of them are overseas. Quite a few Senators are always overseas. We have more Senators overseas customarily than in the Chamber. I think that is certainly true now. We only have five Senators in the Chamber. I know we have a lot more Senators overseas. So a lot of Senators are trying to make their plans.

I came to make the point, and I made the point.

I thank the Senator.

Mr. REID. Mr. President, I appreciate the Senator from Pennsylvania. I enjoy my relationship with him. But the only thing I would do is defend the Senate a little bit. I know he was being facetious. Senators are here in Washington. There are a few Senators attending a very important economic conference in Switzerland, but that is a handful of Senators, three or four, as I understand it. I am glad they are there. I am confident that if any votes are required in the near future—they have been advised and have agreed to come back in a few hours' notice.

As I said, I know the Senator was being facetious, but we do not have more Senators overseas than we have here ready to work.

Mr. SPECTER. Well, Mr. President, I did not say we had more Senators overseas than Senators prepared to work. I said we have more Senators overseas than we have in the Chamber. I counted five, and now a sixth has joined on the floor.

Well, as I said earlier, I came to make the point, and I have made the point. The point is that we either debate or we ought to vote. Debate or vote, that is what we do. When the debate is over, we vote. If the debate continues, we do not vote. If the debate continues, we may have to go to cloture. We have rules to accommodate us there. There have been counts made that when you have the number of Senators who have stated their intention to vote for cloture, plus the number of Senators who have stated their intention to vote for Judge Alito, you come to 60 or more.

We are ready to do the business of the Senate. I know Senator FRIST is watching these proceedings because our conference, at a little after 3 o'clock in the afternoon, reaches a little low point, a little low on blood sugar, things get a little sleepy. So I am sure they turned on the television to watch this. It would be my hope that the Republican leader and the Democratic leader will be on the floor today, and we will come to some sort of a schedule so we all know what to do.

Mr. REID. I am not sure our conversation would wake them up, though.

Mr. SPECTER. It is all comparative. If I may direct this comment to Senator REID, you haven't been to a Republican conference. No matter how dull it is, let me tell you, it is lively here. It is exciting here by comparison to what goes on in our Republican conference. I speak with authority because I just came from there.

I thank my distinguished colleague and the Chair and yield the floor for some serious business because we have some speakers.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I think it is safe to say that Chairman SPECTER has committed more time to the nomination of Samuel Alito than any single person in this body and in this country, with the exception of one, and that would be Judge Alito.

I rise today in support of the nomination of Samuel Alito to be Associate Justice of the U.S. Supreme Court. Voting on the nomination of a Supreme Court Justice is a rare event in the Senate, but this year this body has now considered two nominations in only a few short months. To cast this vote is a privilege, and it is one this Member takes seriously. Most Americans did not know Sam Alito 6 months ago, but now millions of citizens have seen him in the news. They have heard him answer countless questions during his confirmation hearing. We have learned a great deal about Judge Alito.

We have seen his family. We have listened to his stories about his childhood. We have heard about his educational background, and we have learned of his service on the bench. We have learned that his temperament and his character, are in fact solid. I personally have had the opportunity to sit with him, and I believe he respects the U.S. Supreme Court and the seat for which he has been nominated.

Americans have probably also heard the Senate debate Judge Alito's nomination. I would guess by now most Americans understand that there is no substantive debate over Judge Alito's qualifications for the Supreme Court. Clearly, Judge Alito has the legal qualifications to be an Associate Justice. He has remarkable academic credentials, extensive experience, not only on the bench but in trying cases as an attorney, and he was given a unanimous ''well qualified'' rating by the American Bar Association. He has argued cases before the Supreme Court, and he served on the bench of the Third Circuit Court of Appeals for the past 15 years.

It is my assessment that those who oppose Judge Alito's nomination do it for purely political purposes. They believe he might take positions contrary to their own political ideologies. Therefore, they believe he should be disqualified. He should not be considered for a slot on the Supreme Court.

Let me take a moment to provide an example of how critics have severely distorted the facts about Judge Alito's record. Quite honestly, if those same critics chose to rely upon the facts rather than the political sound bites, they might be quite surprised.

Judge Alito has been viciously attacked by critics over his record on civil rights. As we all know, Judge Alito serves on the Third Circuit Court of Appeals. This appellate court in New Jersey has been described by the Associated Press as one of the most liberal courts in the Nation. My guess is it is probably only second, within that categorization, to the Ninth Circuit Court. It seems that opponents of Judge Alito have become so fixated on criticizing his record that they disregard the actual facts of his record.

When analyzing Judge Alito's civil rights record based on the more than 4,800 cases he has decided, the facts are these: Judge Alito has agreed with the other members of his ''liberal'' Third Circuit judicial panel 94 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by President Clinton on that bench 95 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by Jimmy Carter on the Third Circuit Court 96 percent of the time on civil rights issues. Finally, when Judge Alito sat on a three-judge panel where both other judges were appointed by Democratic Presidents, the decision handed down in those cases was unanimous 100 percent of the time on the civil rights cases. These are the facts. Those are the numbers.

Clearly, by the standards some in this body have chosen to apply to Judge Alito, no judge on the Third Circuit Court would therefore qualify to be considered for the Supreme Court. The statistics are one example of the distortion of Judge Alito's record by some. I could stand here on the floor for hours to discuss other misrepresentations of Judge Alito's record on individual issues, but I believe it is important to speak on why this Supreme Court confirmation should matter to the American people.

When I say I am going to speak about why this confirmation matters, I don't mean that I am going to talk about why the debate matters in the daily battles inside the beltway in Washington, DC. I want to speak about why it matters to the American people. It has become clear to me and to the 8½ million people in North Carolina that I represent, that Washington, DC, is overshadowed by partisan bickering and is arguably more polarized now than ever before.

As I discussed in this Chamber and in front of this body when considering the nomination of Chief Justice Roberts a few months ago, my constituents in North Carolina care about civil liberties. They have questions about life and death, property rights, basic freedoms, as well as their own economic prosperity and personal security.

That is why this vote is important today. The Supreme Court affects every aspect of our daily lives. But

more importantly, the decisions being made on the High Court today will affect the lives of our children and future generations yet to come. I am a father and I am a husband first; I am a Senator second. I believe while it is part of my job to vote on Supreme Court confirmations, I think of this vote in terms of how it will affect my family as well as the rest of the families in North Carolina and across the country. When my sons are my age, how will this decision, my vote on Sam Alito, affect them or eventually affect their children? That is what we are here to debate.

As we all know, public opinion frequently changes with time as opposed to the Constitution which changes rarely. While the legislative bodies across the country are intended to be flexible branches of our government institution, charged with addressing the needs of the people by making new laws, the judiciary is intended to be the equitable and impartial check, charged with preserving and protecting our Nation's basic fundamental principles.

I believe a nominee's judicial philosophy should translate to their legal interpretations, not their political positions. The legislature makes the law and the judiciary interprets it. Both branches serve an equally legitimate and important function, but they are very different. My constituents want justices who apply the law, not judges who make the law.

Opponents of Judge Alito continuously cite political reasons to vote against his nomination. Unfortunately, this sounds all too much like your typical Washington, DC, partisan battle. But I assure my colleagues, the American people outside of the beltway of this town don't care to hear us bicker about partisan political issues when it comes to the future of the Supreme Court. This should be a thorough debate on an individual's legal qualifications and judicial philosophy.

This debate is much bigger than Republicans and Democrats. This debate is about our children's future. For me, it is about doing what is right, and about doing what is right as a father and a husband. It demands that this body, the Senate, come together. Stop the character assassination, the distortion of a nominee's record, and support this nominee because of his expertise and his accomplishments.

After meeting Judge Alito, having the opportunity to review his questions in front of the Judiciary Committee, having an opportunity to ask him questions personally, I am confident that he does, in fact, have a sound judicial philosophy and that he will administer justice according to the strict interpretation of our Constitution. I am confident that he will preserve our Nation's longstanding principles and that he will interpret the law, not make it.

I am also convinced that Sam Alito is a man of character and honesty. Judge Alito is not only a good nominee, he is a good man. He deserves the support of every Member of the Senate. I will vote in favor of Judge Alito's nomination to be an Associate Justice to the Supreme Court. I urge my colleagues in this body to join me and to come together to stop the character assassinations and to speak up for the American people and the future of our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, at the outset, I thank Mike Quiello and Nick Pearson of my staff for the research and preparation they gave me in my deliberation and consideration of Samuel Alito, Jr., and his appointment to the Supreme Court. Further, as a second generation American, the grandson of a Swedish immigrant who came to this country about 11 years prior to Samuel Alito, Sr.'s coming to this country from Italy, I am pleased that in the next few days I will have the chance to cast my vote to confirm Judge Alito as a Justice of the Supreme Court and reaffirm the promise that is the American dream of those who have come here from backgrounds that are diverse and far away to be a part of a great nation and have pledged their allegiance to all it stands for.

I have thought a lot about what I would say in confirming my vote on behalf of Judge Alito, and I decided, after listening to the speeches over the last couple of days, that I would try to draw a distinction that, to me, has been apparent in this debate but also is clearly the reason that I support Judge Alito. As we have heard today from a number of my colleagues, he has been criticized for being narrow and restrictive. It is important that we understand what the opposite of narrow and restrictive is to understand where those who oppose him are coming from.

The opposite of narrow and restrictive is broad and unlimited. The last thing the United States of America needs, or our Founding Fathers intended, is to have a Supreme Court that is unrestricted and broad in its interpretation of the Constitution and the laws the legislative branch passes under its authority. Therein lies the philosophical difference in this debate.

It has saddened me that through innuendo and reference in some of the previous speeches over the last couple of days, Judge Alito has been cast as being exactly the opposite of what Judge Alito really is. For example, in the recent aftermath of the tragedies in West Virginia, one speaker referred to Judge Alito's dissenting opinion in the case of RNS Services v. Department of Labor as exemplifying the fact that Judge Alito was against the little man and the worker.

That was a case where a ruling was made on the application of a rule on mine safety. But if you read the rule, Judge Alito did what you would hope a judge would do: He ruled on the application of the rule given the circumstances of the case. He didn't rule against the little man, nor did he rule for the big guy; he ruled based on the laws and the regulations promulgated by the agency this Congress appointed to be over mine safety. That is precisely what we need—a Court that will show us direction, but a Court that will never direct the laws we have passed in the wrong direction.

Secondly, there have been those who have talked about his commitment to civil rights, or really his lack of commitment to civil rights in terms of the claims of a few. I went to do some research on that issue because everything I saw in Judge Alito when he and I talked was the opposite of what those allegations would imply. I went to the testimony of Jack White, an attorney from San Francisco, CA, an African American, a member of the American Civil Liberties Union who came to Washington, DC, and testified before the Judiciary Committee on behalf of Samuel Alito. Rather than me trying to paraphrase what Jack White said, I would like to read it verbatim and then ask anyone who hears this speech the question whether Samuel Alito is a man who is not for the civil rights of all and the individual rights and liberties of every American:

> Now, as I clerked for Judge Alito, I saw a deep sense of duty, diligence, humanity, and respect for his role as a Federal appellate judge. . . .
>
> . . . He uniformly applied the relevant law to the specific facts of every case. Judge Alito recognized that every case was the most important case to the parties and attorneys with something at stake.

See, Judge Alito doesn't judge people by their color; he judges everybody individually in the cases he calls, as the cases are, understanding that every party has an equal interest.

I further quote Jack White:

> I never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case.
>
> . . . I left New Jersey without knowing Judge Alito's personal beliefs on any of them. Now, the reason I didn't know his personal beliefs on all these issues was that the jurist's ideology was never an issue in a case that Judge Alito heard.

You see, Jack White, who was an African-American law clerk for Judge Alito, said that when he left, he never saw the ideological beliefs of the judge interfere with his judgment of the law and his ruling in a case.

I end my quote by reading simply what he said:

> Without fail, I saw Judge Alito treat everyone, every individual, with dignity and respect.

I will take the word of Jack White, who worked for Sam Alito, any day over any of us who, through innuendo or what we may have heard, want to castigate this nominee on his commitment to civil rights. Jack White's word, and his experience, is good enough for me. And Jack White knows what I know about Sam Alito—that he is committed to equity and fairness in the treatment of all Americans.

There has been something made of the fact that he is replacing Sandra Day O'Connor. I wish to talk about that for a minute.

Sandra Day O'Connor is one of my favorite Justices. I am not a lawyer. I came to the Senate from the House, but prior to my years in the House, I ran a small business. I am a businessman, and that is the interest I know and that which I know the best. Judge O'Connor was, without question, during her period on the bench the very best Justice in dealing with the complex issues of business that came before the U.S. Supreme Court. When I had the chance to meet with Judge Alito, I made that point to him and I asked him questions about American business, free enterprise, and the law. In every case, I became convinced that he had the same commitment Sandra Day O'Connor had.

To that end, and with regard to ''narrow and restrictive'' and with regard to the little guy, I wish to conclude my remarks on behalf of Samuel Alito by taking a second to talk about the Kelo v. New London case, the dissenting opinion which Sandra Day O'Connor wrote, and the answers to questions Judge Alito gave before our Judiciary Committee because they completely contravene any comment anybody has made about his commitment to the little guy or the benefit, or lack thereof, of narrow and restrictive ideology.

Justice O'Connor was one of the four dissenting Justices in the Kelo case. They didn't believe in the broadening of eminent domain to take property just because somebody could pay more taxes and would benefit more from it, and I concur with that. I think they made the right ruling. She said:

> For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property—

She is speaking within the context of the ruling in the majority.

> Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.

What more brilliant statement can be made on behalf of the little guy, the average American, or the small homeowner than Sandra Day O'Connor's? What better affirmation of someone's capacity to replace that distinguished Justice could you possibly make than by reading the last sentence of Judge Alito's answer to that question before the Judiciary Committee when he was asked about the Kelo case? He said:

> I would imagine that when someone's home is being taken away, a modest home, for the purpose of building a very expensive commercial structure, that is particularly galling [to me].

Sandra Day O'Connor was a great Justice and did a great service to America. She broke the glass ceiling in being the first woman appointed to the U.S. Supreme Court. I believe Justice Alito will serve our people on this Court every bit in same way Justice O'Connor did. The criticisms of Judge Alito of being narrow and restrictive may, in fact, be, if you look at them in the perspective I have given, a great compliment to his ability and that which all of us seek, and that is a jurist who will rule based on the law, not legislate based on the position. A jurist understands the value and the strength and the power of the Constitution of the United States of America.

Mr. President, I look forward to casting my vote in favor of the nomination of Samuel Alito, Jr., to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I met with Judge Alito on the day after his nomination. I was very impressed with him from the start. After spending an hour or so with him, I could tell that he is a modest, honest, and fair man, a person with a solid understanding of the proper role of a judge. At the time, however, I said I would not make a final decision about his nomination at that point.

I started my career as a county prosecuting attorney, and I believe in trials before verdicts. We just had the trial, and during that trial, the hearing, this is what I saw: I saw a man who is forthright and honest. Over the course of 3 days before the Judiciary Committee, Judge Alito was asked 677 questions on issues ranging from abortion to executive power to Vanguard. He answered at least 659 of them, or 97.3 percent of the questions.

To give you some perspective on these numbers, Chief Justice Roberts, when he was in front of our committee, was asked only 574 questions and answered 89 percent of them. Justice Ginsburg was asked just 384 questions, answering only 80 percent of them. Justice Breyer was asked 355 questions, answering 82 percent. Judge Alito was asked more questions and gave more answers than any recent nominee to the U.S. Supreme Court.

At that hearing, I saw a man of character and integrity. Judges do not shed their values when they don their robes. Our Founders themselves recognized this important point. In Federalist No. 78, for instance, Alexander Hamilton said that only a few individuals would really have the expertise in the law to become a Supreme Court Justice. But fewer still would have the ''integrity'' and the ''dignity'' befitting the office. In my opinion, Judge Alito has the integrity, the character, and the dignity befitting the office of Associate Justice of the Supreme Court.

The best evidence on this point is the testimony of those who know Judge Alito best—his colleagues on the Third Circuit, people he has worked with day in and day out. Judge Edward Becker described Judge Alito as ''modest and self-effacing.'' Judge Becker continued:

> I have never seen a chink in the armor of his integrity, which I view as total.

Judge Leonard Garth, his first boss, called him a ''morally principled judge.'' Even former Judge Tim Lewis, a man who said he occasionally disagreed with Judge Alito, endorsed his elevation to the High Court.

To me, all of this testimony carries substantial weight. We can judge a man by his record, we can judge him by his judicial philosophy, certainly, but there is no better judge of a man than those who know him best.

Unfortunately, some who hardly know Judge Alito have tried to smear his reputation by raising his recusal in the so-called Vanguard case. This case got a lot of play during the hearing. In my opinion, this attack is clearly frivolous. I wish to talk for a moment about it.

This so-called Vanguard case arose out of a financial dispute between two people. The plaintiff won a suit against a woman by the name of Monga, requiring her to turn over about $170,000 that she had in some Vanguard accounts. Ms. Monga then went to court to prevent Vanguard from turning over the money. So while Vanguard was technically a defendant in the case, in the classic sense of the term, it really was not accused of any wrongdoing. It didn't stand to lose anything. The only question was whether Vanguard would transfer the funds it held for Ms. Monga to another person. They just held the money. Nothing about this case could realistically have affected Vanguard as a company, nor Judge Alito. The judge did not own Vanguard; he held mutual funds that were managed by Vanguard.

Mr. President, that is why everyone who has looked into that matter has concluded that the allegations against Judge Alito are absurd. The ABA looked into this allegation and unanimously concluded that Judge Alito was entitled to its highest rating, a rating which explicitly considers ethics and integrity. Five legal experts concluded that Judge Alito did nothing wrong. Judge Becker, the former Chief Judge of the Third Circuit, said he was ''baffled'' by these allegations. The Washington Post wrote in a January 13 editorial that Judge Alito's own testimony ''revealed the frivolousness of the charge.''

Before these hearings began, one of Judge Alito's opponents, Nan Aron, president of the Alliance for Justice, said, ''you name it, we'll do it'' to defeat Judge Alito.

With Vanguard, Judge Alito's opponents resorted to an outrageous attack on him in an effort to undermine his integrity. This attack clearly failed. Although some waged a full-scale war against Judge Alito, what Judge Becker said at the hearing remains true today: There is simply ''not one chink in the armor of his integrity.''

At the hearing, I saw an experienced judge with a brilliant legal mind. Judge Alito came to the Judiciary Committee with a lengthy and distinguished legal career. He served for several years as a Federal prosecutor, taking on the mob, drug dealers, and

white-collar criminals. He argued 12 cases himself before the U.S. Supreme Court. And for more than 15 years, he has served as a judge on the Third Circuit, deciding thousands of cases and authoring hundreds of opinions with his own pen. This background certainly attests to his extraordinary competence and shows why he received a unanimously well-qualified rating from the ABA.

His judicial opinions attest to his competence as well. He writes crisply and clearly without any kind of overstatement. For the most part, he decides only the issues before him and has proven himself capable of tackling complex areas of the law with clear and yet simple language.

In my mind, however, the way Judge Alito answered our questions is perhaps the best example of his extraordinary legal talent. During our hearings, he demonstrated a mastery of constitutional law and his own voluminous jurisprudence. Over the course of 3 days, he spoke clearly and succinctly without using notes. It was an amazing performance. He provided us with detailed information about how he thinks, how he reasons, how he comes to his conclusions. I found his testimony thorough, forthcoming, and informative, and I believe the American people felt the same way.

At the hearing, I also saw a man who is openminded and fair, a man who is compassionate. During our hearings, some complained that Judge Alito has a bias toward Government or big business. But that is not what was said by those who, again, know him best. Take, for example, the testimony of Judge Alito's former law clerks.

Kate Pringle, a self-described ''committed and active Democrat,'' said that Judge Alito ''approached each case without a predisposition toward one party or the other.'' She said he treated all litigants ''in a fair and openminded way.''

Jack White, a member of the NAACP and the ACLU, said that Judge Alito had an ''abiding loyalty to a fair judicial process,'' not ''an enslaved inclination toward a political or personal ideology.'' In fact, Mr. White ''never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case.''

Finally, Professor Nora Demleitner, who described herself as ''a left-leaning Democrat, a member of the ACLU, a woman, and an immigrant,'' also had praise for Judge Alito:

> In the years I have known the judge, he has never decided a case based on a larger legal theory about the Constitution or conservative worldview, but instead has looked at the merits of each individual case.

Judge Alito also understands that judicial opinions are more than ink in the Federal Reporter. He understands that they are decisions that affect real people and have real consequences. The judge himself put it best:

> [W]hen a case comes before me involving, let's say, someone who is an immigrant . . . I can't help but think of my own ancestors because it wasn't that long ago when they were in that position. . . .[W]hen I look at those cases, I have to say to myself, and I do say to myself, this could be your grandfather. This could be your grandmother. They were not citizens at one time, and they were people who came to this country. When I have cases involving children, I can't help but think of my own children and think about my children being treated in the case that's before me. . . .When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender, and I do take that into account. When I have a case involving someone who has been subjected to discrimination because of disability, I have to think of people whom I've known and admired very greatly who had disabilities, and I've watched them struggle to overcome the barriers that society puts up[.]

To me, this testimony accurately reflects Judge Alito's record while on the bench. No matter who comes before him and no matter what the case, Judge Alito approaches each case with an open mind and a real-world sense of the consequences of his actions. To me, that is truly the approach of a fair, openminded, and compassionate judge.

Finally, I saw a man who understands the proper role of a judge. I believe judges play a limited, but obviously important, role in our constitutional system. Judges are not Members of Congress, State legislators, Governors, or Presidents. Their job is not to pass laws or make policy. Instead, it is the job of a judge—to use the words of Justice Byron White—simply ''to decide cases.'' Nothing more.

Judge Alito seems to embody this thinking as well. Several years ago at a ceremony honoring one of his Third Circuit colleagues, Judge Alito reminded his colleagues about the attributes of a good judge. Always remember, he said, to ''act like a judge.''

He went on to say:

> Do what good judges do, what they have done for a long time. Decide the cases that come before you, decide them as best you can. . . .Speak straightforwardly on the matters that are properly before you. Exercise the important powers that are rightfully yours, but keep in mind that you are a judge.

On the first day that I met Judge Alito, I was impressed with him, but I am even more impressed today. He is a good, decent, and honest man. He has extraordinary legal talent, and he approaches each case with an open mind and understanding heart.

In spite of some of the frivolous attacks on his reputation and character, Judge Alito has conducted himself with dignity, patience, and, yes, poise. He is an excellent judge and, in my opinion, will make an outstanding addition to the Supreme Court. I am proud to support his confirmation.

I conclude by noting that when Judge Roberts was sworn in as our Nation's 17th Chief Justice, he reminded us of a ''bedrock principle.'' And that is that ''judging is different from politics.'' Similar to John Roberts, Samuel Alito understands the difference, and when he takes a seat on the Supreme Court, as I expect he will, I know he will remember that. When tough cases come up, he will, in fact, I am sure, act like a judge.

I thank the Chair, and I yield the floor.

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

The PRESIDING OFFICER (Mr. BURR). THE CLERK WILL CALL THE ROLL.

The legislative clerk proceeded to call the roll.

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

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

Mr. OBAMA. Mr. President, it is my understanding that the hour is dedicated to the Democrats speaking with respect to the Alito nomination. I request 5 minutes of that time.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA Mr. President, first let me congratulate Senators SPECTER and LEAHY for moving yet another confirmation process along with a civility that speaks well of the Senate.

As we all know, there has been a lot of discussion in the country about how the Senate should approach this confirmation process. There are some who believe that the President, having won the election, should have complete authority to appoint his nominee and the Senate should only examine whether the Justice is intellectually capable and an all-around good guy; that once you get beyond intellect and personal character, there should be no further question as to whether the judge should be confirmed.

I disagree with this view. I believe firmly that the Constitution calls for the Senate to advise and consent. I believe it calls for meaningful advice and consent and that includes an examination of a judge's philosophy, ideology, and record. When I examine the philosophy, ideology, and record of Samuel Alito, I am deeply troubled.

I have no doubt Judge Alito has the training and qualifications necessary to serve. As has been already stated, he has received the highest rating from the ABA. He is an intelligent man and an accomplished jurist. There is no indication that he is not a man of fine character.

But when you look at his record, when it comes to his understanding of the Constitution, I found that in almost every case he consistently sides on behalf of the powerful against the powerless; on behalf of a strong government or corporation against upholding Americans' individual rights and liberties.

If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there is a claim between prosecutors and defendants, if the Supreme Court has not provided a clear rule of decision, then he will rule in

favor of the State. He has rejected countless claims of employer discrimination, even refusing to give some plaintiffs a hearing for their case. He has refused to hold corporations accountable numerous times for dumping toxic chemicals into water supplies, even against the decisions of the EPA. He has overturned a jury verdict that found a company liable for being a monopoly when it had over 90 percent of the market share in that industry at the time.

It is not just his decisions in individual cases that give me pause, though; it is that decisions like these are the rule for Samuel Alito rather than the exception.

When it comes to how checks and balances in our system are supposed to operate, the balance of power between the executive branch, Congress, and the judiciary, Judge Alito consistently sides with the notion that a President should not be constrained by either congressional acts or the check of the judiciary. He believes in the overarching power of the President to engage in whatever policies the President deems to be appropriate.

As a consequence of this, I am extraordinarily worried about how Judge Alito might approach the numerous issues that are going to arise as a consequence of the challenges we face with terrorism. There are issues such as wiretapping, monitoring of e-mails, other privacy concerns that we have seen surface over the last several months.

The Supreme Court may be called to judge as to whether the President can label an individual U.S. citizen an enemy combatant and thereby lock them up without the benefit of trial or due process. There may be consideration with respect to how the President can prosecute the war in Iraq and issues related to torture. In all of these cases, we believe the President deserves our respect as Commander in Chief, but we also want to make sure the President is bound by the law, that he remains accountable to the people who put him there, that we respect the office and not just the man, and that that office is bounded and constrained by our Constitution and our laws. I don't have confidence that Judge Alito shares that vision of our Constitution.

In sum, I have seen an extraordinarily consistent attitude on the part of Judge Alito that does not, I believe, uphold the traditional role of the Supreme Court as a bastion of equality and justice for U.S. citizens. Should he be confirmed, I hope he proves me wrong. I hope he shows the independence that I think is absolutely necessary in order for us to protect and preserve our liberties and our freedoms as citizens. But at this juncture, based on a careful review of his record, I do not have that confidence, and for that reason I will vote no and urge my colleagues to vote no on this confirmation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. CARPER. Mr. President, of the three branches of our Federal Government, the Supreme Court seems the most removed from the American people. There are, as we know, only nine members of the Supreme Court. None of them, in the end, is accountable to the public. They certainly do not have to face groups of angry voters as you and I do from time to time, at townhall meetings or local potluck dinners, and they are probably thankful for that.

However, their actions can have a tremendous and lasting effect on the lives of every American, probably more so than any Senator or Governor, or perhaps even more than many Presidents. For, in the end, the Supreme Court exists as the last bastion of protection for the rights and freedoms we enjoy as Americans. That is why I take so seriously, as I know you do, our obligation as Senators to provide advice and consent to our Presidents, as required by our Constitution, to determine whether their nominees truly merit a lifetime appointment to serve on our Nation's highest Court.

When I voted for Judge John Roberts' nomination to become Chief Justice of the Supreme Court last fall, I said standing here that it was a close call, at least for me. Ultimately, though, I chose to take what I described then as a leap of faith. As someone whose political and legal opinions are perhaps somewhat more conservative than mine, I knew Chief Justice Roberts would sometimes render decisions with which I may not be comfortable or entirely agree. But after carefully reviewing his testimony, and discussing that testimony with Democratic and Republican members of the Senate Judiciary Committee, meeting with him and other interested parties, and talking to his colleagues, colleagues of his who had known and worked with him in the past, I concluded John Roberts was a worthy successor to Chief Justice Rehnquist and was not likely to shift the balance of the Court in any significant way.

Obviously, more than three-fourths of our colleagues agreed with that decision. When the time had come to cast my vote, I concluded that Chief Justice Roberts' decisions would not be guided by ideology alone, but also by legal precedent and the combination of his life's experiences as a judge, as an attorney, as an academic, as a father, and as a husband. In short, by supporting John Roberts' nomination I voted my hopes and not my fears.

After we confirmed Chief Justice Roberts and turned to face yet another impending Supreme Court vacancy, I urged President Bush to send us a nominee similar to the person he or she would replace—Justice Sandra Day O'Connor. I noted that his next choice could divide this Congress and our country even further, or it could serve to bring us closer together. In my view, we needed that type of consensus candidate to replace Justice O'Connor and her legacy on the Court.

For more than 20 years, Justice O'Connor has been a voice of moderation during often difficult and tumultuous times. As we all know, her decisions oftentimes determined the direction of the Court. Not infrequently, the opinions she wrote reflected the prevailing sentiment of our country and its citizens, too. In my view, she was the right Justice at the right time.

Unfortunately, and with some regret, I rise today not fully convinced that Judge Samuel Alito is the right person to replace Justice O'Connor on the Supreme Court. Unlike a few months ago, when I rose to support the nomination of John Roberts, I will not be supporting Judge Alito's nomination to the Supreme Court. In sharing that decision today, though, let me be clear on several points. I will not be voting against his confirmation because I don't believe he has the legal qualifications, the intellect, or the experience necessary to sit on the Supreme Court. I do. He is clearly very bright and demonstrates an excellent grasp of the law.

I will not be voting against him because I don't like him or respect him. I do. He is described by a number of his colleagues as collegial, as hard working, and as a devoted father and husband. I believe Samuel Alito is an honorable person and that he has lived an honorable life.

Having said that, though, I don't believe we should vote for Supreme Court Justices based solely on their qualifications and likeability. We must also consider their judgment, their legal opinions, their judicial philosophies, and what they said or did not say during the confirmation hearings, in order to determine whether we are truly comfortable with the direction a particular nominee will take our Nation's highest Court. After all, these are lifetime appointments that will have consequences for decades into the future.

In the end, I found myself asking one simple question. Here it is: Is Judge Samuel Alito the right person for this vacancy, not just for now but for decades to come? For me, the answer to that question is, regrettably, no. Let me take a few minutes to explain why.

As we all know, our Constitution provides for three separate but equal branches of Government—the legislative branch, that is us, the Congress; the executive branch, the Presidency and his or her administration; and the judicial branch, the courts. The Framers of our Constitution believed no branch of our Federal Government was superior to another, so our Founding Fathers established an intricate system of checks and balances to ensure that each branch kept a watchful eye on the others.

For instance, it is Congress's job to represent the people and write the laws of our land, but the President can refuse to sign a bill the Congress has passed if he or she disagrees with our conclusions. Congress can then come

back and override a President's objections, if we can muster the necessary votes. Meanwhile, the Supreme Court can rule that a law is, in part or in whole, unconstitutional, providing yet another important check on the power vested in the Congress and in the Presidency.

Admittedly, it is not the most harmonious or quickest form of Government, but it has served our country well for over 200 years. Perhaps it was Churchill who said it best when he described democracy as the worst form of government devised by wit of man, but for all the rest.

I am concerned that, if confirmed, Judge Alito, during the decades he is likely to serve may well take the Court in a new direction that serves to undermine our system of checks and balances, threatening the rights and freedoms many of us hold dear.

Let me elaborate, if I may. In the past, Judge Alito has advocated for what is known as the ''unitary executive theory.''

Until a couple of months ago, I had not heard of that. If you are like me, Mr. President, and you didn't go to law school, you are probably wondering what that means. Let me put it simply. It basically means that Judge Alito feels that the President should largely be allowed to act without having to worry much about Congress or the Supreme Court stepping in and saying: With all due respect, you are out of line.

This line of thinking deeply concerns me and, I believe, many of my colleagues and the people we represent. And it should. Remember, our Nation declared her independence from Britain because we no longer wanted to be ruled by a king, or, frankly, by anyone with king-like powers. Our Founders wanted power to be invested in the people and shared equally by the three branches of Government.

To say then that there are times when a President's power should go largely unchecked except in very rare instances, in my opinion, goes against what our Founders intended. Moreover, unfettered Presidential power could have dangerous consequences, given how a particular President—either now or in the future—chooses to exercise that kind of unchecked power.

Let me give you a recent real-world example. Over the past few months, the Bush administration has been embroiled in several controversies, as we know, over its policies concerning the torture of detainees, as well as its decision to spy on or intercept phone calls and e-mails apparently of thousands of people living in the United States who are suspected of being agents of foreign countries or entities. In both cases, the administration asserted that it should be able to act without the consent of Congress or the courts.

I disagree. I believe that our courts have an obligation under our laws to monitor an administration's actions concerning foreign prisoners and criminal suspects, and I believe administrations should have to justify, within reasonable periods of time, their decision to spy on Americans. I will be the first to acknowledge that there are times when the President—this one or another President—needs the ability to conduct secret wiretaps. And I think most of us agree on that point.

The issue, however, is do Presidents have a constitutional right to conduct secret wiretaps without court authorization, without some other branch of Government making sure that that administration isn't breaking the law?

Again, the fundamental issue for me is the issue of checks and balances.

In these instances, Congress and the courts provide a needed and important backstop to make sure that the administration doesn't became overzealous and abuse the rights of innocent people.

Americans may not understand why these issues are such a big deal. They may even agree with the reasons the Bush administration give, for instance, for circumventing the law—a law that has been in place since 1978 which we modified I think about 4 years ago.

But it is not a stretch to understand how a President—maybe not this one but one in the future—could overstep his or her authority and thereby infringe on the civil rights of innocent Americans.

For that reason alone, we should all have grave concerns about an unchecked Presidency—or a Supreme Court Justice who has routinely sided and ruled in favor of unchecked Executive powers.

Jeffrey Stone, a law professor at the University of Chicago, is a supporter of the Roberts nomination—and initially a supporter of the Alito nomination—wrote recently:

> Given the times in which we live, we need and deserve a Supreme Court willing to examine independently these extraordinary assertions of Executive authority. We can fight and win the war on terrorism without inflicting upon ourselves and our posterity another regrettable episode like the Red Scare and the Japanese internment—

Of the 1950s and 1940s, two shameful episodes in the history of our country where our Government seriously infringed on the rights of average Americans under the guise and excuse of national security.

But as Professor Stone went on to say, we will only avoid such terrible excesses of governmental power ''if the Justices of the Supreme Court are willing to fulfill their essential role in our constitutional system.''

Based on his history and his opinions—in his own words—I fear that Judge Alito may well change the Court's approach and rule in favor of expanded Presidential power—not just at the expense of Congress and the courts but ultimately at the expense of the American people. We cannot and should not play witness to an unchecked Presidency, regardless of political party, regardless of whether the President is a Democrat or a Republican.

We need in this country for the courts and the Congress to ensure that this administration and future administrations abide by the laws of this land and the principles we hold dear.

Just as I am concerned about Judge Alito's views on expanded Presidential power, I am also concerned about Judge Alito's opinion on the role and powers of Congress.

Traditionally, Congress has enjoyed broad authority, as a coequal branch of Government, to debate and adopt laws that we believe protect the interests of the American people, such as keeping our water clean and our air clean and ensuring that fair labor laws and employment standards across the country are fair.

Back in the 1990s, Congress used that authority to pass a bill that banned the possession or sale of machineguns across State lines among everyday Americans. To me, that ban wasn't about whether people had the right to own guns for recreation or self-protection. Those rights are forever enshrined in our Constitution, as they should be. This was about whether people had the right to own, to buy, or to sell across State lines Army-style machineguns, which I think reasonable people can agree have little, if anything, to do with protecting our homes or going hunting.

Nevertheless, the constitutionality of the law was challenged in the courts. All nine Federal appeals courts that heard the subsequent challenges upheld the validity of the original law.

Judge Alito, as a member of the Federal appeals court that covers Delaware and our surrounding region in the Delaware Valley, heard one of those challenges. He ended up disagreeing with his own court's decision and that of eight other Federal appeals courts which ruled that Congress does indeed have the authority under our Constitution to ban the sale of machineguns across State lines.

My primary concern is that if Judge Alito thinks Congress shouldn't have the right to pass laws that arguably keep Americans safer, then what other laws might he believe Congress does not have the authority to adopt under the commerce clause of our Constitution? Laws that protect the air we breathe or the water we drink? Laws that allow men and women to take unpaid leave from their jobs to care for members of their family during times of crisis? I don't know, and that uncertainty—at least for me—is a cause of real concern.

A third concern I hold about Judge Alito relates to his views on other rights and freedoms we enjoy as Americans, particularly a woman's right to end a pregnancy prior to fetal viability. My own opinion about abortion is we have far too many of them, and we need to put a lot more effort into reducing the number of abortions that still take place in America. I am sure on that point Judge Alito and I agree.

But I am not certain Judge Alito agrees with me that we should not go back in time to a place where almost all abortion laws were illegal, where women who wanted to end a pregnancy were in too many instances forced into unhealthy behavior that often put their lives and their reproductive futures at risk. That is why, during his confirmation hearing, I was disappointed that Judge Alito, unlike Judge Roberts, declined to acknowledge that the Supreme Court decision that granted women the right to end an early term pregnancy is ''settled law.''

Justice O'Connor, whom Judge Alito has been nominated to replace, has been the deciding vote on numerous cases that challenged this precedent. That is why I believe replacing Justice O'Connor with Judge Alito—given his rulings and statements on this subject—may well be putting this precedent in jeopardy.

Let me explain why. In the historic Planned Parenthood v. Casey case, Judge Alito voted to uphold a Pennsylvania law requiring married women to notify husbands before obtaining an abortion even during the early stages of pregnancy. That case eventually went to the Supreme Court, which ruled against Judge Alito's position, as we know.

Justice O'Connor, who cast the deciding vote in the Supreme Court overturning the Pennsylvania law and Judge Alito's position, wrote that women do not leave their Constitutional protection at the altar. Married women are entitled to the same protections as single women. I believe she is right.

I had the opportunity to talk with Judge Alito at length recently. I asked him—a conversation that I very much enjoyed—why he ruled the way he did in this instance. He told me he did not think the requirement placed an undue burden on married women. I asked him if he felt the same way today, especially in light of the Supreme Court ruling in opposition to his view. He told me he basically thought the same way. While I respect that honesty, I respectfully disagree and question what other undue burdens he may decide to place on women in the future.

Let me close by saying that this is not an easy vote for me. I know it is not an easy one for a lot of our colleagues. As a former Governor, I believe strongly that this administration or any other administration has the right to nominate judges of the same mind and philosophy. There are consequences in elections. If you win, you have the chance, if you are a Governor or a President, to nominate candidates of your choice for the bench. And I believe Senators should not automatically reject judges outright because of political affiliation or beliefs.

However, politicians of both stripes must take a stand and reject nominees that we believe will take the courts too far to the extreme right or to the extreme left. Wisely, in my State, Delaware's constitution requires overall political balance in our State's courts.

For every Democrat who is appointed to serve as a judge, Delaware Governors have to nominate a Republican. The result has been an absence of political infighting and a balanced, exceptionally and highly regarded State judiciary that we are enormously proud of in our State.

Our Federal Constitution, regrettably, does not require similar political balance when it comes to the judiciary, but political balance should be one of our goals. The Founders of the U.S. Constitution tasked the Senate with finding that balance.

I fear, in the end, that Judge Alito may well upset the balance that exists on the Supreme Court for the better part of my lifetime and move the Court in a direction that will not be best for many of the people of this country.

So this time, unlike my vote for the nomination of John Roberts a few months ago, I will be voting my fears—not my hopes. Having said that, I sincerely wish Judge Alito well.

I hope, if he is confirmed—and I believe that he will be—that he proves my concerns wrong and unfounded. I hope he remembers that our Constitution—that our entire democracy—is both an everlasting and ever-changing experiment. Our Constitution is not something to be strictly interpreted, nor is it something to be recklessly abandoned.

Success in life is often measured not just by the stances we take but by the results we achieve. I believe that is one of the reasons why Justice O'Connor is so revered. It is not because she was always predictable or that she advocated an intractable world view. It is that she found the right balance, even in the most difficult, controversial, and emotional cases of our times.

My fear is that too often Judge Alito may not do so, and thus I will not be supporting his nomination.

My hope, though, is that once he is confirmed to the Supreme Court he will balance the scales of justice and not tip them too far in either direction.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, for the second time, this Congress we are considering the nomination to the Supreme Court. Having confirmed Judge John Roberts as Chief Justice in September, a decision in which I joined, we are now debating the nomination of Judge Samuel Alito to the position of Associate Justice. Positions on the Supreme Court are hugely significant given their lifetime tenures, the balance on the Court, and the importance of the Court's decisions on the lives of Americans. These votes are among the most important and difficult that we cast.

Article II, section 2 of the Constitution simply provides that the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court. . . .''

The Constitution gives us no guidance on the factors the Senate should consider while we carry out this constitutional duty. In the end, each Senator must determine what qualities he or she thinks a good Supreme Court Justice should have and what scope of inquiry is necessary to determine if the prospective nominee has these qualities.

This will be the 11th Supreme Court nomination on which I will have voted. With each nomination I have done my best to fairly determine if the nominee satisfies fundamental requirements of qualification and temperament, if the nominee is likely to bring to the Court an ideology that distorts his or her judgment, and brings into question his or her open mindedness and whether any of the nominee's policy values are inconsistent with fundamental principles of our Constitution.

Like Judge Roberts before him, Judge Alito has an impressive background and command of the law. He easily meets the educational and professional requirements of the position. Judge Alito has worked for the Justice Department, as the U.S attorney for the District of New Jersey, and for nearly 16 years as a judge on the Third Circuit Court of Appeals. He is respected by his peers as a very decent person and is a person of high caliber and integrity.

That Judge Alito has a keen intellect and understands the nuances of the law is indisputable. That is not enough to warrant confirmation if his discernible views on key issues are at variance with fundamental principles of our constitutional system. Because I am not convinced he will adequately protect the constitutional checks and balances that are the bedrock of our liberty, I cannot support his confirmation.

I have concerns about Judge Alito's views in a number of areas. One in which I have the greatest doubts relates to his undue deference to Executive power. In recent years, constitutional issues on the authority of the executive branch have multiplied. These include executive actions in areas of government eavesdropping, other government intrusions on personal privacy, including library records, medical records, and Internet search records, and the detention and treatment of American citizens whom the President designates as ''enemy combatants.'' Our system of checks and balances requires the Supreme Court to enforce limits on Executive power, and the nominee's views on executive authority under the Constitution are extremely important.

Judge Alito's record, however, is one of undue deference to Executive power and raises significant doubts as to whether he would adequately apply the checks and balances that the Founders enshrined in the Constitution to protect, in part, against an overreaching Executive.

For example, while serving as Deputy Assistant Attorney General in 1986, Judge Alito recommended the President use bill signing statements to influence the Court's interpretation of legislative history. He argued that ''the President's understanding of the bill should be just as important as that of Congress,'' and that his signing statement proposal would ''increase the power of the executive to shape the law.''

This issue took on renewed urgency when President Bush recently declared in a signing statement that he would ignore the ban on torture by executive branch personnel, a ban passed overwhelmingly by Congress in the very bill he was signing, if the ban hampered his actions as Commander in Chief. In a written question, I asked Judge Alito about the possible legal relevancy of Presidential signing statements. His response was erudite, as always, suggesting they might be relevant if the President participated in the crafting of the legislation.

In the case of the torture ban language, the President strongly and repeatedly opposed the language and unsuccessfully sought, at a minimum, to obtain a Presidential waiver. Yet when asked at his Judiciary Committee hearing whether a signing statement could have relevancy in that context where the President strongly opposed the language and was not involved in its crafting, Judge Alito responded:

> The role of signing statements and the interpretation of statutes is, I think, a territory that's been unexplored by the Supreme Court.

That statement of fact was not responsive to a question about his views. Judge Alito, thereby, missed the chance to show that his views on this issue have evolved since 1986. His words in 1986 that signing statements can help achieve the goal of ''increasing the power of the Executive to shape the law'' should give us all pause.

If Judge Alito were on the Supreme Court and voted to give constitutional weight to signing statements such as President Bush made when he signed the torture ban legislation, he would be creating a new and radical expansion of Executive power.

In 1988, the Supreme Court addressed the question of executive authority in Morrison v. Olson, the decision which upheld the Independent Counsel Act. The government had argued that the act was unconstitutional because it restricts the Attorney General's power to remove an independent counsel and interfered with executive branch prerogatives, thereby disrupting the proper balance between the branches of Government.

Chief Justice Rehnquist rejected those arguments when he wrote for a 7–1 majority:

> As we stated Buckley v. Valeo, the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as ''a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.''

Nonetheless, just a year later, in remarks to the Federalist Society in 1989, Judge Alito, then the U.S. attorney for the District of New Jersey, called the Morrison v. Olson decision ''stunning,'' and described congressional checks on broad Presidential power as ''pilfering.'' He said:

> . . . the Supreme Court [in Morrison] hit the doctrine of separation of powers about as hard as heavy weight champ Mike Tyson usually hits his opponents.

Yet in the setting of the Judiciary Committee hearings, when asked whether the views he expressed to the Federalist Society were still his views, Judge Alito would only say:

> Morrison is a settled precedent—it is a precedent of the court. It was an 8–1 decision (sic). It's entitled to respect under stare decisis. It concerns the Independent Counsel Act, which is no longer in force.

He gave no indication that he has modified his earlier extreme view over time, but, again, he simply made a statement of obvious fact: that Morrison is a precedent of the Supreme Court and entitled to respect as such.

Although he has been hesitant to check Presidential power, Judge Alito has been more than willing to check congressional power. In United States v. Rybar, the Third Circuit upheld a conviction under the Federal law prohibiting the possession of machine guns. In his dissent, Judge Alito said there was insufficient evidence in the RECORD to determine that Congress had the power under the commerce clause to enact that legislation. Not only did the majority strongly criticize his view of congressional power, and not only did the Supreme Court decline to review the majority's ruling, thereby suggesting the majority's view was the correct view, but the Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have also all found the congressional machine-gun ban to be constitutional.

Undue restriction of legislative branch authority such as reflected in Judge Alito's dissent in Rybar could lead to further unwise extension of executive branch powers. For instance, Congress has voted to require the executive branch to seek a warrant to eavesdrop on American citizens. We granted broad powers to tap phone lines where there is probable cause that a person is, or is linked to, a terrorist or a spy. We allow the executive branch to go ahead and tap a phone when there is no time to seek a warrant, first, as long as it subsequently seeks a warrant within 3 days. But Congress added an explicit prohibition on the executive branch tapping phones of U.S. citizens except as provided for in that law. This was an explicit prohibition. You must follow the requirements of this law or else you must not tap American citizens' phones.

Can a President ignore that prohibition, that check on his power? The Supreme Court ruled on the issue of executive authority in the seminal Youngstown case. As Justice Robert Jackson wrote in his renowned opinion:

> When the President takes measures incompatible with the expressed will of Congress, his power is at its lowest ebb.

Three times at his hearing, however, Judge Alito characterized that circumstance where the President acts contrary to the explicit congressional prohibition as a ''zone of twilight.'' Justice Jackson reserved that zone of twilight, that zone of ambiguity, for the circumstance where ''the President acts in absence of either a congressional grant or denial of authority.''

Again, where the President acts in defiance of a congressional prohibition, Presidential power, according to Jackson, is at its lowest ebb, not in a twilight zone of uncertainty.

More specifically, Judge Alito—referring to the congressional prohibition on executive wiretapping under the Foreign Intelligence Surveillance Act, FISA, the prohibition on executive wiretapping, except as provided for in that act, spoke as follows at his hearing:

> Where the President is exercising executive power in the face of a contrary expression of congressional will through a statute or even an implicit expression of congressional will, you'd be in what Justice Jackson called the twilight zone, where the President's power is at its lowest point.

And Judge Alito said:

> What I'm saying is that sometimes issues of executive power arise and they have to be analyzed under the framework that Justice Jackson set out. And you do get cases that are in this twilight zone.

Again, referring to the hypothetical presented to him where there was a specific congressional prohibition on wiretapping. Again, calling that a case that is in the twilight zone.

Later, Judge Alito said:

> When you say regardless of what laws Congress passes, I think that puts us in that third category that Justice Jackson outlined, the twilight zone, where, according to Justice Jackson, the President has whatever constitutional powers he possesses under Article II minus what is taken away by whatever Congress has done by an implicit expression of opposition or the enactment of a statute.

By repeated characterizations of Presidential action in the face of a prohibition on that action, as falling into a twilight zone of uncertainty rather than a zone of dubious constitutionality, Judge Alito, unwittingly or otherwise, reflected what I fear his real view is. The twilight zone that he referenced is entered, according to the Youngstown test, when the President acts without congressional authorization, not when Congress has explicitly prohibited his actions. Again, for instance, where Congress has prohibited domestic wiretapping in the absence of seeking a warrant, Presidential power is at its lowest ebb.

In the 1981 case of Dames and Moore v. Regan, Justice Rehnquist reaffirmed the same test, writing that the zone of twilight is entered ''when the President acts in the absence of congressional authorization,'' and reaffirming

Justice Jackson's opinion. Justice Rehnquist found that ''when the President acts in contravention of the will of Congress 'his power is at its lowest ebb and the Court can sustain his actions [Justice Rehnquist said] 'only by disabling the Congress from action on the subject.' ''

If Judge Alito had described the status of Presidential action in contradiction of congressional prohibition only one time, it could be argued that he slipped or made a mistake. But since he repeatedly made the statement, it is more likely to represent his true feeling, particularly since Senator LEAHY pointed out this mischaracterization of Justice Jackson in the Youngstown case and Judge Alito did not correct himself.

Justice Jackson is a longtime and lifelong hero of mine. He was President Truman's Attorney General when Truman nominated him to the Supreme Court. But when President Truman seized the steel mills under his claim of constitutional authority as Commander in Chief, Justice Jackson ruled against his old friend, now Commander in Chief, and wrote:

What is at stake is the equilibrium established by our constitutional system.

Similarly, Justice O'Connor recently cast the deciding vote in Hamdi v. Rumsfeld, which made clear that the President's powers during wartime are not unchecked under our Constitution. Justice O'Connor wrote:

A state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.

The liberties of our people are in the hands of the Supreme Court. The willingness of this President and a number of Presidents before him to ignore the Constitution's limits on their power needs to be checked by the Supreme Court. While I am hopeful Judge Alito will join the long and revered list of Supreme Court Justices who have protected our Constitution's checks and balances, I have too many doubts to be confident he will do so and that he will stand up to excessive exercises of Executive power, as Justice Jackson and Justice O'Connor and other Justices have done.

Judge Alito is a personable, decent man, a man of great integrity and extraordinary intellect. His associates vouch for his collegiality and his congeniality. But I am not confident Judge Alito will help provide the essential check on executive excess that has proven throughout our history to be the bedrock of our liberty.

During his hearings, he stated time and time again that the President is ''not above the law,'' but in the end I am not persuaded there is real conviction behind that mantra.

I wish I could ignore my fears and vote my hopes. But the doubts are too nagging and the stakes are too high for me to consent to Judge Alito's nomination to the Supreme Court.

I thank the Chair, yield the floor, and 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. CRAIG. 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. CRAIG. Mr. President, I am here today to discuss the nomination of Judge Samuel A. Alito, Jr. to be an Associate Justice of the Supreme Court.

Over 200 years ago, the Framers of the United States Constitution had a similar discussion. On the topic of judicial nominations, they emphasized the need for qualified judges—those who possess virtue, honor, requisite integrity, competent knowledge of the laws, fit character, and those who have the ability to conduct the job with utility and dignity.

They also talked about the courts that these judges sit on and warned against them exercising will instead of judgment, the consequence of which would be the substitution of the courts' pleasure to that of the legislative body.

These principles have stood the test of time—have been a constant standard that has guided the Senate's constitutional obligation of advice and consent and—today, over two centuries later, we see these principles embodied in Judge Samuel Alito.

You can tell this by Judge Alito's record.

Judge Alito has served as a judge on the Third Circuit Court of Appeals for 15 years. He was confirmed unanimously by a voice vote and since his appointment, he has participated in more than 1,500 Federal appeals and written more than 350 opinions.

From 1987 to 1990, he was the U.S. attorney for the District of New Jersey—the chief Federal law enforcement officer in the State. As a Federal prosecutor, he oversaw the prosecutions of numerous organized crime figures, white-collar criminals, environmental polluters, drug traffickers, terrorists, and other Federal defendants.

Judge Alito also served as an Assistant to the Solicitor General from 1981–1985, arguing 12 cases before the Supreme Court and writing briefs or petitions in more than 250 cases.

He was a Deputy Assistant Attorney General in the Office of Legal Counsel, which is the highest authority within the executive branch for answering legal questions and advising the federal government on complex statutory and constitutional questions.

He is also a distinguished student and scholar. He earned his bachelor's degree from Princeton University and his law degree from Yale Law School, where he served as editor of the Yale Law Journal.

You can also tell his qualifications by the kind of human being he is—and by the kind that others know him to be.

Judge Edward Becker, Senior Court of Appeals Judge for the Third Circuit, who served with Judge Alito for 15 years, called him a wonderful human being, gentle, kind, considerate, patient, self-effacing, brilliant, highly analytical and meticulous, a soul of honor, with no chinks in the armor of his integrity.

Judge Leonard Garth, who has known Judge Alito since he clerked for him in 1976 and served with him on the Third Circuit for the 15 years of Judge Alito's tenure there, called him thoughtful, modest, and self-effacing, and that it is rare to find humility such as his in someone of such extraordinary ability.

And Edna Axelrod, a former colleague and lifelong Democrat, called him a man of unquestionable ability and integrity, one who approaches each case in an openminded way, seeking to apply the law fairly.

You can also tell his qualifications from his judicial philosophy—and the way he judges.

Judge Becker testified that Judge Alito scrupulously adheres to precedent.

A former colleague and friend of 20 years likewise said that those who know him know that he is not an ideologue, he does not use his position to pursue personal agendas, and he has a profound respect for the law and precedent.

Judge Alito himself testified that he makes decisions knowing a judge can't have any agenda, a judge can't have any preferred outcome in any particular case, and a judge certainly doesn't have a client. The judge's only obligation—and it is a solemn obligation—is to the rule of law. And that means in every single case, the judge has to do what the law requires.

All of these things—his record, character, and judicial integrity—don't simply make him qualified to be an Associate Justice of the Supreme Court—they make him well qualified, according to the American Bar Association.

After interviewing more than 300 people and analyzing nearly 350 published opinions, a panel at the ABA concluded that Judge Alito's integrity, his professional competence, and his judicial temperament are of the highest standard—and his time on the bench established a record of both proper judicial conduct and even-handed application in seeking to do what is fundamentally fair.

Some of those now opposing the nomination of Judge Alito used to agree.

When Judge Alito was in the process of being confirmed to the Third Circuit, one Senator said that Judge Alito ''obviously had a very distinguished record'' and commended him for his ''long service in the public interest.''

Another, referring generally to the nominations process, said ''we need to get away from rhetoric and litmus tests, and focus on rebuilding a constructive relationship between Congress and the courts . . . we do not need nominees put on hold for years . . . while we screen them for their Republican sympathies and associations.''

And the Senate did this some years ago. I recall when the nomination of Ruth Bader Ginsburg to the Supreme Court came before the Senate in 1993, I was confronted with a nominee whose past revealed that she had a vastly different political ideology than my own. My constituents from Idaho made clear just how different and how far out of the Idaho mainstream that ideology was.

However, Justice Ginsburg was a judge of great ability, character, intellect, and temperament. Her record was replete with evidence of these qualities. And although at one time she had been a vocal advocate for particular political issues, she had a sharp understanding of the limited character of the judiciary and her role within it as a neutral arbiter, not an advocate.

I voted for Ruth Bader Ginsburg. Not because she had the same ideology as I do, but because there was a lack of convincing evidence that she believed the Supreme Court was a place for judicial activism rather than restraint.

Judge Alito's record reflects the same belief, perhaps even more so than Justice Ginsburg's. But now we have the same senators who supported him the first time around suddenly calling his record ''ominous'' and uniting their opposition on the basis of his alleged ''extreme views of executive power.''

In a recent hearing, Judge Alito acknowledged that ''the President, like everybody else, is bound by statutes that are enacted by Congress'' and that there is ''no question about that whatsoever.'' He also testified that ''as a judge, he would have no authority and certainly would not try to implement any policy ideas about federalism.'' There is nothing in Judge Alito's record to suggest otherwise.

What his record does show is a man of character, competence, and integrity who can apply the laws, regardless of his own views.

It is hard to argue against that.

Let us vote to confirm Judge Samuel Alito as an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I understand the leader may be coming. If he does, I will suspend my remarks to allow him to speak, then I will resume. Are we in morning business?

The PRESIDING OFFICER. We are in executive session on the nomination of Judge Alito.

Mr. ALEXANDER. I rise to make a few remarks on Judge Alito. The Presiding Officer is from the next State over. North Carolina and Tennessee have the same mountains, and he may be familiar with a story we tell at home about the old Tennessee judge.

It is told in one of our mountain counties that the lawyers showed up one morning in the courthouse, all prepared for a 3-day or 4-day trial. They had their litigants and their witnesses and their books. They had done the research. The judge came in, sat down behind the bench, and said: Fellows, we can save a lot of time. I had a phone call last night, and I pretty well know the facts. Just give me a little bit on the law.

The lawyers were pretty disappointed because it was obvious to them that the judge already had pretty well made up his mind about what to do about that case. That is not what they expected. They thought they were coming before a judge—at least one side did—who was impartial and they wouldn't know whose side the judge was on.

When Judge Alito is sworn in, he will take two oaths. The first is the constitutional oath that we Senators took. The second is the judicial oath, which makes a pretty good job description of a Justice on the Supreme Court: I—and he will say his name—do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Associate Justice of the Supreme Court under the Constitution and laws of the United States. So help me God.

Judge Alito's statements before the Judiciary Committee suggest to me that he understands very well his duty of impartiality under these oaths. He said he will uphold the Constitution. These are his words:

> The court should make its decision based on the Constitution and the law. It should not sway in the wind of public opinion at any time.

Judge Alito has said that the Constitution applies to everyone:

> No person in this country is above the law. That includes the President and it includes the Supreme Court.

He said he won't allow his personal views to compromise his impartiality. He also said:

> I would approach the question with an open mind and I would listen to the arguments that were made.

The other side has taken an unusual position. They keep asking, Whose side is he on? Is he on the side of the rich or of the poor, the big or the little, the Black or the White, business or labor? Is he on the side of the easterner or the westerner? For us to know whose side he is on would violate his oath. He can't tell us that. The American people know that.

I had the privilege of being Governor of my home State. In that process, I appointed 50 judges. I never asked a single one of them whose side they were on. I appointed Democrats and Republicans. I appointed the first African American judges, and the first women to be circuit court judges. I didn't ask them where they stood on abortion or the death penalty. I tried to find out about their character, about their intelligence, about how they would treat people before them, about their respect for law and their understanding of our country. I have been proud of those 50 appointees.

I am disappointed that some in this Chamber would keep asking of Judge Alito and other nominees of the President, Whose side is he on? Is he on the side of the rich or the poor, of the big, of the little? He must take an oath of office that says he will not be on anybody's side and that when the lawyers come before him to argue a case, they don't know where he is going to come down except that he is going to come down according to his oath, according to the law.

Americans have shown that they know better. I had the privilege of being elected to the Senate in 2002. That was an issue in my election: Did the people of Tennessee want to confirm President Bush's judicial nominees, people who would interpret the law, not make it up as they go along? The people of Tennessee don't want a judge who takes sides before the case is argued.

I said a few months after I arrived here that I would not participate in a filibuster of any President's nominee. I might vote against them for one reason or another, but I wouldn't participate in a filibuster. Each one of them deserves an up-or-down vote. I am looking forward to casting this vote.

I would like to express my great respect for the woman Judge Alito will succeed. Sandra Day O'Connor was appointed by President Ronald Reagan. She was the first woman appointed to the Supreme Court. She has distinguished herself there by her intelligence, her independence, and scholarship. She has been a wonderful representative for our country. She is a great symbol for other men and women, reminding us that American history is a work in progress and that we had a long way to go when she was appointed, as we still do.

She tells a wonderful story of how, when she graduated from Stanford Law School, she applied for a job with a Los Angeles firm. Even though she graduated near the top of her class, she was told they only had places for women as secretaries. A few years later, a partner in the same firm was the Attorney General of the United States, and he called her and asked her to fly to Washington from Arizona so that he could talk with her about being President Reagan's appointee to the Supreme Court. She has come a long way, and she has helped our country come a long way. As we consider Judge Alito, we certainly salute Justice O'Connor.

I look forward to casting my vote for the confirmation of Judge Alito. His resume reads like a resume any of us who were once in law school dreamed we could have: his degree from Yale, his work as an Assistant U.S. Attorney, as Assistant to the Solicitor General, as U.S. Attorney, nearly 16 years of service on the Third Circuit Court of Appeals, and receiving a unanimous ''well qualified'' rating from the American Bar Association, which is the highest possible rating. He has based his opinions and dissents on sound

legal arguments. He appears to be unswayed by the particular details of the case that are irrelevant to the legal issues at stake. He seems to understand that he is not to be on anybody's side, that he is supposed to enforce the law impartially and respect the Constitution. In short, Samuel Alito has demonstrated judicial temperament suitable for a nominee.

I believe he will serve with distinction. I am pleased to support his confirmation as Associate Justice of the U.S. Supreme Court.

I thank the Chair.

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

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

The bill clerk proceeded to call the roll.

Mr. FRIST. 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. FRIST. Mr. President, I understand that earlier today, the distinguished chairman of the Judiciary Committee was on the Senate floor—actually, several times. During his last discussion on the Senate floor, he asked unanimous consent for an up-or-down vote on this distinguished nominee to the Supreme Court. As all of our colleagues know, it is very important from our standpoint that this nominee be given a vote that is up or down, which reflects the advice and consent of this body.

It has been reported to me over the course of the afternoon that there are Members from the other side of the aisle who have expressed their intent to filibuster this nominee. As I have said at the outset, it is important to me to make sure that this nominee be given plenty of time in terms of advice and consent on the floor of this body, and, indeed, he has had just that. It is time to establish an end point for that up-or-down vote. Although we have attempted to set a time certain to have that vote in the future, we have not been able to receive that from the other side of the aisle.

Again, this is a nominee who is well qualified, has the highest ABA rating. We heard seven of his circuit court fellow judges testify on his behalf. Now is the time to bring his vote to the floor of the Senate. There is objection to that, and it has been now 87 days. I believe this is the 87th day since he was initially nominated. We wanted to have hearings in November and December, and there was objection, so we pushed those off until January. In those hearings, Judge Alito testified and was present for 18 hours and answered over 650 questions. We have had debate today and yesterday, and the debate will continue tomorrow and possibly Saturday and Monday—however long it takes for people to be adequately heard. But it is time to set that vote.

Even after we came out of committee, there was yet another delay in terms of bringing Judge Alito's nomination to the floor of this body. I was disappointed that he came out of committee on a party-line vote. That at least raises the specter that this becomes too partisan, and so I am very concerned. All that is behind us now, and it is time to move toward that up-or-down vote.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk at this point.

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

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Samuel A. Alito, Jr., of New Jersey to be an Associate Justice of the Supreme Court of the United States.

Bill Frist, Elizabeth Dole, Michael B. Enzi, Jim DeMint, Wayne Allard, Kit Bond, John Ensign, Arlen Specter, Rick Santorum, Kay Bailey Hutchison, Pete Domenici, Judd Gregg, Lisa Murkowski, Norm Coleman, George Allen, Mitch McConnell.

Mr. FRIST. Mr. President, I ask unanimous consent that the vote on cloture occur at 4:30 p.m. on Monday, January 30, with the mandatory quorum waived. I further ask consent that if cloture is invoked, notwithstanding the provisions of rule XXII, the Senate proceed to a vote on the confirmation of the nomination at 11 a.m. on Tuesday, January 31. Finally, I ask unanimous consent that all debate time on Tuesday prior to 11 a.m. be equally divided between the two leaders or their designees, and that cloture vote may be vitiated by the agreement of the two leaders.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Democratic leader is recognized.

Mr. REID. Mr. President, I wish to express the appreciation on our side for giving us adequate time to talk about this most important nomination. The distinguished majority leader could have filed cloture last night because I told him I didn't have it cleared yet for a time-certain vote. There has been adequate time for people to debate. No one can complain in this matter that there hasn't been sufficient time to talk about Judge Alito, pro or con. We have had a dignified debate. We have gone back and forth, and I hope this matter will be resolved without too much more talking. But everybody has a right to talk.

Again, I express my appreciation to the distinguished majority leader for making sure everybody had ample time to talk on behalf of Samuel Alito or against him.

Mr. FRIST. Mr. President, just to summarize, we will be here tonight for as long as people want to speak. We will be here tomorrow, and we will announce what time we will be in tomorrow. We will be available as long as people would like to speak. If Saturday is necessary, we will provide that time as well. The cloture vote will be at 4:30 on Monday. Once cloture is invoked, we would have a vote at 11 a.m. on Tuesday, January 31.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mrs. DOLE. Mr. President, it is my great privilege to support Judge Samuel A. Alito, Jr., an outstanding choice for Associate Justice of the United States Supreme Court.

Judge Alito is indeed one of the most qualified nominees to ever come before the Senate. He has excelled at every level—high school valedictorian—Phi Beta Kappa from Princeton—Yale Law School—Editor of the Yale Law Journal—Federal prosecutor—distinguished and esteemed judge. His judicial experience and record are vast. During his 15 years on the bench, Judge Alito has participated in more than 1,500 decisions. He has written more than 350 opinions on issues across the legal spectrum. Of the 109 men and women who have been chosen to serve this country on the Supreme Court, Judge Alito has spent more time on the Federal bench than all but four. And no nominee to the high court has come before this body in the last 70 years with as much Federal judicial experience. Judge Alito is precisely the type of person America needs on the Supreme Court.

Yet, despite Judge Alito's obvious qualifications for this important post, some members of the other party have resorted to personal attacks in an effort to deny this good and honorable public servant confirmation by the Senate. They have questioned his integrity, questioned his commitment to equal rights, and mischaracterized his rulings from the bench.

But in reality, the hostility towards Judge Alito has nothing to do with his integrity, his commitment to fairness, or even his view of executive power. Rather, these attacks are simply a pretext upon which to oppose Judge Alito's nomination. His critics' real fear is that he will refuse to rubberstamp the agenda advanced by liberal interest groups. Make no mistake, they want Judge Alito—and the Supreme Court—to undermine marriage, religious expression, and protection of the unborn.

I do not know how Judge Alito will ultimately rule when confronted with difficult questions of law—and neither do my colleagues—because Judge Alito has rightly refused to prejudge cases that may come before him. But we can all take comfort in the principles that will guide his approach—respect for the Constitution and the rule of law, a commitment to hear all sides of an argument with an open-mind, impartiality and fairness to all parties, big or small, powerful or powerless.

Judge Alito's judicial record and Senate testimony demonstrate an unwavering dedication to these principles. His colleagues on the bench and in the Justice Department, his clerks, and so many others who know him well, have testified that Samuel Alito is a man who will approach his job without bias. Like John Roberts, Samuel Alito understands that a Supreme Court justice should apply the law without regard to his personal views. I am confident that Judge Alito will bring this approach to the Court.

Mr. President, there is no question that confirmation hearings can be long, stressful, and exhausting—not only for the nominees but for their families and friends as well. But in earlier days, a nominee with Samuel Alito's intellect, qualifications, and integrity would have been confirmed with overwhelming support. Indeed, the other side has not publicly ruled out the possibility of an attempted filibuster. I fear that this precedent will have a chilling effect—keeping our best and brightest from entering public service.

The responsibility of the United States Senate to give advice and consent to a Supreme Court nominee is among the most significant given to us. It is vital to our Government's constitutional structure that the Senate discharge its duty by giving a Supreme Court nominee an up or down vote. And each Senator has ample resources upon which to make such a decision here.

Judge Alito has a judicial record far surpassing that which has customarily been available to us when considering a nominee for the highest court in the land. He also has answered more questions during the course of his hearing than any Supreme Court nominee in recent memory. If any question existed about Samuel Alito's integrity, judicial temperament, or qualifications for the Supreme Court, it was put to rest before the Judiciary Committee. I ask that my fellow Senators therefore vote to confirm Samuel Alito as Associate Justice of the United States Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, on January 4, 2005, I was privileged to take the oath of office as a U.S. Senator. I raised my right hand and, along with my colleagues, Republican and Democrat, pledged to support and defend the Constitution of the United States.

Now, as this distinguished body considers the nomination of Judge Samuel Alito, I am reminded again of what that obligation means. The legal experts have had their say, so today I wish to speak not as a legal scholar but as a commonsense American citizen.

When our Founding Fathers framed our Constitution, they gave us an incredible gift: a democracy with checks and balances. We will always be indebted to those visionary leaders who understood that we would need a constant, fixed star by which to navigate the unpredictable and changing seas that we would encounter as a nation.

Today, over 200 years later, the wisdom of our Founders is clear as our Constitution continues to serve as a protector of liberty and individual freedom. But as this confirmation process continues to unfold, I fear that we have strayed far from where the Founders intended us to be.

I am afraid we have done a grave disservice not only to Judge Alito but to other qualified public servants who will certainly think twice before subjecting themselves to the dehumanizing process this has become. As I watched Judge Alito's hearings before the Judiciary Committee, I was struck by the harsh attacks some leveled against him. I was proud of my fellow Senator from South Carolina, Mr. LINDSEY GRAHAM, who expressed the outrage of the American people and apologized to Judge Alito and his family for the behavior of those on the committee, who seemed more intent on slandering him than fairly examining his long, distinguished legal career.

Sadly, partisanship prevailed, and Democrats chose to vote in lockstep against this committed public servant. Every Democrat on the Judiciary Committee voted against this well-qualified judge.

Now, as this nomination comes before the full Senate, the unfair rhetoric continues. I find it sad that yesterday my colleague from Massachusetts, Senator KERRY, took to the floor of this Chamber to insinuate that he could, as he said, ''almost imagine Karl Rove right now whispering to Judge Alito, 'just say that you have an open mind, say whatever it takes.''' This accusation is insulting not only to Judge Alito—a man who, by all reports, is a fair and honest public servant—but to the intelligence of every American who shares Judge Alito's understanding that the proper role of a judge is to interpret the law, not make it.

These types of slanderous accusations also fly in the face of diverse and numerous independent groups that have stepped forward to defend Judge Alito's character and qualifications. Many of his former colleagues, including several judges who have served with him, testified under oath that he is fair and independent.

The American Bar Association, hardly known as a bastion of the rightwing, unanimously agreed to give Judge Alito their highest ranking of ''well qualified'' for his ''integrity, professional competence, and judicial temperament.''

A bipartisan group of 51 former Judge Alito clerks wrote that the judge was ''guided by his profound respect for the Constitution and the limited role of the judicial branch,'' that he ''applied precedent faithfully and fairly.'' Where Congress had spoken, ''he gave the statute its commonsense reading,'' avoiding both ''rigid interpretations that undermined the statute's clear purpose,'' and attempts to ''distort the statute's plain language to advance policy goals not adopted by Congress.''

Their conclusion:

> In short, the only result that Judge Alito ever tried to reach was the result dictated by the applicable law and the relevant facts.

Mr. President, I ask you, under our Constitution, what more could anyone—any Republican or Democrat—ask of a judge?

Judge Alito's hearings did serve a useful purpose. We now see a new litmus test being used by the Democrats as their standard for nominees. They have decided that the judiciary should be used to advance their own liberal policies. They are looking for a court that will act as a superlegislature, enabling them to reform laws in a way that Americans have rejected at the polls through the democratic process.

The Democrats lecture us that we must restore constitutional checks on the expansion of Presidential power, while in the same breath assigning to the judiciary a constitutional prerogative reserved solely for Congress. I am having a hard time reconciling these two ideas, and I suspect the American people are, too.

True to their strategy in recent years, the Democrats will say anything but do nothing except block what should be done.

Theirs is the philosophy of judicial activism that has led to decisions to ban the Pledge of Allegiance in our schools and allow local governments to take an American's home just to increase tax revenue. Increasingly, judges have legislated precedents that have little basis in written statute or the Constitution but instead are based on their own personal opinions.

This point was vividly made when Senator KOHL called for ''an expansive and imaginative'' interpretation of the Constitution, and further stated that the approach of a judge ''just applying the law, is very often inadequate to ensure social progress [and] right historic wrongs. . . .''

Judge Alito eloquently addressed this flawed argument when he stated that while previous court decisions are deserving of our respect, if a decision is not supported by the text of the Constitution and the laws passed by Congress, then it should be overturned.

Furthermore, he correctly pointed out that it was exactly this process, not an ''imaginative interpretation,'' that capably righted historic wrongs in the landmark civil rights case Brown v. Board of Education. To quote Judge Alito:

> When Brown was finally decided, that was not an instance of the court changing the meaning of the equal protection clause; it was an instance of a court writing an incorrect interpretation that had prevailed for a long period of time.

It is clear that we are facing the grave danger of the slippery slope in which bad precedent—by which I mean precedent not clearly derived from the Constitution or a law passed by Congress—builds upon bad precedent. Before you know it, the original meaning

of the law or phrase in question is lost to history.

The Democrats are simply on the wrong side of this important debate. The Constitution is not a list of suggestions. It is the constant fixed star that should guide every action we take.

The issue before us today reaches far beyond the confirmation of Judge Alito. He has more judicial experience than any Supreme Court nominee in the last 75 years. There is no question that he is eminently qualified to sit on the Nation's highest Court.

Today we are debating which of these two diametrically opposed philosophies will prevail in the confirmation of future judges—the philosophy in which unelected judges create new law or the philosophy that returns a runaway judiciary to acting within the bounds of the checks and balances established by the Constitution.

In my travels in South Carolina, time and again, South Carolinians have asked me to fight for judges who will place the rule of law above their personal opinions. I support Judge Alito because he has shown that he will do just that. The consistent winner in his court has not been a person of business, a branch of Government, or political ideology. It has been the Constitution and our democracy.

When the speeches are done and the vote is called, I hope there will be those on the other side of the aisle who will put aside partisan politics. I pray that we can join together in affirming the rule of law by voting yes to confirm Judge Samuel Alito as the next Associate Justice of the Supreme Court of the United States. The American people deserve no less.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SARBANES. Mr. President, for the second time in 4 months, the Senate is being called upon to carry out one of its most important constitutional responsibilities, which is to give its advice and consent to a nominee to be a Justice on the Supreme Court of the United States. We have many serious responsibilities in this body, but I must say I think this one ranks at or near the very top of any of the decisions we will be called upon to make. That is because it falls uniquely to the nine Justices of the Supreme Court to expound and interpret the Constitution and the laws passed pursuant to it. The installation of two new Justices within a short time period has the potential to alter fundamentally the constitutional framework that protects the rights and liberties of the people of this Nation.

Once again we see the argument being made that the President is entitled to his nominee, and that the Senate's role in the appointment process is limited to confirming the President's choice, barring some serious disqualification with the nominee. In effect, the presumption—a very heavy presumption—it is argued, is with the nominee and his confirmation.

In my view, this is not what the Constitution provides in requiring the Senate's advice and consent to a nominee to the Federal bench, which is, after all, a third, separate, independent branch of our national Government.

From a historical perspective, it is worth noting that over the course of our history, roughly one in every four nominations to the Court has not been confirmed by the Senate. There have been 158 nominations to the Supreme Court in the course of the history of the Republic, of which 114 were confirmed. Not all of the others were rejected. Some were rejected on votes taken in this body, some withdrew, and some were never acted upon. But the notion of this heavy presumption runs contrary to historical practice in the Senate. Almost one out of every four—actually a little more than one out of every four—nominations has not been confirmed by the Senate.

As Michael Gerhardt, distinguished professor of constitutional law at the University of North Carolina Law School, testified recently before the Judiciary Committee:

> Neither the plain language of the Appointments Clause nor the structure of the Constitution requires Senators to simply defer to a President's Supreme Court nomination.

Let me repeat that quote:

> Neither the plain language of the Appointments Clause nor the structure of the Constitution requires Senators to simply defer to a President's Supreme Court nomination.

In my view, the Senate's duty to advise and consent on nominations is an integral part of the Constitution's system of checks and balances among our institutions of government. A nomination alone does not constitute an entitlement to hold the office.

Furthermore, some have said when considering a nominee that we look only to their experience, their qualifications, their character. These are all obviously very important criteria. But, in my view, the nominee's judicial philosophy also must be given very serious consideration. We are facing a decision to place someone on the Supreme Court for life tenure. It could be 20, 30, or 35 years. Judge Alito is in his fifties, so we are talking about someone who is going to shape the interpretation of our Constitution over decades. You view that when you consider a nominee to the Supreme Court.

The nominee's judicial philosophy should be given very serious consideration, as well put by former Chief Justice Rehnquist. Writing in 1959, long before he went on the Court, the late Chief Justice Rehnquist wrote that the Senate should follow the ''practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him.''

In considering Judge Alito's nomination to be an Associate Justice of the Supreme Court, in my view, the question of his judicial philosophy is not only a legitimate question but indeed an essential question. Inquiring into a nominee's judicial philosophy does not mean discovering how he or she would decide specific future cases.

We are always being warned about that, and there is no effort here to predetermine that. Rather, it seeks to ascertain the nominee's fundamental perspectives on the Constitution, how it protects our individual liberties, ensures equal protection of the law, maintains the separation of powers and the checks and balances encompassed within our Constitution.

Judge Alito has served on the U.S. Court of Appeals for the Third Circuit since 1990, during which time he has written hundreds of published opinions, and earlier he served 6 years in the U.S. Department of Justice. So there is much to consider in his record and many lessons to be drawn from it.

Of the issues the Court is likely to face, perhaps none is more basic than the proper reach and exercise of executive power. We are particularly focused on this issue now, but it is an issue that has recurred constantly throughout our history as we seek to maintain the careful balance the Founding Fathers placed in the Constitution.

They, in fact, established in the Constitution a complex system of democratic governance with three separate, equal branches of the Government. At the center of this system lies not any one of the three branches but rather a delicate balance amongst the three branches.

Looking at Judge Alito's record, one sees a clear and constant deference to the executive, which, in my view, would significantly tip that delicate balance with respect to our constitutional system.

The Constitution grants the legislative power expressly to Congress. It gives the President power to only approve or veto legislation. The veto power, of course, gives the President very significant authority with respect to legislation. But if a bill becomes the law, with or without the President's approval, it then becomes his or her responsibility as the Chief Executive to see that the law is carried out, to see that the law is properly executed.

Judge Alito's record demonstrates he would seek to extend the President's power to allow for modification of law by the executive alone. As one example, while he was an official in the Department of Justice, he was instrumental in advancing a policy of so-called Presidential statements, to create a platform from which the President could seek to alter the underlying purpose of legislation passed by the Congress without the concurrence of the Congress.

Such a deference to executive power, I think, is of deep concern, especially

as we see on occasion now when Presidents, rather than following constitutional process by seeking legislative change through the Congress, instead refuse to carry out statutes that the Executive finds not to his liking.

Furthermore, under our constitutional system, the courts are the ultimate guarantors of individuals' rights and the defenders of our liberties. On this issue, too, Judge Alito has been quite clear and consistent.

Professor Goodwin Liu of Boalt Hall School of Law at the University of California at Berkeley summed up Judge Alito's work in his testimony to the Judiciary Committee:

> Throughout his career, with few exceptions, Judge Alito has sided with the police, prosecutors, immigration officials, and other government agents while taking a minimalist approach to recognizing official error and abuse.

In an editorial on January 12, the New York Times made the same point in somewhat different terms:

> [Judge Alito] time and again, as a lawyer and a judge, . . . has taken the side of the big corporations against the 'little guy,' supported employers against employees, and routinely rejected the claims of women, racial minorities and the disabled.

In a memorandum that he submitted when applying for a political position in the Justice Department in 1985, Judge Alito made a series of very sweeping statements about his understanding of the Constitution. He wrote that he was inspired to apply to law school by his opposition to certain decisions of the Warren Court—the Court headed by Chief Justice Earl Warren—decisions which are now considered bedrock provisions of constitutional law, decisions involving criminal procedure, the Establishment clause of the Constitution, and reapportionment.

In that very same memo, he also took strong positions in opposition to Court decisions on affirmative action and the right to choose. When asked about the memo during his confirmation hearings, Judge Alito explained that the 1985 memo reflected his views of the Constitution at that time. He did not, however, explicitly disavow those views, and nothing in the hearing record demonstrates they have changed. In fact, his decisions as a judge on the Third Circuit reflect that these are the views he has continued to hold and to espouse.

The Baltimore Sun concluded in an editorial that:

> Despite Judge Alito's periodic assurances of having an open mind, the disturbing impression from the hearings is that on critical issues such as abortion, civil rights and the limits of executive power, he does not.

That is a very perceptive observation with respect to Judge Alito's testimony before the Judiciary Committee.

I am not persuaded that Judge Alito recognizes either the critically important role the Supreme Court must play in preserving the constitutional balance of power among the three branches of our Government, that delicate balance to which I made reference earlier which was so much a part of the thinking of that distinguished assemblage which gathered in Philadelphia in the summer of 1787 to frame our Constitution.

I have this concern about his view of the role the Court must play in preserving the constitutional balance of power among the three branches of Government and whether he recognizes the role of the Court as the ultimate guarantor of every individual's constitutional rights and liberties.

For the ordinary citizens all across our country, the rulings of the Supreme Court can be of immense importance in terms of providing for their rights and liberties.

Because I am not persuaded in this regard about the appropriateness of Judge Alito's nomination, when the time comes to vote, I will vote against his nomination to become an Associate Justice on the Supreme Court of the United States.

I yield the floor and 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. INHOFE. 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. INHOFE. Mr. President, I have just learned that two of our distinguished Senators, both from Massachusetts, have made the statement that they are trying to drum up support for a filibuster. This is not going to happen. I know that people get desperate. They get desperate because they are afraid something might happen to their liberal agenda. But the Constitution is very clear.

We have discussed this, we have debated this, and there is not going to be a problem there. But I think it is worth bringing to the attention of the American people that this is actually taking place right now. Nowhere did our Founding Fathers say that to confirm a judge, you had to have a supermajority, and I do not believe this is going to happen.

Let me share a couple thoughts with you. First of all, I am not a lawyer. I am not a member of the Judiciary Committee. In a way, that puts me in a position, perhaps, that is a little better than a lot of my colleagues who are. In fact, most of the people who have spoken are members of the Judiciary Committee. But, by now, we have heard so much about Judge Samuel Alito's resume, about the type of person he is. I would have to say, yes, he is guilty, he is guilty of being a strict constructionist, of being a strict interpreter of the Constitution, and he will rule according to settled law. I do not think anyone has any doubt in their mind that he would.

The problem is that some of the Democrats have made it clear they are going to make this a partisan fight, now even talking about perhaps even a filibuster. They have a litmus test. They do not confirm any nominee of any President unless that nominee makes some type of a commitment and passes a litmus test for their far-left liberal agenda, whether that is gay marriage or whether it is abortion on demand or any of the rest of it. That is really what it is about. We do not talk about this. They kind of dance around this issue, but that is the real reason they do not like this guy, because he is not going to line up and give a litmus test to some liberal agenda.

One of the things that bothers me about this is, this is all new. This did not happen in the past. I can remember when Judge Scalia was up for confirmation. People talk about Judges Scalia and Alito not just because their names sound similar, but their temperament is the same and their background is the same, their writings are the same—very similar. We went through a very long process with Judge Scalia during his confirmation, and he ended up being confirmed by a unanimous vote—a unanimous vote.

If you will remember, that is when William Rehnquist was taken from the Court and made the Chief Justice, which created the vacancy. A lot of people did not want to have someone who was a strict constructionist, but they realized he was qualified, and they realized he was appointed by a President who was a Republican, Ronald Reagan, and they went ahead and confirmed him. It was unanimous. Now this is something that is really changing now because there is no way in the world Judge Alito is going to be unanimously confirmed.

Back in the Clinton administration, I remember so well when President Clinton nominated Judge Ginsburg and then Breyer. And keep in mind, we Republicans were not real excited about that. They did not have a very conservative background, and yet they were overwhelmingly confirmed.

That is the change I see happening. It is not like it used to be. Ginsburg was 96 to 3. Breyer was 87 to 9. They were overwhelmingly confirmed.

Not too long ago, just the other day, JEFF SESSIONS, who is our colleague from Alabama, made a statement. He said if we really get into this thing where we are looking at it philosophically, then you are going to have to remember—and the way he worded it was—''the knife cuts both ways.'' He said if this new standard is affirmed, then it will be more difficult for future Democrat Presidents to have their nominees confirmed. I agree with this. If a Democrat President comes up and makes a nomination, we would change, the same way they are changing during this. Maybe the litmus test would be discussed at that time.

On the plane coming up here just a few minutes ago—we just landed, after this recess—my wife and I were talking about this, and I told her about the comments of Senator SESSIONS. I said:

What I think I will do in my speech on the floor tonight on the confirmation of Judge Alito is make the statement that if they adhere to this litmus test, that if I am around—I do not think there is going to be a Democrat President, but if there is and I am still in the U.S. Senate, I am going to do the same thing. I am going to hold them to a litmus test. My wife said: No, don't do that. Don't stoop to that just because they are doing it. So I am not doing it. I learned a long time ago that—my wife and I have been married 46 years—I do what I am told.

So anyway, this is something that is a change that we have observed, and I think it warrants our consideration.

Now, the Democrats are also making outrageous accusations, trying to justify partisan votes. I believe in my heart that they do not believe these accusations they are making, but what they do want to do is have some excuse so they can go home and say, ''I voted against this guy,'' but not tell them the real reasons. Let's go over some of these accusations that are made.

I start out with Senator KENNEDY, who inaccurately stated that Alito opposes the one-person, one-vote principle. I will go ahead and give the quote. Senator KENNEDY, on January 9 said:

> It expresses outright hostility to the basic principle of one person, one vote, affirmed by the Supreme Court as essential to ensuring that all Americans have a voice in their government.

Now, the fact is, Judge Alito has stated that the principle of one person, one vote is a bedrock principle of American constitutional law. He has never taken issue with that principle. And to quote him, he said:

> [T]he principle of one person, one vote is a fundamental part of our constitutional law. . . . [and] I do not see any reason why it should be reexamined. And I do not know that anybody is asking for that to be done. . . . I think that is [a] very well settled [principle] now in the constitutional law of our country.

I would adhere to that. Well, he could not be more emphatic than that. Again, Senator KENNEDY—what he said is not true. I know he wants it to be true. He wishes it were true, but it is not.

Then along came Senator SCHUMER from New York. In attacking Judge Alito's jurisprudence, Senator SCHUMER tried to paint Alito as someone who is ''too conservative.'' His statement was:

> Judge Alito, in case after case, you give the impression of applying careful legal reasoning, but, too many times, you happen to reach the most conservative result.

Well, the fact is, Senator SCHUMER's characterization of Alito overlooks the bulk of Alito's record of nearly 5,000 votes as a court of appeals judge reached on the law and the facts, which are inconsistent with Senator SCHUMER's picture of Alito.

Now, if you question this, the statement that was made by Senator SCHUMER, if you believe there might be some merit to it, let's stop. The easiest way to refute that is to read an editorial that was in the Washington Post. There is not a person who belongs to this body or anyone within earshot of what I am saying right now who is going to say the Washington Post is a conservative publication or a Republican publication. It is not. Yet what they said about Alito was:

> [J]udge Alito's dissents are not the work of an unblinking ideologue. . . .[T]hey are the work of a serious and scholarly judge whose arguments deserve respect—a respect evident among his colleagues even when their positions differ.

And that is not the Washington Times; this is the Washington Post making this statement. So I would say, like Senator KENNEDY, that Senator SCHUMER, what he said is just flat not true. I am sure he wishes it were true, but it is not.

Here is another statement made by Senator KENNEDY. He is trying to make a position that Judge Alito wants, through the Presidential signing statements—Presidential signing statements are statements that are made by the President when a new law is passed—to say: This is my interpretation of it. Well, he likes to imply that Alito supports giving the President absolute power. Senator KENNEDY said:

> You argued that the Attorney General should have the absolute immunity, even for actions that he knows to be unlawful or unconstitutional; suggested that the court should give a President's Signing Statement great deference in determining the meaning and the intent of the law; and argued, as a matter of your own political and judicial philosophy, for an almost all-powerful presidency.

Well, the fact is, the President's bill-signing statement is a device developed long before Alito came along.

They try to imply that he had something to do with this. This has been embraced by Democratic and Republican Presidents for years and years, all the way back to Presidents Monroe and Jackson. The suggestion that Alito somehow invented this notion is patently absurd. So, again, Senator KENNEDY is wrong. His statement is not true.

He further cites false and inaccurate Knight Ridder analysis. This is rather interesting. Senator KENNEDY made more outrageous statements this time about Alito's view of government searches. Senator KENNEDY, on January 10:

> Mr. Chairman, at this point, I'd like to include in the appropriate place in the RECORD the Knight Ridder studies that concluded that Judge Alito never found a government search unconstitutional.

Knight Ridder's writers, Stephen Henderson and Howard Mintz, have repeatedly been accused of biased reporting on Alito's record. The National Journal's Stuart Taylor wrote:

> I focus here not . . . on such egregious factual errors as the assertion on C–SPAN, by Stephen Henderson of Knight Ridder newspapers, that in a study of Alito's more than 300 judicial opinions, ''we didn't find a single case in which Judge Alito sided with African-Americans . . . [who were] alleging racial bias.

He went on to say:

> What is remarkable is that any reporter could have overlooked [case after case after case] in which Alito has sided with African-Americans alleging racial bias.

In a few minutes, I am going to be specific on some of these, but there would be too many to cite for the amount of time we have. Senator KENNEDY's statements are inaccurate and untrue. I know he wishes they were true, but they are not. These guys are grasping at straws.

Then Senator BIDEN came in with inaccurate statements on Presidential treatment toward the State. Senator BIDEN charged Alito with ruling in favor of the State against the individual. This is what he said:

> But as I've tried diligently to look at your record, you seem to come down more often and give the benefit of the doubt to the outfit against whom discrimination is being alleged. You seem to lean—in close cases, you lean to the state versus the individual.

The facts belie that. The fact is, Alito's record shows he consistently approaches each case based on the law and the facts. He rules for plaintiffs and for defendants when the law supports him. He rules for the corporation or the State when the law supports their position. This is the appropriate approach for a Federal judge. It is clear that Alito understands the importance of the independence of the judiciary and has a healthy respect for its role as the bullwark against executive overreaching.

Alito often cites Alexander Hamilton. I think Alito has quoted Alexander Hamilton more than anyone else, at least it seems that way to me. He said:

> [A]s Alexander Hamilton aptly put it in Federalist 78, the courts should carry out [the judicial power] with ''firmness and independence.'' ''Without this,'' he observed, ''all the reservations of particular rights or privileges [in the Constitution] would amount to nothing.''

Alito continued:

> When a constitutional or statutory violation [by other governmental institutions] is proven, a court should not hesitate to impose a strong and lawful remedy if that is what is needed to provide full redress. Some of the finest chapters in the history of the Federal Courts have been written when federal judges, despite resistance, have steadfastly enforced remedies for deeply rooted constitutional violations.

During his 15 years on the bench, Judge Alito has repeatedly ruled to restrain executive authority, reflecting his understanding of the role of the judiciary to protect the constitutional rights, separation of powers, and so forth. What Senator BIDEN said is not true. I know he wishes it were.

Next we had Senator FEINSTEIN. She was approaching something to which I am particularly sensitive. I chair the committee called Environment and Public Works. The Presiding Officer is a member of that committee. We deal

with environmental issues. Senator FEINSTEIN mischaracterized Alito's environmental record.

Let me say this for anyone who might be listening: If there is nothing better going on right now, these Senators I am very critical of, I love them dearly. That is possible. It doesn't happen in the other body, seeing a Senator here who also served in the House at the time that I was there. We can love our friends, our Senators, with whom we serve, and we can detest their philosophy and their agenda. I learned this the hard way.

I will share this story. Back in 1994, I came from the House to the Senate. And operating as I had always operated in the House, there happened to be a Senator on the floor named Wendell Ford from Kentucky. He was known as the junkyard dog of the Senate. I disagreed with him. I came down here. That was the opening day, the first day I was elected and confirmed in a special election. I went down and I took him on. It was mean. It was wicked. And we are yelling and screaming. Afterwards I felt pretty good. I went to go back to the Russell Building, went down the elevator and ran into none other than Senator BOB BYRD.

BOB BYRD said: Ride along with me. He said: Young man, I appreciate your spunk.

I liked that because that happened to be November 17, 1994. It was my 60th birthday.

He said: Young man, I appreciate your spunk, but this isn't the way we do it in the Senate. He explained to me the history of the Senate, how it must have been divinely inspired, so that there is a genuine love for your fellow Senators, something that doesn't exist in the other body. I don't know why I said all that.

But Senator FEINSTEIN accused Alito of ruling against the Clean Water Act. She said:

> In Public Interest Research Group of New Jersey v. Magnesium Electron, a citizens environmental group sued a chemical manufacturer under the Clean Water Act for polluting a river used by members of the group . . . your decision, as I understand it, was based upon your conclusion that the environmental group did not have standing to sue under the Clean Water Act because even though members of the environmental group had stopped using the river due to the pollution, they did not prove any injury to the environment. The decision, if broadly applied, would have gutted the Citizen Lawsuit Provision of the Clean Water Act . . . so you see where the concern comes with respect to overthrowing something on a technicality that can have enormous implications.

That is what Senator FEINSTEIN said. Keep in mind what Alito's vote was. He did not write the opinion. He voted in this case. It was a straightforward application of the Supreme Court's controlling precedent in Lujan v. Defenders of Wildlife. Most of us remember Manuel Lujan who later became Secretary of Interior. This decision was a 1992 decision in which the Supreme Court required that in order to file suit, a plaintiff must allege the actual injury, not just have this great concern over activities such as pollution.

What we are saying here is that Senator FEINSTEIN should have read this. He was interpreting a law he may have agreed on or may not have, but this was sent down. This was settled law, established by the U.S. Supreme Court. Alito's vote, which he didn't write, was one based in law. I think what Senator FEINSTEIN said was not true. It needs to be answered. That is the answer.

Another one that Senator KENNEDY researched. Senator KENNEDY charged that Alito rarely votes for the little guy. Senator KENNEDY charged Alito with false accusations saying that he was biased toward the rich and powerful. This is Senator KENNEDY talking about the rich and powerful. He was biased toward the rich and powerful and against the little man. I will use the quote that he used. He said:

> And on the cases he decided, in case after case after case, we see legal contortions and inconsistent reasoning to bend over backwards to help the powerful.

This is on January 12, stated by Senator KENNEDY. Time after time during his hearings, Alito and other Senators have repeated instances in which Alito did rule for the little guy. In cases involving criminal law, employment and labor law, immigration law, and others, Judge Alito has consistently ruled for plaintiffs or defendants as the facts and the law demanded.

I will give some examples. In Zubi v. AT&T Corporation, in 2000, Alito dissented from a case foreclosing a plaintiff's opportunity to advance his claim of race discrimination. Alito would have applied a longer statute of limitations to let the claim go forward. That is just the opposite of what was asserted by Senator KENNEDY.

In another case, Caruso v. Blockbuster-Sony Music Entertainment Center at the Waterfront, writing for the unanimous panel, Judge Alito reversed in part the district court's grant of summary judgment for Blockbuster-Sony ''E-Centre''—this is a big corporation—and against a disabled patron. The plaintiff was William Caruso. He was a disabled veteran of Vietnam who used a wheelchair, brought suit against E-Centre under the Americans with Disabilities Act claiming that the wheelchair areas in the pavilion do not provide wheelchair users with lines of sight over standing spectators. The lawn area is not wheelchair accessible.

Judge Alito explained that even though the Department of Justice's standards do not require that wheelchair users must be able to see the stage when other patrons stand, the E-Centre must make assembly areas like the lawn accessible to people in wheelchairs. He concluded:

> We reject the argument that assembly areas without fixed seating need not provide access to people in wheelchairs.

Again, Alito's stellar record proves that Senator KENNEDY's statement is false.

The next one I will mention was Senator KENNEDY's statement on racial discrimination. Senator KENNEDY wrongly stated that Alito had never written an opinion related to race discrimination, implying that he could be a racist. Senator KENNEDY said:

> Judge Alito has not written one single opinion on the merits in favor of a person of color alleging race discrimination on the job: in 15 years on the bench, not one.

He said that on January 9. The facts are that Alito has repeatedly ruled in favor of minorities making allegations of racial discrimination in employment. One such case is Smith v. Davis, 2001, in which Alito voted to reverse a grant of summary judgment against an African-American man's claim that he had been discriminated against in employment on the basis of race. Another one is Zubi v. Johnson & Johnson Medical, Inc. Alito voted to reverse a district court's grant of summary judgment against the plaintiff.

Judge Alito and his colleagues concluded that the female African-American plaintiff had introduced sufficient evidence to question whether the employer had, in fact, given her lower quality assignments due to her ''objective'' scores on certain evaluations, as the employer maintained. There are many more cases.

I ask unanimous consent to print in the RECORD the other cases.

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

> In Collins v. Sload (2004), Alito joined a per curiam opinion reversing the District Court's dismissal of a Pro Se Title VII complaint alleging racial discrimination. The District Court had dismissed the complaint for failure to exhaust administrative remedies. The panel concluded that the question could not be resolved on the record and remanded for further proceedings.
>
> In Pope v. AT&T (2001), Alito joined a per curiam opinion reversing the District Court's grant of summary judgment against an African American man alleging race discrimination under Section 1981. The panel concluded that the plaintiff had submitted significant evidence that AT&T's stated reason was pretextual, and remanded for trial.

Mr. INHOFE. The facts, as we have demonstrated, speak for themselves. Samuel Alito is not a racist, not a rightwing extremist who believes in an executive branch with sole authority and rules only in favor of the powerful but a thoughtful, mainstream, fair, experienced interpreter of the Constitution. He is a good guy. I have heard many people say that he is probably one of the most qualified persons ever to be nominated for this High Court. Those liberal Senators who are desperately grasping at any straw to find justification to vote against Judge Alito, they have their litmus test. In order to be confirmed to the U.S. Supreme Court, a judge must embrace all of the leftwing's extremist agenda, an agenda that is so unpopular in America that the American people reject it, and it must be legislated from the bench. That is the problem they have.

When my service in the Senate is over, one of the greatest honors I will have had, for the sake of America and

for the sake of my 20 kids and grandkids, is to vote to confirm Samuel Alito to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise to voice my strong support for the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court. Judge Alito has demonstrated and dedicated his life to public service, from serving in the Army Reserve to working as a prosecutor for the Federal Government.

For the past 15 years, Judge Alito has been a model jurist on the court of appeals, and his record reflects a deference to the political branches of our Government that is all too often lacking among some on the bench.

The guiding question for each of us in determining a nominee's fitness for this post should be whether the person is dedicated to applying the Constitution to every case considered by the Court and not adding to or changing the Constitution's text to suit his or her own personal policy preferences.

Judge Alito has clearly shown that he will approach every case with an open mind and apply the law as it is, rather than what he thinks it should be.

As Judge Alito has said, a judge cannot have an agenda and cannot have a preferred outcome in any particular case. I am convinced that he will not be an activist on the court and will conscientiously exercise restraint in his role as a justice.

Judge Alito has risen to his station in life from relatively humble beginnings. As he stated in his introductory remarks before the Judiciary Committee, his parents instilled in him a love of learning and, through their example, the importance of persistence and hard work.

I had the opportunity to meet with Judge Alito after he was nominated last fall. During this meeting, we discussed the role of the judiciary and some of the broad principles set forth in our Constitution. I was impressed by Judge Alito's quiet answers and thoughtful demeanor during that meeting.

Judge Alito is the kind of person who would fit in very well with my constituents in South Dakota. He is the kind of guy you would see at the local hardware store or at a school activity. Judge Alito would meet what I call the ''Murdo'' test. Murdo is my hometown. About 600 people live there. They are pretty plain spoken people. They use common sense to solve problems. They believe in the rule of law. And they have an inherent sense of fairness when it comes to making sure that the law applies fairly to all. If you listen to anyone who has served on the court with or worked with Judge Alito, those are the attributes they ascribe to him. He has tremendous respect from those who know him best.

Unassuming and unpretentious, Judge Alito is the kind of individual with whom I believe the people in my hometown and in my State would feel comfortable. And not just South Dakotans but Americans everywhere, at least the silent majority of Americans. The character attacks on Judge Alito by the loud left have backfired because the majority of the American people have figured it out. They don't need the Senator from Massachusetts or the Senator from New York to tell them what they need to know. Judge Alito told them everything they needed to know in the hearings, and the more the political left attacks and delays and demonstrates, the more partisan they appear to the American public and the more their true agenda is exposed.

Judge Alito's quiet and thoughtful demeanor was clearly on display during his confirmation hearings. During these hearings, Judge Alito was extremely forthcoming and candid in his responses to questions, all 650 questions. For over 18 hours he responded thoroughly and thoughtfully to the full spectrum of questions and questioners, both those who were sincere and those who were sarcastic.

All of these things have convinced me that Judge Alito has the ability and temperament necessary to be an outstanding justice on the Supreme Court.

It is unfortunate that some on the other side have decided to make the nomination process about politics rather than about qualifications. Sadly, it seems the other side is engaging in an effort to ensure a large opposition vote to score political points, rather than giving a well-qualified nominee like Judge Alito the strong vote he deserves.

When Justice Ginsburg, a former general counsel for the American Civil Liberties Union, was nominated by President Clinton, she received nearly unanimous support—96 votes—despite the fact that many Republican Senators strongly disagreed with her views. She replaced the much more conservative Judge White. Yet no one was complaining about her shifting the Court dramatically to the left. Senators voted for her based on her qualifications.

When Justice Breyer, a former staffer for Senator KENNEDY, was nominated by President Clinton, he received 87 votes, and again many of those who voted in his favor strongly disagreed with his views.

Justice Ginsburg and Justice Breyer received strong support because of their qualifications and because Senators put aside politics in the interest of a dignified confirmation process.

Judge Alito is also well qualified. He unanimously received the highest rating from the American Bar Association, the benchmark that used to be considered the gold standard for evaluating nominees to the Federal Courts. Judge Alito is clearly a man of high integrity and intellect. No one disputes that. He deserves a large vote in the U.S. Senate, just as Justice Breyer and Justice Ginsburg received. I call upon my colleagues on the other side of the aisle to summon their better angels, put aside their desire to score political points, and instead work to ensure a dignified confirmation process.

The Supreme Court gets the last word on some of the most challenging and divisive issues of our day. That is why those on the Court must be dedicated to the rule of law and the principle of judicial restraint. Throughout his career in public service, Judge Alito has shown the qualifications and temperament essential to serving on the Supreme Court.

I ran for the United States Senate for the opportunity to cast votes like the one I will cast on this nomination. When I asked South Dakotans for their vote, I assured them that I would do my best to see that the courts are populated with smart, qualified, and principled people who understand that the appropriate role of the judiciary in our Constitutional Republic is not to make laws but to apply them fairly to all.

Judge Alito is eminently fit and qualified to serve as an associate justice on the Supreme Court. That is why I will vote in favor of his confirmation, and I urge my colleagues to do the same.

I yield to the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank our colleague, Senator THUNE, for his excellent remarks. I know he cares deeply about the judiciary. I know that he talked about it a lot in his campaign. He is such a talented new Member of the Senate. There are many reasons he is here today, and I suggest that one of the reasons is because the individual he ran against—the former Democratic leader, Tom Daschle—led an obstruction of highly qualified judicial nominees. We are seeing that again today.

Now this Democratic leader, Mr. REID, has urged his colleagues to vote ''no'' in the party conference. Some have tried to say that is not so. But when the Democratic leader goes before his colleagues and urges them to vote ''no,'' it has an impact. It sets this as a political vote rather than allowing and encouraging each individual Member to vote their own conscience. It is going to reduce the number of votes that Judge Alito will receive because people try to follow their leaders when they can. But it is not right.

This is a fabulous nomination. Judge Sam Alito is one of the finest nominees to ever come down the pike. He and Chief Justice Roberts were fabulous as witnesses, with incredible academic backgrounds and experience and a proven record of support from Democrats, liberals and conservatives, and a professional record and resume in both cases that are superb. But they do have a little difference of opinion, apparently, from some in the Senate. Senator THUNE made reference to it. Judge Alito and Judge Roberts believe it is

their duty to follow the law. It is their responsibility as judges to be neutral umpires, to not allow their personal, political, social, or religious views to impact their interpretation of the laws before them.

That is what a judge is all about in the American legal system, for heaven's sake. What kind of threat is that when you have a judge who believes in that philosophy?

Judge Alito's whole judicial approach to life and to his work is that a judge should put aside personal views and be a neutral, fair umpire, deciding the discrete case before the court, based on a fair and honest finding of the facts and an honest application of the law to those facts. That is what a judge is supposed to do.

We have Members on the other side insisting that a judge's ideology ought to play a part in the judge's decisionmaking process. That goes squarely in the face of what our American legal system is all about. Why do we give our judges, let me ask, a lifetime appointment to the Federal bench? Why? Because we wanted them to be free from pressure and do their duty day after day, fairly and honestly finding the facts truly in the case and applying the law to those facts—not as Judge Alito said, to engage in implementing ''grand theories.'' I thought that was a good phrase. That is the kind of judge President Bush promised, and that is the kind of judge Senator THUNE promised to support when he ran. That is the kind of judge I have believed in, in my career. I practiced for 15 years, for a long time, before Federal judges. I respect them. We had some magnificent Federal judges that I practiced before. I lost some cases and I won some cases, and every good lawyer does. But we all know one thing—that as long as that judge does his best, day after day, to honestly find the facts and apply the law, we can live with that. Your clients can live with that, too, even though they may be disappointed about the case. If we feel the judge is going to redefine marriage because he didn't like the way the State of Massachusetts defined marriage, and he is just going to say the Constitution somehow made reference to marriage, and a marriage now is no longer between just a man and a woman, but between two men or two women—this is going to be somehow found in the Constitution? And he is going to impose this on the people? What kind of power is that? Would five unelected judges, with lifetime appointments, who are utterly unaccountable to the American people, say that the phrase ''under God'' in the Pledge of Allegiance is not constitutional? Next, I suppose they will come in here with a chisel and right up there on the wall in this Chamber they will want to take out those big letters saying ''In God We Trust.'' I suppose that will be the next thing we have.

Well, that is not called for in the Constitution. The Constitution simply says Congress shall make no law establishing a religion or prohibiting the free exercise of your religion. So this is a recent phenomenon to see such a hostile approach to public expressions of religious faith in America. That is not our heritage, not the way the people understood the Constitution; that is not what the Constitution says.

But our colleagues don't like that. Is almost amusing, as we have gone through the committee process, to see them grasp in desperation to find something to complain about with Judge Alito. None of them could agree on what they didn't like. They bounced all over the place mostly. It sounded like they didn't like President Bush. They were having grievances about Abu Ghraib prison, which President Bush had nothing to do with. It was not the policy of the administration or the Army, and the people who abused those prisons are serving jail time today.

(Mr. ALLEN assumed the chair.)

Mr. SESSIONS. Mr. President, they want to say this has something to do with that. They have been hankering for Harriet Miers, which is rather odd, I think. They have suggested somehow that some rightwing cabal caused President Bush to withdraw her nomination. She didn't have a lot of constitutional experience. I am not aware she has ever argued a case before the Supreme Court. Very few lawyers have, although Judge Alito has argued 12 cases before the U.S. Supreme Court. She has not served as a judge. He has served 15 years as a Federal appellate judge.

At any rate, she is a wonderful person who has many fine qualities. I am not at all sure that she would be any more restrained or any more liberal in her interpretation of judicial decisions than Judge Alito. I don't know what her philosophy would be. But I do know this: They have complained steadfastly that Judge Alito somehow is a tool of President Bush to defend his national security policy and his war on terrorism and that Judge Alito is going to be a part of his efforts to arrogate powers to the executive branch.

Who has been at President Bush's right arm for 5 years? It is Harriet Miers. She is the counsel to the President of the United States. She is his personal lawyer. She sits right by him. She has been involved in every one of these decisions about executive branch powers, National Security Agency wiretaps of al-Qaida telephone conversations. She has been part of all of that. You think they would have let her come through here? They say: Oh, we think she would be a fine nominee. What would they have done to her? Those in this Chamber who think she would have gotten a pass on those issues, raise your hand. And she knew that. That is why she withdrew herself. She wrote the President a letter and said: It has been insisted that if I come before the committee, I have to divulge my private conversations with you, the President of the United States, my advice to you on all these issues. It would violate attorney-client privilege. That is something I cannot do and will not do. I am in an untenable position. I am honored to serve you. I would like to continue to serve as your chief counsel, which she does today. But I ask you to withdraw my nomination.

That is all that was about. Goodness. It indicates how desperate they have gotten to find complaints about this fine judge.

By the way, Judge Alito has not been a part of any of this national security, Washington, inside-the-beltway stuff. Judge Alito has been sitting on a Federal bench in the Third Circuit—living in New Jersey—outside Washington, DC. He has not had a single case I am aware of dealing with any of these national security or Presidential wartime powers issues. He comes at it as a skilled scholar, a person with a demonstrable record of fairness, and great intellectual capacity. I think when these cases come before him, as some may, he will decide them fairly. That is what everybody who knows him says.

Another deal they keep talking about is the unitary executive. Have you heard that phrase? They say: Oh, he is terrible; he believes in a unitary executive. It is almost amusing. Senator KENNEDY and others have used this phrase more than once: He believes in an all-powerful Executive. Now, you know no judge believes in an all-powerful Executive. You have to watch judges. They can strike down anything they want to. They are not going to give the President unlimited power. They are not going to give Congress unlimited power. But a good judge will follow the Constitution and will contain the executive if it goes too far and will contain the legislative branch if it goes too far. He or she will show personal constraint and not go too far as a member of the court. I think some need to remember that. Some have gone too far, in my opinion.

This has not been about Judge Alito. It has been about an opportunity to attack President Bush. That is what everything seems to come down to here. That is why it is so political.

They said he recommended, in defending a former Attorney General of the United States who had been sued personally for monetary damages, that they not defend the case on the basis that the Attorney General had absolute immunity from suit, but suggested he argue that he had a qualified immunity.

The former Attorney General of the United States believed he had absolute immunity, and Judge Alito then, as a young lawyer in the appellate section of the Department of Justice, was obliged to make the argument, if it was defensible in any way, for absolute immunity, and he made it.

That didn't mean he believed the Attorney General can never be sued. But I am going to tell you, the Presiding Officer has been a Governor of Virginia. People will sue for anything. If

every Governor, if every Senator, if every attorney general can be hauled into court and be sued because they voted on some bill or did something and they have to pay out of pocket these judgments or lawyers to defend themselves, you can shut down the Government. We do have some cases where a Government official has absolute immunity and sometimes they have qualified immunity.

I was Attorney General of Alabama. I had to defend the Governor and other officials in various lawsuits, some of them as bogus as $3 bills, but you have to go down there and defend it. Are you going to try the case for 6 months or, if he has immunity, do you assert the immunity and get the case dismissed in the beginning? You get the case dismissed. That is what any good attorney for the Department of Justice would do.

He has never, in any way, supported an all-powerful Executive or an all-powerful executive branch that is ''unchecked by the other two branches of Government.'' Where did they come up with those kinds of ideas?

This is what he said in a speech at law school about the case of ex parte Milligan: It expressed that ''the Constitution applies even in extreme emergency.'' The Constitution does apply in the case of extreme emergency. That is what Judge Alito wrote some time ago.

He also said at the hearings:

The Bill of Rights applies at all times, and it is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis.

That is what he told us under oath in committee. He also said:

No person in this court is above the law, and that includes the President and that includes the Supreme Court. Everybody has to follow the law, and that means the Constitution of the United States, and it means the laws that are enacted under the Constitution of the United States.

He also said this:

Neither the President nor anyone else, I think, can authorize someone to . . . override a statute that is constitutional. . . . The President has to follow the Constitution and the laws, and it is up to Congress to exercise its legislative power. . . . The President has to comply with the fourth amendment, and the President has to comply with the statutes that are passed.

So it is clear that Judge Alito and his opponents are not talking about the same thing when they talk about the unitary executive theory.

According to Judge Alito, the ''unitary executive theory'' is not a theory that supports ''inherent authority to wiretap American citizens without a warrant, to ignore congressional acts at will, or to take any other action he saw fit under his inherent powers.''

Those items have to do with the scope of Executive power, which is an entirely different matter from this theory of a unitary executive. They have tried to take this theory of a unitary executive, which has been around a long time, and twist it to say it has something to do with whether the President has the power to wiretap you.

Judge Alito clearly explained that the unitary executive theory has nothing to do with the scope of Executive power, the separation of powers doctrine, Presidential signing statements, or the constitutionality of independent agencies. As he stated during the hearings:

The unitary executive doesn't have to do with the scope of executive power . . . I don't see any connection between the concept of a unitary Executive and the weight that should be given to signing statements in interpreting statutes.

That is so correct and so weird that it even has to be clarified. Do we have any lawyers in this body?

He goes on to say:

I don't think I've ever challenged the constitutionality of independent agencies.

Instead, this is what Judge Alito said about the unitary executive theory—this is what he said:

[I]t is the concept that the President is the head of the executive branch. The Constitution says that the President is given the Executive power.

Does anybody dispute that? I am quoting him.

And the idea of the unitary Executive is that the President should be able to control the executive branch, however big it is or however small it is . . . It has to do with control of whatever the executive is doing. It doesn't have to do with the scope of Executive power. It does not have to do with whether the Executive power that the President is given includes a lot of unnamed powers or what is often called inherent power.

Isn't that a good statement? We have heard a lot of discussion for some time now about this problem of the President, and he is supposed to head the executive branch. We have all these agencies that act like independent nations. When the FBI and DEA get together and reach an agreement, they enter into memorandums of understanding, like a treaty. The agencies are both under the executive branch, under the President's authority, but they get so big for their britches that they think they have their own independence. There is a concern that the President is put in charge of the entire executive branch and is supposed to supervise all kinds of different federal agencies—the Immigration and Customs Enforcement Bureau, the Corps of Engineers, the Drug Enforcement Agency, the FBI, all of them. And then the Congress takes all the management of power and gives it to all the individual executive branch people so that the President can't even run the agencies, and then they blame him when things go wrong. That is the way we do things around here.

I asked Charles Fried, who was a former Solicitor General of the United States—the person who argues cases on behalf of the United States before the U.S. Supreme Court—and had been a professor at Harvard Law School before that teaching judicial philosophy: Mr. Fried, you have been around a good while. You have heard this talk about the unitary executive. What is it? What does it mean to you?

Boy, he just hit it right on. I was surprised. He even rebuked the members of the committee for misinterpreting the theory, he said this:

I think what has been said about the unitary Executive in these hearings is very misleading. The unitary Executive says nothing about whether the President must obey the law. Of course he must obey the law. It talks about the President's power to control the executive branch.

[It] is not an invention of the Reagan Justice Department, it was propounded in the first administration of Franklin Delano Roosevelt who objected to the powers of the Comptroller General who tried to fire a Federal Trade Commissioner, and who referred to himself [this Comptroller] as the general manager of the executive branch. That is the origin of the notion, the FDR administration.

Some Comptroller General declared he was the general manager of the executive branch and Roosevelt didn't like it and he talked about that and said the executive branch is headed by the President. Here, America, the Government, is one. It cannot sue itself.

Judge Edward Becker was aware of all these things. He is one of the most distinguished Federal appellate judges in America. He appeared at the committee with a group of his colleagues from the Third Circuit. They have served with Judge Alito, many of them for his full 15-year career—most of them at least 7 or more years—during his tenure on the Third Circuit Court of Appeals.

For those who may not fully understand it, an appellate judge on the court of appeals handles the appeals from the trial courts where juries and witnesses testify. Everything that is said in those trials is written down. If somebody is unhappy with the result and thinks they did not get fair treatment, they will appeal to the court of appeals and the court of appeals will review the record, listen to the arguments, consider the law, and determine what the facts are in the case and rule whether they got a fair trial.

If you are not happy with the court of appeals' decision, then you appeal to the Supreme Court and the Supreme Court does basically the same thing, it reviews the transcript and the record and considers the decision of the court of appeals that decided it.

That is what Judge Alito has been doing for 15 years. That is what his life has been. He goes to work and reads transcripts. He is not listening to people's phone calls. He is not approving search warrants, such as State county judges, and magistrates judges, and city judges can do. Judge Alito has been up here doing the very same kind of work he would be doing on the Supreme Court.

What do they say about how he performed in that role? This is what Judge Becker said about Judge Alito's temperament. Sam Alito:

is gentle, considerate, unfailingly polite, decent, kind, patient and generous. . . . I have

never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize . . . he expresses his views in measured and tempered tones.

Pretty good job description of what you would want in a Supreme Court Justice, wouldn't you think?

What about the question of integrity? What did Judge Becker, one of the great judges in the United States today, say about his integrity?

Sam Alito is the soul of honor. . . .I have never seen a chink in the armor of his integrity, which I view as total.

Judge Becker, on Sam Alito's intellect:

He is brilliant, he is highly analytical, and meticulous and careful in his comments and his written work. . . . He is not doctrinaire, but rather open to differing views and will often change his mind in light of the views of a colleague.

Isn't that a fine statement of what you would want in a judge?

What about his approach to the law? They say he has views and he is going to let his views impact his decisionmaking process. What does Judge Becker, who served with him for 15 years and watched him and sat right beside him on that same court of appeals, say?

He scrupulously adheres to precedent. I have never seen him exhibit bias against any class of litigation or litigants. . . . His credo has always been fairness.

Judge Anthony Scirica, Chief Judge of that Third Circuit, has been on the bench for 20 years. This is what Judge Anthony Scirica said about him. Alito:

is a thoughtful, careful, principled judge who is guided by a deep and abiding respect for the rule of law.

He goes on to say Alito ''is intellectually honest.''

Let me insert here a parenthetical. I am telling you, those of us who tried a lot of cases before judges, want a judge who is honest intellectually and does not play games, does not twist facts, does not twist the law so he can justify a decision, and most people know which judges do that.

Judge Scirica said that Alito:

is intellectually honest, he is fair, he is ethical. He has the intellect, the integrity, the compassion and the judicial temperament that are the hallmarks of an outstanding judge.

He goes on to say:

His personal views, whatever they may be, do not jeopardize the independence of his legal reasoning or his capacity to approach each issue with an open mind.

All of us have some beliefs, unless we are a potted plant or already beneath the soil. But the question is, when you put a robe on somebody with a lifetime appointment, are they going to allow some personal belief they may have to not give the litigants before the Court a fair shake and allow their personal bias, their disagreement with the law, or their personal concern, to override what their duty is? Alito is absolutely not this kind of a judge.

So what else does he say about him?

Judge Alito is modest and unassuming.

We had one of our Senators, remarkably, make this statement. It takes your breath away, really.

If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer.

Then he goes on to say if it is a prosecutor or defendant, ''he will rule for the prosecutor.''

That is not what these people who know him say. That is not what his record says and demonstrates. That is not the opinion of anybody who knows the man.

Judge Maryanne Trump Barry, who was appointed to the court in 1999 by President Clinton, had previously worked with Alito in the U.S. Attorneys Office in New Jersey in the 1970s. This is what Judge Maryanne Trump Barry said about him.

In the Attorney General's office, Samuel Alito set a standard of excellence that was contagious, his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency [were clear].

She goes on to say:

Judge Alito is a man of remarkable intellectual gifts. He is a man with impeccable legal credentials. He is a fair-minded man, a modest man, a humble man, and he reveres the rule of law.

This is not a man who is going to get on the Supreme Court and rule against every defendant. As a matter of fact, there is a host of cases in which he ruled for the defendant, sometimes in dissent. He is certainly not going to rule for the employer if the employee has been wronged. Judge Ruggero Aldisert, appointed by President Lyndon Johnson, a Senior Judge who has written a number of books, who campaigned for John F. Kennedy and ran for office as a Democrat, said this about Alito. He is a remarkable man, I must say.

Judicial independence is simply incompatible with political loyalties and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Judge Leonard Garth has been on the bench since 1973. Judge Alito, right out of law school in 1976, clerked for Judge Garth. Judge Garth found him to be:

fiercely intelligent, deeply motivated, and extremely capable.

While Alito was Judge Garth's law clerk, Judge Garth:

developed . . . a deep respect for Sam's analytical ability, his legal acumen, his judgment, his institutional values, and, yes, even his sense of humor. . . .

He said Alito:

is an intellectually gifted and morally principled judge.

Some may not like it. They are going to think there is something wrong with that. Judge Garth said he was a ''morally principled judge.''

He is a sound jurist, always respectful of the institution and the precepts that led to decisions in cases under review.

He goes on to say:

His fairness, his judicial demeanor and actions, and his commitment to the law, all of those qualities which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

Judge Garth did say he was very careful about those words. He knew some were suggesting that Judge Alito, who served for a time in the Reagan Department of Justice and had been unanimously confirmed by this Senate to the court of appeals, after being appointed by former President Bush—some were somehow saying that he might allow his views, whatever they are—and I have not seen any evidence that he has particularly strong political views—that he might allow them to influence him.

He said that:

. . . his commitment to the law, which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

If you served on a bench a long time with a judge, you will know whether that is true. This is a Democratic individual.

Judge John Gibbons said this about it. He said that he was now representing some prisoners in Guantanamo, his law firm was, and he was not happy with the way they had been treated. But he said:

I am confident, however, that as an able and legal scholar and a fair-minded Justice, he will give the arguments . . . careful and thoughtful consideration without any predisposition in favor of the position of the executive branch.

So this Judge Gibbons had been on the bench and is now retired from the bench. He is now in private practice. His law firm, for reasons of which I am not aware, was representing prisoners in Guantanamo. He thinks they are entitled to trials, I suppose. But he said absolutely he trusted Judge Alito to give him a fair trial.

He went on to add:

Alito is a careful, thoughtful, intelligent, fair-minded jurist who will add to the Court's reputation as the necessary expositor of constitutional limits on the political branches of the government.

Judge Tim Lewis, African American, served on the Third Circuit Court of Appeals for 7 years before going into private practice focusing on civil rights and human rights law. Judge Tim Lewis joked about sitting on the leftwing of the panel. Judge Lewis claimed he is:

openly and unapologetically pro-choice and always has been.

He said that:

Judge Alito never had an ideological bent or a result-oriented demeanor or approach.

He is:

intellectually honest.

Then he went on to add this, he emphasized it:

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I can guarantee you that I would not be sitting here today. That is the first thing I want to make clear.

He said Alito ''will not have any agenda-driven or result-oriented approach.''

That was one of the more remarkable panels we have ever had. Judge Alito has served with Republicans and Democrats—experienced judges, extraordinarily wise, very interesting to listen to, and their respect for him was remarkable.

Indeed, the ABA panel member—an African American who represented the University of Michigan in the affirmative action admissions case which went before the Supreme Court—said that Judge Alito was ''held in incredibly high regard'' by the ABA.

I will share a few words from Judge Alito himself before I wrap up.

In his testimony, he was asked about cases that may come before him. I have to say nobody would dispute that in recent years he was more forthcoming than any nominee we have had in discussing openly how he would analyze a case, without going too far and prejudging it in any way. He said these words, which I think reflect good judgment and wisdom of judgment.

By the way, we have a transcript, but all of this was without notes. He spoke so beautifully. He looked right at us.

This is what he said:

Good judges develop certain habits in mind. One of those habits in mind is to have a delay in reaching a conclusion until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read, or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague during the conference on the case when the judges privately fully discuss the case.

That is what we want in a judge. We want a judge who comes in with a philosophy and a demonstrated record of not rushing to judgment, not allowing any personal views he may have to influence him. He analyzes a case, but has a record that has won the respect of colleagues, liberals and conservatives, Republicans and Democrats, the bar, and his colleagues on the bench.

He is an extraordinary nominee. I could not be more proud of him. He did a magnificent job in testifying. I never thought that anyone would testify to the level of John Roberts because he is such a skilled attorney and advocate. But this judge in his own way was every bit as good. He made us all proud, and President Bush should be very proud for submitting his nomination.

I am pleased to support him. I will be voting for him, and I hope my colleagues will do the same.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

RESOLUTION ON CAMBODIA

Mr. MCCONNELL. Mr. President, I commend the majority leader for offering an important resolution on Cambodia yesterday that expressed concern with the systematic campaign by Prime Minister Hun Sen and the Government of Cambodia to undermine democracy and the rule of law in that country.

Scholars can argue when this campaign was initiated—after U.N.-sponsored elections in 1993 or before the coup d'etat in 1997—but no one disputes that it culminated early this year in the arrest of human rights leader Kem Sokha and other reformers in Phnom Penh on charges of defaming the Prime Minister.

As the resolution points out, no sector in Cambodia has been spared in this campaign.

Opposition leader Sam Rainsy was stripped of his parliamentary immunity last year and sentenced to 18 months in absentia for defaming the Prime Minister.

Radio journalist Mom Sonando was arrested for criminal defamation.

Even Rong Chhum, president of the Cambodian Independent Teachers Association, was similarly charged.

To be sure, other champions of freedom in Cambodia have suffered worse fates. Former parliamentarian Om Radsady and labor leader Chea Vichea were brutally murdered by unknown assailants. Justice remains similarly elusive for a grenade attack against a conference hosted by the Buddhist Liberal Democratic Party in 1995 and a more brutal attack against a peaceful rally organized by the Khmer Nation Party—headed by Sam Rainsy—in 1997.

The immediate and strong condemnation of the arrest of Sokha and his colleagues by international donors and multilateral organizations, including the United Nations and the World Bank, is certainly welcomed. U.S. Ambassador Joe Mussomeli and Deputy Chief of Mission Mark Storella deserve praise for standing by Sokha throughout the crisis. Assistant Secretary of State Christopher Hill's trip to the region succeeded in freeing Sokha from prison, and I know he cringes at Hun Sen's characterization of Sokha's release as a ''gift''. This may have been simply a poor choice of words, but it serves to affirm the world's perception of Hun Sen as a Southeast Asian dictator.

The news that Hun Sen will drop charges against Sokha and other civil society reformers is not a cause for celebration. History shows that Hun Sen is a habitual offender, and we can expect continued harassment and intimidation against those championing freedom and the rule of law.

The international community must now turn its attention to the plight of Sam Rainsy, Cheam Channy and other political prisoners. It is time for His Majesty King Sihamoni to derail Hun Sen's campaign by immediately pardoning Rainsy, Channy, and all other political prisoners. Only then will democracy have a chance to get back on track in Cambodia.

The challenge for Cambodia's many donors is straightforward: hold Hun Sen and his government accountable for their actions. While this may require some soul searching by U.S. allies, particularly France, Germany, and Japan, the status quo in Cambodia serves only the interests of Hun Sen and the ruling Cambodian People's Party. With a donor's conference approaching in March 2006, the international community must demand a return on the significant assistance provided to Cambodia.

As over $2 billion has been invested in the democratic development of that country since the 1991 Paris Peace Accords, it is not too much for the international community to demand that the Prime Minister and his government conduct themselves in a manner that respects the constitutional rights and dignity of the people of the Cambodia.

LISTENING TO TEENS ABOUT GUN VIOLENCE

Mr. LEVIN. Mr. President, the 2005 Teen Gun Survey conducted by the Uhlich Children's Advantage Network, also known as UCAN, produced some very interesting and troubling results. UCAN conducts this survey each year as a way of measuring teens' attitudes about gun violence. For 2005, the sample included nearly 1,000 teenagers from around the country who responded to a variety of questions about their exposure to gun violence and its impact on their lives.

The UCAN survey makes clear that far too many teens are exposed to gun violence. According to the survey, nearly half of the respondents personally know someone who has been shot, and more than a third know another teenager who has threatened to kill someone with a gun. Almost one out of every five teenagers who responded said they heard gunshots in their neighborhood at least once a month, and 38 percent believe they could get a handgun if they wanted to. Disturbingly, 39 percent of the respondents fear they will be shot someday.

The results of the survey also raise significant concerns about the perceived safety of our schools. More than a third of respondents said that they are afraid gun violence might take place in their school, and 21 percent feel that they are safer away from school than when they are in school.

These results should be taken seriously. Many teens who are exposed to gun violence may turn to violence later in life. A study completed last year by a University of Michigan researcher

found that adolescents who were exposed to gun violence were more than twice as likely to carry out violent acts within the following 2 years. Fifty-six percent of the teens surveyed by UCAN said that they believe violent teenagers learn their behavior from their parents. We must do more to break this cycle.

Unfortunately, most of those who responded to the UCAN survey believe that the Government doesn't understand the realities of gun violence for teenagers and would not care if they were a victim of gun violence. In addition, 41 percent of the teens surveyed said they would benefit from more violence prevention programs and resources.

We should listen to what teenagers around the country are saying about guns. Their responses to the UCAN survey show that Congress is not doing enough to protect young people from the threat of gun violence. I urge the Senate to do more to help ensure our teenagers do not have to fear guns in their schools and communities by passing commonsense gun safety legislation and by supporting violence reduction programs.

HONORING OUR ARMED FORCES

MAJOR STUART ANDERSON

Mr. GRASSLEY. Mr. President, I speak today with deep sorrow, for we have lost a truly brave American and soldier. MAJ Stuart Anderson died on January 7, 2006, when the Blackhawk helicopter he was in crashed just outside Tal Afar in northern Iraq. His helicopter was part of a two helicopter team providing support for the 101st Airborne Division. Major Anderson was assigned to the 3rd Corps Support Command, Army National Guard. My condolences go out to his wife, Tori; his two daughters, Keely 15, and Kirsten 10; his parents, Claremont and Nancy Anderson; and many other family and friends.

Major Anderson grew up in Hoffman, MN, and then graduated from Benson High School in Benson, MN. He attended North Dakota State University. Maj. Anderson had been living in Dubuque, IA, for the past 5 years and was scheduled to return home this fall. He was a supply and service support representative for his Des Moines based unit; he made sure combat troops in some of Iraq's most dangerous areas had the proper supplies.

Major Anderson joined the Army Reserve in 1984, became an officer in 1989, and was serving in his second tour of duty in Iraq. Many of Major Anderson's colleagues define him as a trusted and humble leader. LTC Thomas Nielsen wrote that ''Major Anderson was one of the finest officers I have known in my 28-year career.'' Major Anderson's father said that ''he was very proud of being in the military . . . he just loved it.'' He was known to sprinkle in humor with his training and with his annual Christmas cards. His humor will be missed by all who knew him. I ask my colleagues in the Senate and every American to remember the sacrifice that Major Anderson gave for our freedom.

UNI-CAPITOL WASHINGTON INTERNSHIP PROGRAM

Ms. STABENOW. Mr. President, each year congressional offices host American college students as interns, to help our future leaders learn about public service and see how their Government works firsthand.

Today, I would like to let you know about a program that gives Australian students the opportunity to experience our democratic and legislative process. It's called the Uni-Capitol Washington Internship Program.

My office is taking part in it right now, along with others in Congress. Twelve of Australia's brightest are here, pursuing knowledge and understanding. In so doing, we are all finding new reasons to like an old friend.

The Uni-Capitol was born of the efforts of Eric Federing. Eric worked for more than a decade in the House and the Senate as a senior adviser. While doing this job, he lectured across Australia on American Government, politics, and news media. In an effort to forge ties across the Pacific and for the betterment of both societies, Eric put together this idea in Washington in 1999.

The selection process for the students is competitive and intellectually rigorous, ensuring the highest quality applicant. All participating students are comprehensively matched with a congressional office and corresponding position. They come from a wide range of academic disciplines and bring as much knowledge and understanding to our offices as they take away.

For the past 7 years, Mr. Federing's students have approached this opportunity with vim and vigor. I am pleased to have Douglas Ferguson from the University of Canberra working in my office this year. I would also like to submit into the RECORD the names of other Australian interns participating in this year's program:

Andrew Brookes, from Melbourne University, is in Senator CHRISTOPHER DODD's office. Ryan Conroy, from Deakin University, is in Representative SAM FARR's office. Jenna Davey-Burns, from Melbourne University, is in Representative LOUIS SLAUGHTER's office. Sarah Dillon, from Deakin University, is in Representative ALCEE HASTINGS's office. Jessica Gurevich, from Melbourne University, is in Representative MIKE CASTLE's office. Scott Ivey, from the University of Western Australia, is in Representative LORETTA SANCHEZ's office. Saul Lazar, from Deakin University, is in Senator CHUCK HAGEL's office. Abbie McPhie, from Macquarie University, is in Representative JERROLD NADLER's office. Linda Nelson, from the University of Wollongong, is with the House Science Committee's majority staff. Marianna O'Gorman, from the University of Queensland, is in Delegate ENI FALEOMAVAEGA's office. Rachel Thomson, from the University of Western Australia, is with the Joint Economic Committee's minority staff.

Australia continues to be one of America's strongest allies. Our greatest gift is the friendship born of shared values. I thank the Uni-Capitol Program and these Australian interns for their hard work, and I wish the program continued success.

ATTACK ON CHASIDIC SYNAGOGUE IN MOSCOW

Mr. BROWNBACK. Mr. President, on January 11 of this year, at the Moscow Headquarters and Synagogue of Agudas Chasidei Chabad of the Former Soviet Union, a so-called ''skinhead'' attacked worshippers with a knife and wounded eight persons. I know that all Members of this body deplore this terrible crime and send our prayers and best wishes to all those injured during the assault.

The victims of this senseless violence include Rabbi Isaac Kogan, who testified before an April 6 Helsinki Commission hearing I convened last year concerning Chabad's ongoing efforts to retrieve the Schneerson Collection of sacred Jewish texts from Moscow. The Rabbi is a noted refusenik who was appointed by the Lubavitcher Rebbe, Rabbi Menachem M. Schneerson, to be part of Agudas Chasidei Chabad of the Former Soviet Union. In addition to nurturing Judaism throughout the former USSR, that organization has fought tirelessly to win the return of the Schneerson Collection to its rightful owners in the United States. The entire U.S. Senate has twice petitioned the Russian leadership to release those holy texts.

As chairman of the Helsinki Commission, I have followed closely the issue of anti-Semitism and extremism around the world. Unfortunately, the brutal attack at the Agudas Chasidei Chabad synagogue fits what appears to be a rising trend of attacks on ethic and religious minorities in Russia.

Let me present one disturbing statistic. According to an article in the Moscow News last year, the Moscow Human Rights Center reports that Russia has up to 50,000 skinheads with active groups in 85 cities. This, as opposed to an estimated 70,000 skinhead activists throughout the rest of the world.

To make matters worse, there are indications that the police themselves are sometimes involved in racist attacks. Earlier this month, a Russian newspaper carried a story about the Moscow police assault of a passerby who happened to be from the North Caucasus. According to persons from the North Caucasus, such beatings are a common occurance.

What was uncommon was the fact that the gentleman in question is a colonel in the Russian Army and an internationally known cosmonaut.

Let me be clear. Anti-Semitism, bigotry, extremist attacks and police brutality are not found only in Russia. Our own country has not been immune to these challenges to rule of law and human dignity.

Nevertheless, as Russia accedes to the chairmanship of the G–8 and the Council of Europe, there will be increased scrutiny of its commitment to internationally recognized standards of human rights practices. I urge the authorities in Russia to do everything in their power to combat ethnic and religious intolerance and safeguard the religious freedom and physical safety of all it citizens.

TRIBUTE TO MATTHEW HOLT

Mr. LEAHY. Mr. President, I rise today to speak about Matt Holt, who has served the Senate with distinction for 25 years. As a benefits and retirement counselor and deputy for employee benefits and financial services in the Senate Disbursing Office, Matt Holt has committed his talents and energy to serving Senators and staff for over two decades.

His career here in the Senate has been exemplary. He is not only hardworking and dedicated but also friendly, helpful, and patient. He always takes the time to fully answer our questions, and he has become a tremendous resource for the Senate Disbursing Office.

Matt is truly an asset to the Senate, and all of us here in the Senate community are grateful for his outstanding dedication and hard work. An avid outdoorsman, Matt is looking forward to spending time fishing, camping, and hiking with his wife Jeanne and his children Jessica and Ben. He leaves with our appreciation and best wishes for a happy and relaxing retirement. He certainly has earned it.

BOY SCOUT TROOP 89

Mr. OBAMA. Mr. President, I rise today to say a few words about a special group of constituents. This April marks the 50th anniversary of Boy Scout Troop 89 of Downers Grove, IL. Teenagers move a mile a minute. Something that is ''cool'' in the morning may be forgotten by the afternoon. But Scouting is one institution that has maintained a central role in the lives of many young people in Illinois and around America.

Boy Scouts learn about and enjoy the outdoors, build friendships for life, and strengthen values such as teamwork, honesty, and respect for others. Downers Grove is a quiet residential village west of Chicago and a good place to instill these lessons. Some troops last longer than others, but Troop 89 has served the boys of Downers Grove since before I was born. That is a singular achievement, and I am pleased to have this opportunity to recognize it. To the Boy Scouts, parents, and friends of Troop 89, my heartiest congratulations on your 50th anniversary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5335. A communication from the Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Use of Diagnostic Code Numbers; Schedule of Ratings—Neurological Conditions and Convulsive Disorders'' (RIN2900–AM32) received on January 16, 2006; to the Committee on Veterans' Affairs.

EC–5336. A communication from the Director, Regulations Management, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Elimination of Copayment for Smoking Cessation Counseling'' (RIN2900–AM11) received on January 16, 2006; to the Committee on Veterans' Affairs.

EC–5337. A communication from the Director, Regulations Management, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Traumatic Injury Protection Rider to Servicemembers' Group Life Insurance'' (RIN2900–AM36) received on January 16, 2006; to the Committee on Veterans' Affairs.

EC–5338. A communication from the Acting Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the Department of the Navy Report of Violation of Administrative Control of Appropriation Regulations Case 04–01; to the Committee on Appropriations.

EC–5339. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a report of a violation of the Antideficiency Act by the Department of the Army, case number 02–06; to the Committee on Appropriations.

EC–5340. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Health, United States, 2005''; to the Committee on Health, Education, Labor, and Pensions.

EC–5341. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, reports entitled ''The National Healthcare Quality Report 2005'' and ''The National Healthcare Disparities Report 2005''; to the Committee on Health, Education, Labor, and Pensions.

EC–5342. A communication from the Assistant Secretary for Administration and Management, transmitting, pursuant to law, the Department's Fiscal Year 2005 Report on Competitive Sourcing; to the Committee on Health, Education, Labor, and Pensions.

EC–5343. A communication from the Assistant Secretary for Administration and Management, Competitive Sourcing Official, Department of Labor, transmitting, pursuant to law, the Department's Fiscal Year 2005 Competitive Sourcing Report; to the Committee on Health, Education, Labor, and Pensions.

EC–5344. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Annual Funding Notice for Multiemployer Defined Benefit Pension Plans'' (RIN1210–AB00) received on January 16, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5345. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Food Additives Permitted for Direct Addition to Food for Human Consumption; Synthetic Fatty Alcohols'' (Docket No. 1994F–0153) received on January 16, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5346. A communication from the Acting Deputy Assistant Administrator, Office of Diversion Control, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Anabolic Steroid Control Act of 2004'' (RIN1117–AA95) received on January 16, 2006; to the Committee on the Judiciary.

EC–5347. A communication from the Clerk of Court, United States Court of Federal Claims, transmitting, pursuant to law, the annual report of the United States Court of Federal Claims for the year ended September 30, 2005; to the Committee on the Judiciary.

EC–5348. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled ''Annual Energy Outlook 2006''; to the Committee on Energy and Natural Resources.

EC–5349. A communication from the Director, Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Locality-based Comparability Payments'' (RIN3206–AK78) received on January 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5350. A communication from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Extension of Port Limits of Rockford, Illinois'' (CBP Dec. 05–38) received on January 26, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5351. A communication from the General Counsel, Office of Government Ethics, transmitting, pursuant to law, a report relative to conflict of interest laws relating to executive branch employment; to the Committee on Homeland Security and Governmental Affairs.

EC–5352. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Administration's Performance and Accountability Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5353. A communication from the Assistant Secretary for Legislative Affairs, Department of Homeland Security, transmitting, pursuant to law, a report entitled ''Report on the Threat of Terrorism to U.S. Ports and Vessels''; to the Committee on Homeland Security and Governmental Affairs.

EC–5354. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department of Energy's Fiscal Year 2005 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–5355. A communication from the General Counsel, Government Accountability Office, transmitting, pursuant to law, a report relative to bid protest decided in fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5356. A communication from the Director, National Gallery of Art, transmitting, pursuant to law, a report relative to competitive sourcing for fiscal years 2003, 2004, and 2005, and planned competitions for fiscal year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5357. A communication from the Chairman, National Mediation Board, transmitting, pursuant to law, a report relative to competitive sourcing for fiscal years 2003,

2004, and 2005, and planned competitions for fiscal year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5358. A communication from the President and Chief Executive Officer, Inter-American Foundation, transmitting, pursuant to law, the Foundation's Fiscal Year 2005 Competitive Sourcing Report; to the Committee on Homeland Security and Governmental Affairs.

EC–5359. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, the Agency's Office of Inspector General Semiannual Report for the period from April 1, 2005 to September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5360. A communication from the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the Department's Office of Inspector General Semiannual Report for the period from April 1, 2005 to September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5361. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Department of Commerce's Office of Inspector General Semiannual Report for the period from March 31, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5362. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-214, ''Old Morgan School Place Designation Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5363. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-215, ''Full Service Grocery Store Alcohol License Exception Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5364. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-216, ''Walt Whitman Way Designation Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5365. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-217, ''Producer Summary Suspension Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5366. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-218, ''Adams Morgan Business Improvement District Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5367. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-219, ''Water Pollution Control Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5368. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-220, ''Human Rights Clarification Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5369. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-221, ''Domestic Partner Health Care Benefits Tax Exemption Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5370. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-222, ''National Community Reinvestment Coalition Real Property Tax Exemption Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5371. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-223, ''Real Property Disposition Economic Analysis Temporary Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5372. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-224, ''Estate and Inheritance Tax Clarification Temporary Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5373. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-225, ''Public Assistance Confidentiality of Information Temporary Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5374. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-226, ''Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5375. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-227, ''Criminal Background Checks for the Protection of Children Clarification Temporary Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5376. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-228, ''Highway Trust Fund and District Department of Transportation Temporary Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5377. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-229, ''Karyn Barquin Adult Protective Services Self-Neglect Expansion Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5378. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-230, ''Stevie Sellows Intermediate Care Facility for the Mentally Retarded Quality Improvement Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5379. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-231, ''Grandparent Caregivers Pilot Program Establishment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5380. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-232, ''Dedication of Portions of the Alley System in Square 5252, S.O. 03-1707, Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5381. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-233, ''District of Columbia Health Professional Recruitment Program Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5382. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-248, ''Vending Licensing Moratorium Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5383. A communication from the Publications Control Officer, Department of the Army, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Obtaining Information From Financial Institutions'' (RIN0702-AA49) received on January 16, 2005; to the Committee on Armed Services.

EC–5384. A communication from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Contract Financing'' (DFARS Case 2003-D043) received on January 18, 2006; to the Committee on Armed Services.

EC–5385. A communication from the Under Secretary of Defense for Personnel and Readiness, transmitting, a report on the approved retirement of General Lance W. Lord, United States Air Force, and his advancement to the grade of general on the retired list; to the Committee on Armed Services.

EC–5386. A communication from the Under Secretary of Defense for Acquisition, Technology and Logistics, transmitting, pursuant to law, a report entitled ''LHA(R) Program Live Fire Test and Evaluation Management Plan''; to the Committee on Armed Services.

EC–5387. A communication from the Assistant Secretary of the Navy (Installations and Environment), Department of Defense, transmitting, pursuant to law, a report relative to the intent to conduct an analysis of ''Bulk Fuel Storage and Distribution'' at Marine Corps Air Station Miramar, CA; to the Committee on Armed Services.

EC–5388. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled ''Statement, Justification and Plan Included in Presidential Waiver for Calendar Year 2006 Under Section 1303 of the National Defense Authorization Act for Fiscal Year 2005''; to the Committee on Armed Services.

EC–5389. A communication from the Under Secretary of Defense for Acquisition, Technology and Logistics, transmitting, pursuant to law, a report entitled ''Alternative Live Fire Test and Evaluation Strategy for USMC Heavy Lift Replacement Helicopter''; to the Committee on Armed Services.

EC–5390. A communication from the Under Secretary of Defense for Acquisition, Technology and Logistics, transmitting, pursuant to law, a report entitled ''DD(X) Program Live Fire Test and Evaluation Management Plan''; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 1708. A bill to modify requirements relating to the authority of the Administrator of General Services to enter into emergency leases during major disasters and other emergencies (Rept. No. 109–214).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first

and second times by unanimous consent, and referred as indicated:

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. HATCH, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. CRAIG, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Mr. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. ALLEN, Mr. AKAKA, Mr. TALENT, Mrs. CLINTON, Mr. CHAMBLISS, Ms. STABENOW, Mr. CORNYN, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2197. A bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. CRAIG, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Mr. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. ALLEN, Mr. AKAKA, Mr. TALENT, Mr. CHAMBLISS, Mr. CORNYN, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Mr. ENZI, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2198. A bill to ensure the United States successfully competes in the 21st century global economy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. WARNER, Mr. OBAMA, Mr. BOND, Mr. LIEBERMAN, Mr. BURNS, Mrs. MURRAY, Mr. CRAIG, Mr. BAYH, Mrs. HUTCHISON, Ms. CANTWELL, Mr. DEWINE, Mr. MENENDEZ, Mr. THOMAS, Mr. KOHL, Mr. SMITH, Mr. KERRY, Mr. VOINOVICH, Mr. NELSON of Florida, Mr. ALLEN, Mr. LEAHY, Mr. TALENT, Mr. AKAKA, Mr. CHAMBLISS, Mrs. CLINTON, Mr. CORNYN, Ms. STABENOW, Mr. COLEMAN, Mr. DAYTON, Mr. MARTINEZ, Mr. SALAZAR, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2199. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education; to the Committee on Finance.

By Mr. LUGAR:

S. 2200. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes; to the Committee on Foreign Relations.

By Mr. OBAMA (for himself, Mr. INOUYE, Mrs. MURRAY, and Mr. LAUTENBERG):

S. 2201. A bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY (for himself, Mr. KERRY, and Mr. FEINGOLD):

S. 2202. A bill to provide for ethics reform of the Federal judiciary and to instill greater public confidence in the Federal courts; to the Committee on the Judiciary.

By Mrs. CLINTON (for herself and Mr. NELSON of Florida):

S. 2203. A bill to amend title XVIII of the Social Security Act to eliminate cost-sharing under part D of such title for certain full-benefit dual eligible individuals; to the Committee on Finance.

By Mr. ENSIGN (for himself and Mr. REID):

S. 2204. A bill to validate certain conveyances made by the Union Pacific Railroad Company of lands located in Reno, Nevada, that were originally conveyed by the United States to facilitate construction of transcontinental railroads, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THUNE:

S. 2205. A bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. VITTER:

S. Res. 354. A resolution honoring the valuable contributions of Catholic schools in the United States; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NELSON of Nebraska (for himself, Mr. GRAHAM, Mr. ALLEN, Mr. TALENT, Mrs. DOLE, Mr. DEWINE, Ms. MURKOWSKI, Ms. SNOWE, Mr. THUNE, Mr. ISAKSON, Ms. LANDRIEU, Mr. NELSON of Florida, Mr. HARKIN, Mr. DORGAN, Mr. LAUTENBERG, Mr. BINGAMAN, Mr. AKAKA, Mr. BAUCUS, Mrs. CLINTON, Mr. KOHL, Ms. MIKULSKI, Mr. BAYH, Ms. CANTWELL, Mr. PRYOR, Mr. SALAZAR, Mr. LIEBERMAN, Mr. BIDEN, Mr. CONRAD, Mr. KENNEDY, Mr. FEINGOLD, Mr. MENENDEZ, Mr. JOHNSON, and Mr. DURBIN):

S. Res. 355. A resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure; to the Committee on Armed Services.

ADDITIONAL COSPONSORS

S. 409

At the request of Mr. COLEMAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 409, a bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes.

S. 787

At the request of Mr. SCHUMER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 787, a bill to amend the Internal Revenue Code of 1986 to equalize the exclusion from gross income of parking and transportation fringe benefits and to provide for a common cost-of-living adjustment, and for other purposes.

S. 843

At the request of Mr. SANTORUM, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 843, a bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education.

S. 1035

At the request of Mr. INHOFE, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 1035, a bill to authorize the presentation of commemorative medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th century in recognition of the service of those Native Americans to the United States.

S. 1604

At the request of Mr. CRAIG, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1604, a bill to restore to the judiciary the power to decide all trademark and trade name cases arising under the laws and treaties of the United States, and for other purposes.

S. 1774

At the request of Mr. CORNYN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1774, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension.

S. 1841

At the request of Mr. NELSON of Florida, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1923

At the request of Ms. SNOWE, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1923, a bill to address small business investment companies licensed to issue participating debentures, and for other purposes.

S. 1963

At the request of Mr. BAUCUS, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1963, a bill to make miscellaneous improvements to trade adjustment assistance.

S. 2081

At the request of Mr. COLEMAN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 2081, a bill to improve the safety of all-terrain vehicles in the United States, and for other purposes.

S. 2131

At the request of Mr. GRASSLEY, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2131, a bill to amend title 9, United States Code, to provide for greater fairness in the arbitration process relating to livestock and poultry contracts.

S. 2154

At the request of Mr. OBAMA, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. 2172

At the request of Ms. LANDRIEU, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 2172, a bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes.

S. 2179

At the request of Mr. OBAMA, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2185

At the request of Mr. HAGEL, the names of the Senator from Nevada (Mr. REID), the Senator from Michigan (Ms. STABENOW) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 2185, a bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part.

S. 2196

At the request of Mrs. CLINTON, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2196, a bill to authorize the Secretary of Energy to establish the position of Assistant Secretary for Advanced Energy Research, Technology Development, and Deployment to implement an innovative energy research, technology development, and deployment program.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. HATCH, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. CRAIG, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Mr. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. ALLEN, Mr. AKAKA, Mr. TALENT, Mrs. CLINTON, Mr. CHAMBLISS, Ms. STABENOW, Mr. CORNYN, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2197. A bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. OBAMA, Mr. WARNER, Mr. LIEBERMAN, Mr. BOND, Mrs. MURRAY, Mr. BURNS, Mr. BAYH, Mr. CRAIG, Ms. CANTWELL, Mrs. HUTCHISON, Mr. MENENDEZ, Mr. DEWINE, Mr. KOHL, Mr. THOMAS, Mr. KERRY, Mr. SMITH, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. LEAHY, Mr. ALLEN, Mr. AKAKA, Mr. TALENT, Mr. CHAMBLISS, Mr. CORNYN, Mr. DAYTON, Mr. COLEMAN, Mr. SALAZAR, Mr. MARTINEZ, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Mr. ENZI, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2198. A bill to ensure the United States successfully competes in the 21st century global economy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. ALEXANDER, Ms. MIKULSKI, Mr. LUGAR, Mr. DODD, Mr. WARNER, Mr. OBAMA, Mr. BOND, Mr. LIEBERMAN, Mr. BURNS, Mrs. MURRAY, Mr. CRAIG, Mr. BAYH, Mrs. HUTCHISON, Ms. CANTWELL, Mr. DEWINE, Mr. MENENDEZ, Mr. THOMAS, Mr. KOHL, Mr. SMITH, Mr. KERRY, Mr. VOINOVICH, Mr. NELSON of Florida, Mr. ALLEN, Mr. LEAHY, Mr. TALENT, Mr. AKAKA, Mr. CHAMBLISS, Mrs. CLINTON, Mr. CORNYN, Ms. STABENOW, Mr. COLEMAN, Mr. DAYTON, Mr. MARTINEZ, Mr. SALAZAR, Mr. INOUYE, Mr. STEVENS, Mr. BIDEN, Mr. COCHRAN, Mr. HAGEL, Ms. MURKOWSKI, Mr. PRYOR, Ms. COLLINS, Mr. VITTER, and Ms. LANDRIEU):

S. 2199. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education; to the Committee on Finance.

Mr. DOMENICI. Mr. President, I rise today to introduce a legislative package which we refer to as the ''Protecting America's Competitive Edge Act of 2006'' or the ''PACE'' Act. This legislation ensures that the United States continues to set the pace in science, and in the development of new technologies.

I know my colleagues Senator BINGAMAN, Senator ALEXANDER, and Senator MIKULSKI share my conviction that this legislation addresses one of the most pressing challenges before us today. There are troubling signs that the United States is becoming less competitive in scientific and high-technology fields. Today, the United States is a net importer of high technology products. The U.S. share of global high-technology exports has fallen over the last two decades from 30 percent to only 17 percent.

The PACE legislation closely follows the recommendations made in a recent National Academy of Sciences report entitled ''Rising Above the Gathering Storm.'' The metaphorical storm is the challenge to our global competitiveness in science and technology. I want to congratulate Norm Augustine, who chaired the National Academy committee, and the members of his committee for producing such a comprehensive, ground-breaking report on this important issue.

The Augustine report makes 20 recommendations for U.S. schools, universities, research and economic policy. Our legislation will enact each of the recommendations. For example, our legislation doubles authorizations for basic research in the physical sciences by over the next 7 years. It also requires that at least 8 percent of Federal research budgets are allocated to high-risk, potentially high pay-off research. It will strengthen the skills of thousands of math and science teachers by establishing training and education programs at summer institutes hosted at the National Laboratories.

We need to take U.S. competitiveness seriously. We need to take action to support our standard of living, and ensure we continue to grow and prosper. If we do not, we can expect other nations to rival our global competitiveness—and one day to surpass us.

I ask unanimous consent that the text of all three bills in the following order, the PACE-Energy Act, the PACE-Education Act, and the PACE-Finance Act, be printed in the RECORD.

S. 2197

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting America's Competitive Edge Through Energy Act of 2006'' or the ''PACE-Energy Act''.

SEC. 2. MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION AT THE DEPARTMENT OF ENERGY.

(a) SCIENCE EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended—

(1) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively;

(2) by inserting after subsection (a) the following:

''(b) ORGANIZATION OF MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION PROGRAMS.—

''(1) DIRECTOR OF MATHEMATICS, SCIENCE AND ENGINEERING EDUCATION.—The Secretary, acting through the Under Secretary for Science (referred to in this subsection as the 'Under Secretary'), shall appoint a Director of Mathematics, Science, and Engineering Education (referred to in this subsection as the 'Director') with the principal responsibility for administering mathematics, science, and engineering education programs of the Department.

''(2) QUALIFICATIONS.—The Director shall be an individual, who by reason of professional background and experience, is specially qualified to advise the Under Secretary on all matters pertaining to mathematics, science, and engineering education at the Department.

''(3) DUTIES.—The Director shall—

''(A) oversee all mathematics, science, and engineering education programs of the Department;

''(B) represent the Department as the principal interagency liaison for all mathematics, science, and engineering education programs, unless otherwise represented by the Secretary or the Under Secretary;

''(C) prepare the annual budget and advise the Under Secretary on all budgetary issues for mathematics, science, and engineering education programs of the Department; and

''(D) perform other such matters related to mathematics, science, and engineering education as are required by the Secretary or the Under Secretary.

''(4) STAFF AND OTHER RESOURCES.—The Secretary shall assign to the Director such personnel and other resources as the Secretary considers necessary to permit the Director to carry out the duties of the Director.

''(5) ASSESSMENT.—The Secretary shall offer to enter into a contract with the National Academy of Sciences under which the National Academy, not later than 5 years after, and not later than 10 years after, the date of enactment of this paragraph, shall assess the performance of the mathematics, science, and engineering education programs of the Department.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.''; and

(3) by striking subsection (d) (as redesignated by paragraph (1)) and inserting the following:

''(d) MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION FUND.—The Secretary shall establish a Mathematics, Science, and Engineering Education Fund, using not less than 0.3 percent of the amount made available to the Department for research, development, demonstration, and commercial application for each fiscal year, to carry out sections 3165, 3166, and 3167.''.

(b) DEFINITION.—Section 3168 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381d) is amended by adding at the end the following:

''(5) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).''.

(c) MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION PROGRAMS.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by inserting after section 3162 the following:

''Subpart A—Science Education Enhancement'';

(2) in section 3169, by striking ''part'' and inserting ''subpart''; and

(3) by adding at the end the following:

''Subpart B—Mathematics, Science, and Engineering Education Programs

''SEC. 3170. DEFINITIONS.

''In this subpart:

''(1) DIRECTOR.—The term 'Director' means the Director of Mathematics, Science, and Engineering Education.

''(2) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

''CHAPTER 1—ASSISTANCE FOR SPECIALTY SCHOOLS FOR MATHEMATICS AND SCIENCE

''SEC. 3171. ASSISTANCE FOR SPECIALTY SCHOOLS FOR MATHEMATICS AND SCIENCE.

''(a) IN GENERAL.—Consistent with sections 3165 and 3166, the Director shall make available necessary funds for a program using scientific and engineering staff of the National Laboratories, in which the staff—

''(1) assists teaching courses at statewide specialty secondary schools that provide comprehensive mathematics and science (including engineering) education; and

''(2) uses National Laboratory scientific equipment in the teaching of the courses.

''(b) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of the Protecting America's Competitive Edge Through Energy Act of 2006, the Director shall submit a report to the appropriate committees of Congress detailing the impact of the activities assisted with funds made available under this section.

''CHAPTER 2—EXPERIENTIAL-BASED LEARNING OPPORTUNITIES

''SEC. 3175. EXPERIENTIAL-BASED LEARNING OPPORTUNITIES.

''(a) INTERNSHIPS AUTHORIZED.—From the amounts authorized under subsection (d), the Secretary, acting through the Director, shall establish a summer internship program for middle school and secondary school students that shall—

''(1) provide the students with internships at the National Laboratories; and

''(2) promote experiential, hands-on learning in mathematics or science.

''(b) ELIGIBILITY CRITERIA.—The Director shall establish criteria to determine the sufficient level of academic preparedness necessary for a student to be eligible for an internship under this section.

''(c) PRIORITY.—

''(1) IN GENERAL.—The Director shall give priority for an internship under this section to a student who meets the eligibility criteria described in subsection (b) and who attends a school—

''(A)(i) in which not less than 40 percent of the children enrolled in the school are from low-income families; or

''(ii) that is designated with a school locale code of 7 or 8, as determined by the Secretary of Education; and

''(B) for which there is—

''(i) a high percentage of teachers who are not teaching in the academic subject areas or grade levels in which the teachers were trained to teach;

''(ii) a high teacher turnover rate; or

''(iii) a high percentage of teachers with emergency, provisional, or temporary certification or licenses.

''(2) COORDINATION.—The Director shall consult with the Secretary of Education in order to determine whether a student meets the priority requirements of this subsection.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of the fiscal years 2007 through 2013.

''CHAPTER 3—NATIONAL LABORATORIES CENTERS OF EXCELLENCE IN MATHEMATICS AND SCIENCE EDUCATION

''SEC. 3181. NATIONAL LABORATORIES CENTERS OF EXCELLENCE IN MATHEMATICS AND SCIENCE EDUCATION.

''(a) IN GENERAL.—The Secretary shall establish at each of the National Laboratories a program to support a Center of Excellence in Mathematics and Science at 1 public secondary school located in the region of the National Laboratory to provide assistance in accordance with subsection (c).

''(b) GOALS.—The Secretary shall establish goals and performance assessments for each Center of Excellence authorized under subsection (a).

''(c) ASSISTANCE.—Consistent with sections 3165 and 3166, the Director shall make available necessary funds for a program using scientific and engineering staff of the National Laboratories, during which the staff—

''(1) assists teaching courses at the Centers of Excellence in Mathematics and Science; and

''(2) uses National Laboratory scientific equipment in the teaching of the courses.

''(d) EVALUATION.—The Secretary shall consider the results of the performance assessments required under subsection (b) in any performance review of a National Laboratories management and operations contractor.

''CHAPTER 4—SUMMER INSTITUTES

''SEC. 3185. SUMMER INSTITUTES.

''(a) DEFINITION OF SUMMER INSTITUTE.—In this section, the term 'summer institute' means an institute at a National Laboratory, conducted during the summer, that—

''(1) is conducted for a period of not less than 2 weeks;

''(2) includes, as a component, a program that provides direct interaction between students and faculty; and

''(3) provides for follow-up training during the academic year.

''(b) SUMMER INSTITUTE PROGRAMS AUTHORIZED.—The Secretary, acting through the Director, shall establish or expand program of summer institutes at each of the National Laboratories to provide additional training to strengthen the mathematics and science teaching skills of teachers employed at public schools in kindergarten through grade 12 education, with a particular focus on teachers of kindergarten through grade 8.

''CHAPTER 5—DISTINGUISHED SCIENTIST PROGRAM

''SEC. 3191. DISTINGUISHED SCIENTIST PROGRAM.

''(a) PURPOSE.—The purpose of this section is to promote scientific and academic excellence at National Laboratories.

''(b) ESTABLISHMENT.—The Secretary, acting through the Director and in consultation with the Director of the Office of Science, shall establish a program to support the appointment of distinguished scientists by National Laboratories.

''(c) QUALIFICATIONS.—Successful candidates under this section shall be persons who, by reason of professional background and experience, are able to bring international recognition to the appointing National Laboratory in their field of scientific endeavor.

''(d) SELECTION.—A distinguished scientist appointed under this section shall be selected through an open peer review process.

''(e) APPOINTMENT.—An appointment by a National Laboratory under this section shall be at the rank of the highest grade of distinguished scientist or technical staff of the National Laboratory.

''(f) DURATION.—An appointment under this section shall be for 6 years, consisting of 2 3-year funding allotments.

''(g) USE OF FUNDS.—Funds made available under this section may be used for—

''(1) the salary of the distinguished scientist and support staff;

''(2) undergraduate, graduate, and postdoctoral appointments;

''(3) research-related equipment;

''(4) professional travel; and

''(5) such other requirements as the Director determines are necessary to carry out the purpose of the program.

''(h) REVIEW.—

''(1) IN GENERAL.—The appointment of a distinguished scientist under this section shall be reviewed at the end of the first 3-year allotment for the distinguished scientist through an open peer review process to determine if the appointment is meeting the purpose of this section under subsection (a).

''(2) FUNDING.—Funding of the appointment of the distinguished scientist for the second 3-year allotment shall be determined based on the review conducted under paragraph (1).''.

SEC. 3. DEPARTMENT OF ENERGY EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the Department of Energy for early-career scientists and engineers for purposes of pursuing independent research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term ''eligible early-career researcher'' means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Energy, through the Director of the Office of Science of the Department of Energy, shall award not less than 65 grants per year to outstanding eligible early-career researchers to support the work of such researchers in the Department, particularly the National Laboratories, or other federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Secretary of Energy an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(3) SPECIAL CONSIDERATION.—In awarding grants under this section, the Secretary of Energy shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) DURATION AND AMOUNT.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) USE OF FUNDS.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at the Department of Energy, particularly the National Laboratories, or other federally-funded research and development center.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(A) $6,500,000 for fiscal year 2007;

(B) $13,000,000 for fiscal year 2008;

(C) $19,500,000 for fiscal year 2009;

(D) $26,000,000 for fiscal year 2010; and

(E) $32,500,000 for fiscal year 2011.

SEC. 4. ADVANCED RESEARCH PROJECTS AUTHORITY-ENERGY.

(a) DEFINITIONS.—In this section:

(1) ARPA-E.—The term ''ARPA-E'' means the Advanced Research Projects Authority-Energy established under subsection (b).

(2) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Energy Technologies established under subsection (c).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the position of Under Secretary for Science established under section 202(b) of the Department of Energy Organization Act (42 U.S.C. 7132(b)).

(b) ARPA-E.—

(1) ESTABLISHMENT.—There is established the Advanced Research Projects Authority–Energy.

(2) DIRECTOR.—ARPA-E shall be headed by a Director, who shall be appointed by the Secretary and report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall use the Fund to award competitive, merit-based grants, cooperative agreements, and contracts to public or private entities (including businesses, federally funded research and development centers, and institutions of higher education) to—

(A) support basic and applied energy research to promote revolutionary changes in technologies that would promote the missions of the Department of Energy;

(B) advance the development, testing, evaluation, and deployment of critical energy technologies; and

(C) accelerate prototyping and development of technologies that would address national energy priorities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address areas of national need in science and energy technology, as identified by the Director.

(5) COORDINATION.—The Director—

(A) shall ensure that the activities of ARPA-E are coordinated with activities of other appropriate research agencies; and

(B) may carry out projects under this section jointly with other agencies.

(6) PERSONNEL.—

(A) IN GENERAL.—In hiring personnel for ARPA-E, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 5 U.S.C. 3104 note).

(B) TERM.—The term of appointments for an employee under subparagraph (A) may not exceed 5 years, except that the Secretary may renew the term of appointment of the employee for an additional term of 5 years.

(7) DEMONSTRATIONS.—The Director shall periodically hold energy technology demonstrations to improve contact among technology developers, vendors, and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the ''Acceleration Fund for Research and Development of Energy Technologies'', consisting of—

(A) such amounts as are appropriated to the Fund under paragraph (5); and

(B) any interest earned on investment of amounts in the Fund under paragraph (3).

(2) EXPENDITURES FROM FUND.—

(A) IN GENERAL.—Subject to subparagraph (B), on request by the Director, the Secretary of the Treasury shall transfer from the Fund to the Director such amounts as the Director determines are necessary to carry out this section.

(B) ADMINISTRATIVE EXPENSES.—An amount not exceeding 5 percent of the amounts in the Fund shall be available for each fiscal year to pay the administrative expenses necessary to carry out this section.

(3) INVESTMENT OF AMOUNTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals.

(B) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

(i) on original issue at the issue price; or

(ii) by purchase of outstanding obligations at the market price.

(D) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(4) TRANSFERS OF AMOUNTS.—

(A) IN GENERAL.—The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(B) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund—

(A) $300,000,000 for fiscal year 2007;

(B) $500,000,000 for fiscal year 2008;

(C) $700,000,000 for fiscal year 2009;

(D) $900,000,000 for fiscal year 2010; and

(E) $1,000,000,000 for fiscal year 2011.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF ENERGY FOR BASIC RESEARCH.

Section 971(b) of the Energy Policy Act of 2005 (42 U.S.C. 16311(b)) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(4) $5,320,000,000 for fiscal year 2010;

''(5) $5,851,000,000 for fiscal year 2011;

''(6) $6,436,000,000 for fiscal year 2012; and

''(7) $7,080,000,000 for fiscal year 2013.''.

S. 2198

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Protecting America's Competitive Edge Through Education and Research Act of 2006'' or the ''PACE-Education Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—10,000 TEACHERS, 10,000,000 MINDS K–12 MATHEMATICS AND SCIENCE EDUCATION

Subtitle A—Education

SEC. 111. DEFINITIONS.

Unless otherwise specified in this subtitle, the terms used in this subtitle have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

CHAPTER 1—MATH AND SCIENCE TEACHERS

SEC. 121. BACCALAUREATE DEGREES IN MATHEMATICS AND SCIENCE WITH TEACHER CERTIFICATION.

(a) GRANTS AUTHORIZED.—From the amounts authorized under subsection (g), the Secretary shall award grants to eligible recipients to enable the eligible recipients to provide integrated courses of study in mathematics, science, or engineering and teacher education, that lead to a baccalaureate degree in mathematics, science, or engineering with concurrent teacher certification.

(b) DEFINITION OF ELIGIBLE RECIPIENT.—In this section, the term ''eligible recipient'' means any department of mathematics, science, or engineering of an institution of higher education.

(c) AWARD AND DURATION.—

(1) AWARD.—The Secretary shall award a grant under this section to each eligible recipient that collaborates with a teacher preparation program at an institution of higher education to develop undergraduate degrees in mathematics, science, or engineering with pedagogy education and teacher certification.

(2) DURATION.—The Secretary shall award a grant under this section to each eligible recipient in an amount that is not more than $1,000,000 per year for a period of 5 years.

(d) MATCHING REQUIREMENT.—Each eligible recipient receiving a grant under this section shall provide, from non-Federal sources (provided in cash or in kind), to carry out the activities supported by the grant, an amount that is not less than 25 percent of the amount of the grant for the first year of the grant, not less than 35 percent of the amount of the grant for the second year of the grant, and not less than 50 percent of the amount of the grant for each succeeding fiscal year of the grant.

(e) APPLICATION.—

(1) IN GENERAL.—Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall include—

(A) a description of how the eligible recipient will use grant funds to develop and administer undergraduate degrees in mathematics, science, or engineering with pedagogy education and teacher certification, including a description of proposed high-quality research and laboratory experiences that will be available to students;

(B) a description of how the mathematics, science, or engineering departments will coordinate with a teacher preparation program to carry out the activities authorized under this section;

(C) a resource assessment that describes the resources available to the eligible recipient, the intended use of the grant funds, and the commitment of the resources of the eligible recipient to the activities assisted under this section, including financial support, faculty participation, time commitments, and continuation of the activities assisted under the grant when the grant period ends;

(D) an evaluation plan, including measurable objectives and benchmarks for—

(i) improving student retention;

(ii) increasing the percentage of highly qualified mathematics and science teachers; and

(iii) improving kindergarten through grade 12 student academic performance in mathematics and science;

(E) a description of the activities the eligible recipient will conduct to ensure graduates of the program keep informed of the latest developments in the respective fields;

(F) a description of how the eligible recipient will work with local educational agencies in the area in which the eligible recipient is located and, to the extent practicable, with local educational agencies where graduates of the program authorized under this section are employed, to ensure that the activities required under subsection (f)(3) are carried out; and

(G) a description of efforts to encourage applications to the program from underrepresented groups, including women and minority groups.

(f) AUTHORIZED ACTIVITIES.—An eligible recipient shall use the funds received under this section—

(1) to develop and administer teacher education and certification programs with in-depth content education and subject-specific education in pedagogy, leading to baccalaureate degrees in mathematics, science, or engineering with concurrent teacher certification;

(2) to offer high-quality research experiences and training in the use of educational technology; and

(3) to work with local educational agencies in the area in which the eligible recipient is located and, to the extent practicable, with local educational agencies where graduates of the program authorized under this section are employed, to support the new teachers during the initial years of teaching, which may include—

(A) promoting effective teaching skills;

(B) development of skills in educational interventions based on scientifically-based research;

(C) providing opportunities for high-quality teacher mentoring;

(D) providing opportunities for regular professional development;

(E) interdisciplinary collaboration among exemplary teachers, faculty, researchers, and other staff who prepare new teachers; and

(F) allowing time for joint lesson planning and other constructive collaborative activities.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $30,000,000 for fiscal year 2007;
(2) $90,000,000 for fiscal year 2008;
(3) $190,000,000 for fiscal year 2009;
(4) $290,000,000 for fiscal year 2010;
(5) $390,000,000 for fiscal year 2011;
(6) $500,000,000 for fiscal year 2012; and
(7) $500,000,000 for fiscal year 2013.

SEC. 122. MASTER'S DEGREES IN MATHEMATICS AND SCIENCE EDUCATION FOR TEACHERS.

(a) PURPOSES.—The purpose of this section is provide competitive institutional grants for eligible recipients to develop part-time, 3-year master's degree programs in mathematics and science education for teachers in order to enhance the content knowledge and pedagogical skills of teachers.

(b) DEFINITION OF ELIGIBLE RECIPIENT.—In this section, the term ''eligible recipient'' means a mathematics, science, or engineering department of an institution of higher education.

(c) GRANTS AUTHORIZED.—

(1) GRANTS TO ELIGIBLE RECIPIENTS.—From the amounts authorized under subsection (i), the Secretary is authorized to award grants of not more than $1,000,000, on a competitive basis, to eligible recipients to enable the eligible recipients to carry out the authorized activities described in subsection (f).

(2) QUALIFICATION.—In order to qualify for a grant under this section, an eligible recipient shall collaborate with a teacher preparation program of an institution of higher education.

(d) APPLICATION.—To be eligible to receive a grant under this section, an eligible recipient shall submit an application to the Secretary that—

(1) meets the requirements of this section;

(2) includes a description of how the eligible recipient intends to use the grant funds provided under this section;

(3) contains such information and assurances as the Secretary may require;

(4) describes how the eligible recipient will prepare teachers to become more effective mathematics or science teachers;

(5) describes how the eligible recipient will coordinate with a teacher preparation program, and how the activities of the eligible recipient will be consistent with State, local, and other education reform activities that promote student achievement;

(6) describes the resources available to the eligible recipient, the intended use of the grant funds, and the commitment of resources of the eligible recipient to the activities assisted under this section, including financial support, faculty participation, time commitments, and continuation of the activities when the grant period ends;

(7) provides an evaluation plan pursuant to subsection (g);

(8) describes how the eligible recipient will align the proposed master's degree program with challenging student academic achievement standards, and challenging academic content standards, established by the State in which the eligible recipient is located;

(9) describes the activities the eligible recipient will undertake to ensure that local educational agencies in the geographic areas served by the eligible recipient are provided information about the activities carried out with grant funds under this section; and

(10) describes how the eligible recipient will encourage applications to the program from underrepresented groups, including women and minority groups.

(e) PRIORITY.—The Secretary may give priority consideration to applications that demonstrate that the eligible recipient shall—

(1) consult with local educational agencies in developing and administering master's degree programs;

(2) use online technology to allow for flexibility in the pace at which candidates complete the master's degree programs; and

(3) develop innovative efforts aimed at reducing the shortage of master's degree level mathematics or science teachers in low-income urban or rural areas.

(f) AUTHORIZED ACTIVITIES.—An eligible recipient shall use the grant funds received under this section to develop part-time, 3-year master's degree programs in mathematics and science education for teachers, conducted over 3 full-time summer sessions, and alternate weekends during the academic year, as appropriate, which shall include—

(1) developing courses that—

(A) are based on rigorous mathematics and science content and aligned with challenging State academic content standards;

(B) promote effective teaching skills; and

(C) promote understanding of effective instructional strategies for students with special needs, including students with disabilities, students who are limited English proficient, and students who are gifted and talented;

(2) hiring and training professional staff to administer the program;

(3) purchasing equipment for computer and teaching aids;

(4) providing educational instruction for not fewer than 20 teachers per year;

(5) providing stipends to help support the participants in the form of tuition reimbursement and travel expenses; and

(6) creating opportunities for clinical experience and training for teachers through participation with professionals in business, research, and work environments relating to mathematics, science, or engineering, including opportunities for using laboratory equipment.

(g) ANNUAL EVALUATION.—Each eligible recipient shall establish and include in the application submitted pursuant to section (d) an evaluation plan that includes strong performance objectives. The plan shall include objectives and measures for increasing—

(1) the percentage of master's degree level mathematics or science teachers hired by the State in which the eligible recipient is located;

(2) teacher retention;

(3) the percentage of master's degree level mathematics or science teachers serving in high-need schools;

(4) the percentage of master's degree level mathematics or science teachers among underrepresented groups; and

(5) the competencies of program graduates in their respective fields of mathematics or science.

(h) GRADUATE FELLOWSHIPS.—An individual who has received a master's degree in mathematics or science education under a program developed pursuant to this section and who meets the requirements of section 141(b)(2) shall be eligible for a fellowship authorized under such section 141(b)(2).

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $200,000,000 for fiscal year 2007;
(2) $500,000,000 for fiscal year 2008;
(3) $500,000,000 for fiscal year 2009;
(4) $500,000,000 for fiscal year 2010;
(5) $500,000,000 for fiscal year 2011;
(6) $500,000,000 for fiscal year 2012; and
(7) $500,000,000 for fiscal year 2013.

CHAPTER 2—NATIONAL SCIENCE FOUNDATION SCHOLARSHIPS AND FELLOWSHIPS

Subchapter A—National Science Foundation Scholarships for Mathematics and Science Teachers

SEC. 131. PURPOSE.

The purpose of this subchapter is to annually recruit and train 10,000 new mathematics and science teachers by providing scholarships for undergraduate courses of study leading to baccalaureate degrees in mathematics, science, or engineering, with concurrent teacher certification.

SEC. 132. RECRUITING AND TRAINING NEW MATHEMATICS AND SCIENCE TEACHERS.

(a) GRANTS AUTHORIZED.—From the amounts authorized under subsection (g), the Director of the National Science Foundation (referred to in this section as the ''Director'') shall award merit-based undergraduate scholarships to eligible students to assist the eligible students in paying their college education expenses, which shall include tuition, fees, books, supplies, and equipment required for courses of instruction.

(b) DEFINITION OF ELIGIBLE STUDENT.—In this section, the term ''eligible student'' means a student who—

(1) attends an institution of higher education;

(2) is majoring in mathematics, science, or engineering;

(3) is pursuing concurrent certification in teaching; and

(4) demonstrates continued academic achievement and progress, as determined by the Director, toward completion of a baccalaureate degree in mathematics, science, or engineering with concurrent certification in teaching.

(c) AWARDS.—The Director shall award a scholarship under this section to an eligible student in an amount that is not greater than $20,000 per academic year for not more than 4 years of undergraduate study. The amount awarded for each academic year shall not exceed the student's cost of attendance for the academic year.

(d) SERVICE REQUIREMENTS.—

(1) SERVICE REQUIREMENT.—An individual who is awarded a scholarship under this section shall enter into an agreement with the Director under which the individual agrees to be employed for not less than 5 academic years as a full-time mathematics, science, or elementary school teacher in a public elementary school or secondary school, or 4 academic years as a full-time mathematics, science, or elementary school teacher in a public elementary school or secondary school—

(A)(i) in which not less than 40 percent of the children enrolled in the school are from low-income families; or

(ii) designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary; and

(B)(i) in which there is a higher percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(ii) in which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licenses.

(2) COORDINATION WITH THE SECRETARY OF EDUCATION.—The Director shall coordinate with the Secretary to determine whether an individual who receives a scholarship award under this section is employed as a full-time

mathematics, science, or elementary school teacher in accordance with paragraphs (1), (3), and (4).

(3) FAILURE TO COMPLY.—If an individual who receives a scholarship award under this section fails to comply with the agreement entered into pursuant to paragraph (1), the Director shall take 1 or more of the following actions:

(A) Require the individual to repay all or the applicable portion of the total scholarship amount awarded to the individual under this section.

(B) Impose a fine or penalty in an amount to be determined by the Director.

(4) REGULATIONS.—The Director shall promulgate regulations setting forth the terms of repayment and the criteria to be considered in granting a waiver for the service requirements. Such criteria shall include whether compliance with the service requirements is inequitable and represents undue hardship.

(e) COORDINATION WITH THE SECRETARY OF DEFENSE.—The Director shall coordinate with the Secretary of Defense to ensure members of the Armed Forces are aware of the educational opportunity under this section, particularly members of the Armed Forces who have training in engineering.

(f) FELLOWSHIPS.—An individual shall be eligible for a fellowship under section 141(b)(1) if the individual—

(1) has received a baccalaureate degree in mathematics, science, or engineering, and concurrent certification in teaching;

(2) has received a scholarship award under this section; and

(3) meets the requirements of section 141(b)(1).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $50,000,000 for fiscal year 2007;
(2) $100,000,000 for fiscal year 2008;
(3) $150,000,000 for fiscal year 2009;
(4) $170,000,000 for fiscal year 2010;
(5) $170,000,000 for fiscal year 2011;
(6) $170,000,000 for fiscal year 2012; and
(7) $170,000,000 for fiscal year 2013.

Subchapter B—National Science Foundation Fellowships for Mathematics and Science Teachers

SEC. 141. NATIONAL SCIENCE FOUNDATION FELLOWSHIPS FOR MATHEMATICS AND SCIENCE TEACHERS.

(a) FELLOWSHIP AUTHORIZED.—The Director of the National Science Foundation (referred to in this section as the ''Director'') is authorized to award fellowships to individuals, as described in subsection (b), a portion of which shall be used for continuing education and professional development activities.

(b) FELLOWSHIP AWARDS.—The Director shall award the following fellowships:

(1) The Director shall award $10,000 annually for 4 academic years to an individual who meets the following criteria:

(A) The individual has received a baccalaureate degree in mathematics, science, or engineering, and concurrent certification in teaching.

(B) The individual received a scholarship award under section 132.

(C) The individual is employed as a full-time mathematics, science, or elementary school teacher in a public elementary school or secondary school—

(i)(I) in which not less than 40 percent of the children enrolled in the school are from low-income families; or

(II) designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary; and

(ii)(I) in which there is a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(II) in which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licenses.

(2) The Director shall award $10,000 annually for 5 academic years to an individual who has received a master's degree in mathematics or science education under a program developed pursuant to section 122 and who undertakes increased responsibilities, such as teacher mentoring and other leadership activities.

(c) APPLICATION.—An individual desiring a fellowship under this section shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may require. Each application shall include assurances that the individual meets the requirements of the fellowship for which the individual is applying.

(d) COORDINATION.—The Director shall coordinate with the Secretary to determine whether an individual who receives a fellowship under this section meets the requirements of this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to carry out subsection (b)(1)—
(A) $5,000,000 for fiscal year 2008;
(B) $15,000,000 for fiscal year 2009;
(C) $30,000,000 for fiscal year 2010;
(D) $45,000,000 for fiscal year 2011;
(E) $45,000,000 for fiscal year 2012; and
(F) $45,000,000 for fiscal year 2013; and

(2) to carry out subsection (b)(2)—
(A) $100,000,000 for fiscal year 2010;
(B) $200,000,000 for fiscal year 2011;
(C) $300,000,000 for fiscal year 2012; and
(D) $400,000,000 for fiscal year 2013.

CHAPTER 3—ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS

SEC. 151. ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS.

(a) PURPOSE.—The purposes of this section are—

(1) to educate an additional 70,000 Advanced Placement (AP) or International Baccalaureate (IB) and 80,000 pre-AP or pre-IB teachers of mathematics and science over the 5 year period beginning with 2007; and

(2) to triple to 1,500,000 the number of students who take AP and IB mathematics and science examinations.

(b) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From the amounts authorized under subsection (i), the Secretary shall award grants, on a competitive basis, to eligible recipients to enable the eligible recipients to carry out the activities authorized in subsection (f).

(2) LIMITATION.—An eligible recipient may not receive more than 1 grant at a time under this section to undertake authorized activities within the same State.

(c) DEFINITIONS.—In this section:

(1) ELIGIBLE RECIPIENT.—The term ''eligible recipient'' means a nonprofit educational entity with expertise in Advanced Placement or International Baccalaureate services.

(2) MASTER TEACHER.—The term ''master teacher'' means a teacher—

(A) with an advanced degree or an advanced certification;

(B) who uses the most effective teaching methods in the teacher's disciplines; and

(C) who has shown demonstrable results of higher student achievement in mathematics or science.

(d) APPLICATION.—

(1) IN GENERAL.—Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the need for increased access to Advanced Placement or International Baccalaureate programs in mathematics and science;

(B) provide for the involvement of business and community organizations in the activities to be assisted;

(C) describe the availability of matching funds from non-Federal sources to assist in the activities authorized; and

(D) demonstrate an intent to carry out activities that target local educational agencies—

(i) that serve not fewer than 10,000 children from low-income families;

(ii) for which not less than 20 percent of the children served by the local educational agency are children from low-income families; or

(iii) with a total of less than 600 students in average daily attendance at the schools that are served by the local educational agency and all of those schools are designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary.

(e) PRIORITY CONSIDERATION.—The Secretary shall give priority to eligible recipients that submit an application under subsection (d) that demonstrates a pervasive need to expand or develop Advanced Placement or International Baccalaureate programs in mathematics and science.

(f) AUTHORIZED ACTIVITIES.—An eligible recipient shall use the grant funds provided under this section for the following activities:

(1) To identify and work with local educational agencies to expand or develop Advanced Placement or International Baccalaureate and pre-Advanced Placement or pre-International Baccalaureate programs in mathematics and science in schools served by the local educational agencies.

(2) To work with the local educational agencies to establish Advanced Placement or International Baccalaureate coordinators in each secondary school served by the local educational agencies.

(3) To ensure master teachers provide training to prepare teachers to teach Advanced Placement or International Baccalaureate courses in mathematics and science, which shall include at a minimum—

(A) week-long summer institutes; and

(B) 2-day seminars in the teachers' disciplines each year for 4 years.

(4) To ensure master teachers provide training to prepare teachers to teach pre-Advanced Placement or pre-International Baccalaureate courses in mathematics and science, which shall include at a minimum—

(A) a 4-day summer institute; and

(B) 4 days on campus each year for 4 years.

(5) To provide stipends to teachers who satisfactorily complete the Advanced Placement or International Baccalaureate or pre-Advanced Placement or pre-International Baccalaureate training.

(6) To provide a bonus to a teacher who has satisfactorily completed the Advanced Placement or International Baccalaureate or pre-Advanced Placement or pre-International Baccalaureate training for each student of the teacher who passes an Advanced Placement or International Baccalaureate examination in mathematics and science.

(7) To provide test preparation sessions for students taking Advanced Placement or International Baccalaureate examinations in mathematics and science.

(8) To reimburse students half of the cost of the Advanced Placement or International Baccalaureate mathematics and science examination fees.

(9) To provide scholarships to students who pass the Advanced Placement or International Baccalaureate mathematics and science examinations.

(g) EVALUATION AND ACCOUNTABILITY PLAN.—

(1) IN GENERAL.—Each eligible recipient receiving a grant under this section shall develop an evaluation and accountability plan for activities assisted under this section that includes rigorous objectives that measure the impact of activities assisted under this section.

(2) CONTENTS.—The plan developed pursuant to paragraph (1) shall include—

(A) the number of students served by the eligible recipient who are taking pre-Advanced Placement or pre-International Baccalaureate courses in mathematics and science;

(B) the number of students served by the eligible recipient who are taking Advanced Placement or International Baccalaureate courses in mathematics and science;

(C) the number of students served by the eligible recipient who take Advanced Placement or International Baccalaureate mathematics and science examinations;

(D) the number of students served by the eligible recipients who pass Advanced Placement or International Baccalaureate mathematics and science examinations; and

(E) the number of teachers trained in Advanced Placement or International Baccalaureate and pre-Advanced Placement or pre-International Baccalaureate mathematics and science programs.

(h) MATCHING REQUIREMENTS FOR GRANTS.—Each eligible recipient receiving a grant under this section shall provide, from non-Federal sources (in cash or in kind), an amount equal to 100 percent of the amount of the grant for each year of the grant, of which not less than 25 percent shall come from State sources.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $241,000,000 for fiscal year 2007;

(2) $341,000,000 for fiscal year 2008;

(3) $453,000,000 for fiscal year 2009;

(4) $596,000,000 for fiscal year 2010; and

(5) $731,000,000 for fiscal year 2011.

CHAPTER 4—NATIONAL CLEARINGHOUSE ON MATHEMATICS AND SCIENCE TEACHING MATERIALS

SEC. 161. NATIONAL CLEARINGHOUSE ON MATHEMATICS AND SCIENCE TEACHING MATERIALS.

(a) PURPOSE.—The purpose of the this section is to strengthen the skills of mathematics and science teachers by establishing a national clearinghouse of proven effective kindergarten through grade 12 mathematics and science teaching materials.

(b) EFFECTIVE MATHEMATICS AND SCIENCE TEACHING MATERIALS.—The Secretary is authorized to convene, not later than 1 year after the date of enactment of this Act, a national panel to collect proven effective kindergarten through grade 12 mathematics and science teaching materials, or to support the development of new materials where no effective models exist.

(c) COMPOSITION OF NATIONAL PANEL.—

(1) CONSULTATION.—The Secretary shall appoint members to the panel after consultation with the National Academy of Sciences of the National Academies.

(2) SELECTION.—The Secretary shall ensure that the panel broadly represents scientists, practitioners, educators, representatives from entities with expertise in education, mathematics, and science, and parents. The Secretary shall ensure that the panel includes the following:

(A) A majority representation of educators and parents directly involved in the kindergarten through grade 12 education process.

(B) Proportionate representation of educators and parents from all demographic areas, including urban, suburban and rural schools.

(C) Proportionate representation of educators and parents from public and private schools.

(3) QUALIFICATIONS OF MEMBERS.—The members of the panel shall be individuals who have substantial knowledge or experience relating to—

(A) education, mathematics, or science policy or programs; or

(B) education, mathematics, or science curricula content development.

(d) AUTHORIZED ACTIVITIES OF NATIONAL PANEL.—The panel shall—

(1) identify proven effective kindergarten through grade 12 mathematics and science teaching materials;

(2) identify the need for new mathematics and science teaching materials, and support the development of such new materials through contracts and cooperative agreements; and

(3) establish a national clearinghouse of information on effective kindergarten through grade 12 mathematics and science teaching materials.

(e) DISSEMINATION.—The Secretary shall disseminate information related to the clearinghouse to State educational agencies, and otherwise make available and accessible to local educational agencies and schools the teaching materials collected by the panel in the form of a searchable online database or Internet web site.

(f) MATHEMATICS AND SCIENCE TEACHING MATERIALS.—

(1) RELIABILITY AND MEASUREMENT.—The kindergarten through grade 12 mathematics and science teaching materials collected under this section shall be—

(A) reliable, valid, and grounded in scientific theory and research in existence as of the date of the collection of materials;

(B) reviewed regularly to assess effectiveness; and

(C) developed in careful consideration of State academic assessments and student academic achievement standards.

(2) STUDENTS WITH DIVERSE LEARNING NEEDS.—The teaching materials shall include relevant materials for students with diverse learning needs, particularly for students with disabilities and students with limited English proficiency.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2007 and $20,000,000 for each of the fiscal years 2008 through 2011.

CHAPTER 5—FUTURE AMERICAN-SCIENTIST SCHOLARSHIPS

SEC. 171. FUTURE AMERICAN-SCIENTIST SCHOLARSHIPS.

(a) PURPOSE.—The purpose of this section is to increase the number and percentage of citizens of the United States who earn baccalaureate degrees in mathematics or science (including engineering) by providing 25,000 new competitive merit-based undergraduate scholarships to students who are citizens of the United States, for the purpose of enabling each such student to obtain a baccalaureate degree in mathematics or science at a 4-year institution of higher education.

(b) SCHOLARSHIPS.—

(1) IN GENERAL.—From the amounts authorized under subsection (e), the Secretary shall award the scholarships to eligible students that shall be used by the eligible students to pay for qualifying expenses at the 4-year institution of higher education of the eligible students' choosing.

(2) FUTURE AMERICAN-SCIENTIST SCHOLARSHIPS.—A scholarship awarded under this section shall be called a ''Future American-Scientist Scholarship''.

(c) AMOUNT; DURATION.—

(1) AMOUNT.—A scholarship award under this section shall be in an amount of not more than $20,000 per year.

(2) DURATION OF SCHOLARSHIP.—A scholarship awarded to an eligible student under this section shall be for the number of years necessary for the eligible student to earn a baccalaureate degree in mathematics or science, except that no scholarship under this section shall be awarded for a period of more than 4 years.

(d) DEFINITIONS.—In this section:

(1) ELIGIBLE STUDENT.—The term ''eligible student'' means a student who—

(A) is a citizen of the United States;

(B) is attending a 4-year institution of higher education;

(C) is enrolled, or will be enrolled at the start of the next academic year, in a course of study at an institution of higher education that leads to a baccalaureate degree in mathematics or science;

(D) demonstrates aptitude, as determined by the Secretary, in mathematics or science; or

(E) for each year of a scholarship under this section, demonstrates continued academic achievement and progress, as determined by the Secretary, toward completion of a baccalaureate degree in mathematics or science.

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) QUALIFIED EXPENSES.—The term ''qualified expenses'' means the tuition, books, fees, supplies, and equipment required for a course of instruction leading to a baccalaureate degree in mathematics or science at a 4-year institution of higher education of the eligible student's choosing.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $375,000,000 for fiscal year 2007;

(2) $750,000,000 for fiscal year 2008;

(3) $1,125,000,000 for fiscal year 2009; and

(4) $1,500,000,000 for each of the fiscal years 2010 through 2013.

CHAPTER 6—GRADUATE RESEARCH FELLOWSHIPS

SEC. 181. GRADUATE RESEARCH FELLOWSHIPS IN SCIENTIFIC AREAS OF NATIONAL NEED.

(a) FELLOWSHIPS AUTHORIZED.—From the amounts appropriated under subsection (e), the Secretary shall establish a fellowship program to provide tuition and financial support for eligible students pursuing master's and doctoral degrees in mathematics or science (including engineering) or other areas of national need.

(b) AREAS OF NATIONAL NEED.—The Secretary may establish, on an annual basis, areas of national need important to the mission of the Department of Energy, and may use the areas of national need in determining the specific fields of study to be supported by fellowship awards under this section. In establishing the areas of national need, the Secretary shall consider the results of the survey conducted under section 1101 of the Energy Policy Act of 2005 (42 U.S.C. 16411).

(c) USE AND AMOUNT OF AWARDS.—A fellowship award under this section shall be—

(1) in an amount that is commensurate with the amount of similar graduate research fellowships awarded by the National Science Foundation; and

(2) used by the eligible student to cover educational expenses and to provide additional financial support.

(d) DEFINITIONS.—In this section:

(1) ELIGIBLE STUDENT.—The term ''eligible student'' means a student who is enrolled in a master's or doctoral degree program in mathematics or science (including engineering) or other areas of national need at an institution of higher education (as defined in section 171).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated under this section—

(1) $225,000,000 for fiscal year 2007;

(2) $450,000,000 for fiscal year 2008; and

(3) $675,000,000 for each of the fiscal years 2009 through 2013.

Subtitle B—National Science Foundation Early-Career Research Grants

SEC. 191. NATIONAL SCIENCE FOUNDATION EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the National Science Foundation, for early-career scientists and engineers for purposes of pursuing independent research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term ''eligible early-career researcher'' means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Director of the National Science Foundation shall award not less than 65 grants per year to outstanding eligible early-career researchers to support the work of such researchers in universities, private industry, or federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Director of the National Science Foundation an application at such time, in such manner, and accompanied by such information as the Director may require.

(3) SPECIAL CONSIDERATION.—In awarding grants under this section, the Director of the National Science Foundation shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) DURATION AND AMOUNT.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) USE OF FUNDS.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at a university, private industry, or federally-funded research and development center.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(A) $6,500,000 for fiscal year 2007;

(B) $13,000,000 for fiscal year 2008;

(C) $19,500,000 for fiscal year 2009;

(D) $26,000,000 for fiscal year 2010; and

(E) $32,500,000 for fiscal year 2011.

TITLE II—SOWING THE SEEDS THROUGH SCIENCE AND ENGINEERING RESEARCH

Subtitle A—Office of Science and Technology Policy Matters

SEC. 211. COORDINATION OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION PROGRAMS.

(a) NATIONAL GOALS.—

(1) BODY FOR ESTABLISHMENT OF GOALS.—The Director of the Office of Science and Technology Policy shall establish within the President's Committee of Advisors on Science and Technology a standing subcommittee on education in mathematics, science, and engineering in the Federal Government.

(2) RESPONSIBILITY.—The subcommittee established under this subsection shall—

(A) develop national goals for the support by the Federal Government of education in mathematics, science, and engineering; and

(B) periodically review and update any goals so developed.

(3) PUBLIC COMMENT.—The Director shall enter into an agreement with the National Academy of Sciences or other appropriate scientific organization to seek public comment on the national goals developed under this subsection.

(b) DEPUTY ASSISTANT DIRECTOR FOR SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION PROGRAMS.—

(1) IN GENERAL.—There shall be in the Office of Science and Technology Policy a Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs who shall be appointed by the Director of the Office of Science and Technology Policy, acting through the Associate Director for Science of the Office of Science and Technology Policy, from among individuals having the qualifications specified in paragraph (2).

(2) QUALIFICATIONS FOR APPOINTMENT.—The qualifications of an individual for appointment as Deputy Assistant Director shall include such professional experience and expertise, and such other qualifications, as the Director of the Office of Science and Technology Policy considers appropriate to permit such individual to advise the Director on all matters relating to the education programs of the Executive Branch on mathematics, science, and technology.

(c) RESPONSIBILITY.—The Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Educations Programs shall ensure effective coordination among the departments, agencies, and elements of the Federal Government in the discharge of the education programs of the Executive Branch on mathematics, science, and technology.

(d) PLAN FOR COORDINATION OF PROGRAMS.—

(1) IN GENERAL.—In carrying out the responsibility described in subsection (c), the Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Educations Programs shall develop each year a plan for the coordination of the education programs of the Executive Branch on mathematics, science, and technology during the five fiscal years beginning in the year of such plan.

(2) ELEMENTS.—Each plan developed under this subsection shall include—

(A) mechanisms for the coordination of the education programs of the Executive Branch on mathematics, science, and technology during the five fiscal years beginning in the year of such plan; and

(B) recommendations on funding, by agency, of such education programs during each such fiscal year.

(3) CONSISTENCY WITH NATIONAL GOALS.—Each plan developed under this subsection shall be consistent with the most current national goals for the support by the Federal Government of education in mathematics, science, and engineering developed under subsection (a).

(4) AVAILABILITY TO PUBLIC.—The Director of the Office of Science and Technology Policy shall take appropriate actions to ensure that each plan developed under this subsection is available to the public.

(e) STAFFING AND OTHER RESOURCES.—The Director of the Office of Science and Technology Policy shall assign the Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Educations Programs such personnel and other resources as the Director considers appropriate in order to permit the Deputy Assistant Director to carry out the duties of the Deputy Assistant Director under this section.

(f) DEADLINES FOR CERTAIN ACTIONS.—

(1) ESTABLISHMENT OF SUBCOMMITTEE.—The Director of the Office of Science and Technology Policy shall establish the subcommittee required by subsection (a)(1) not later than 30 days after the date of the enactment of this Act.

(2) APPOINTMENT OF DEPUTY ASSISTANT DIRECTOR.—The Director of the Office of Science and Technology Policy, acting through the Associate Director for Science of the Office of Science and Technology Policy, shall make the first appointment to the position of Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs under subsection (b)(1) not later than 60 days after the date of the enactment of this Act.

SEC. 212. NATIONAL COORDINATION OFFICE FOR ADVANCED RESEARCH INSTRUMENTATION AND FACILITIES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall establish within the Office of Science and Technology Policy an office to be known as the ''National Coordination Office for Advanced Research Instrumentation and Facilities''.

(2) HEAD OF OFFICE.—The head of the National Coordination Office for Advanced Research Instrumentation and Facilities shall be the Director of the National Coordination Office for Advanced Research Instrumentation and Facilities, who shall be appointed by the Director of the Office of Science and Technology Policy.

(3) STAFF AND OTHER RESOURCES.—The Director of the Office of Science and Technology Policy shall assign to the National Coordination Office for Advanced Research Instrumentation and Facilities such personnel and other resources as the Director of the Office of Science and Technology Policy considers appropriate in order to permit the National Coordination Office for Advanced Research Instrumentation and Facilities to carry out its duties under this section.

(4) DEADLINE FOR ESTABLISHMENT.—The National Coordination Office for Advanced Research Instrumentation and Facilities shall be established not later than 30 days after the date of the enactment of this Act.

(b) DUTIES.—

(1) IN GENERAL.—The National Coordination Office for Advanced Research Instrumentation and Facilities shall coordinate the award by the departments, agencies, and other elements of the Federal Government of grants for advanced research instrumentation and facilities.

(2) ADVANCED RESEARCH INSTRUMENTATION AND FACILITIES.—

(A) IN GENERAL.—For purposes of this section, advanced research instrumentation and

facilities are specially designed and developed instruments or tools (whether of a physical or nonphysical nature) that are available commercially but are overly expensive for design and development under a single research grant.

(B) EXAMPLES.—Examples of advanced research instrumentation and facilities for purposes of this section include the following:

(i) Single, stand-alone instruments or instrument suites.

(ii) Networks.

(iii) Computational modeling applications.

(iv) Computer databases.

(v) Sensor systems.

(vi) Facilities that house ensembles of interrelated instruments.

(vii) Instruments assembled from components.

(3) DISCHARGE OF DUTIES.—The Office shall coordinate the award of grants for advanced research instrumentation and facilities under this section in accordance with the strategic implementation plan developed under subsection (c).

(c) STRATEGIC IMPLEMENTATION PLAN.—

(1) PLAN REQUIRED.—Not later than one year after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall, in consultation with the Director of the Office of Management and Budget, develop a plan for the award by the departments, agencies, and other elements of the Federal Government of grants for advanced research instrumentation and facilities during the five-year period beginning on the date of the issuance of the plan.

(2) ELEMENTS.—The plan required by paragraph (1) shall include the following:

(A) Criteria applicable to the award of grants for advanced research instrumentation and facilities, including criteria applicable to—

(i) scientific and technical merit;

(ii) the identification of the strategic requirements of the departments, agencies, and other elements of the Federal Government; and

(iii) national science and technology needs.

(B) An assessment of the current and anticipated needs of the departments, agencies, and other elements of the Federal Government for advanced research instrumentation and facilities.

(C) A report to Congress on the proposed allocation of funds, including amounts authorized to be appropriated by subsection (f), by the departments, agencies, and other elements of the Federal Government for grants for advanced research instrumentation and facilities.

(3) PUBLIC COMMENT.—In developing the plan required by paragraph (1), the Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences, or other similar entity, to secure public comments on the plan.

(d) RECOMMENDATIONS ON AGENCY FUNDING.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall, in consultation with the Director of the National Coordination Office for Advanced Research Instrumentation and Facilities, make recommendations each year to the Director of the Office of Management and Budget on the amount of funds to be requested for the departments, agencies, and other elements of the Federal Government for the fiscal year beginning in such year for the award of grants for advanced research instrumentation and facilities.

(2) PURPOSE.—The purpose of the recommendations under paragraph (1) shall be to advise the Director of the Office of Management and Budget on the amounts to be requested in the budget of the President (as submitted to Congress under section 1105 of title 31, United States Code) for each fiscal year for the award of grants for advanced research instrumentation and facilities.

(e) USE OF GRANT AMOUNTS.—Amounts under grants awarded by departments, agencies, and other elements of the Federal Government for advanced research instrumentation and facilities may be used for purposes as follows:

(1) The purchase and installation of instruments.

(2) The commissioning of equipment.

(3) The calibration of instruments.

(4) The acquisition of parts and materials for construction of instruments.

(5) Personnel costs of personnel engaged in the development of instruments.

(6) The operation and maintenance of instruments.

(7) Such other purposes as the Director of the National Coordination Office for Advanced Research Instrumentation and Facilities considers appropriate.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to amounts appropriated under Federal law other than this Act, there is authorized to be appropriated for each of fiscal years 2008 through 2012, to carry out this section (including the plan specified in subsection (c))—

(A) $1,000,000 to the Office of Science and Technology Policy;

(B) $150,000,000 to the National Science Foundation;

(C) $87,000,000 to the Department of Defense;

(D) $152,000,000 to the Office of Science of the Department of Energy; and

(E) $117,000,000 to the National Aeronautics and Space Administration.

(2) AVAILABILITY.—The amount authorized to be appropriated by this subsection shall remain available until expended.

SEC. 213. HIGH-RISK, HIGH-PAYOFF RESEARCH.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall, in consultation with the Director of the Office of Management and Budget, establish guidelines to ensure that each Federal research agency allocates not less than 8 percent of the funds available to such agency each fiscal year for basic research for high-risk, high-payoff research.

(b) HIGH-RISK, HIGH-PAYOFF RESEARCH.—For purposes of this section, high-risk, high-payoff research is research that—

(1) has the potential for yielding results with far-ranging or wide-ranging implications; but

(2) is too novel or spans too diverse a range of disciplines to fare well in the traditional peer review process.

(c) GUIDELINE ELEMENTS.—The guidelines required by subsection (a) shall include provisions on the following:

(1) Expedited procedures for the approval of the use of funds for high-risk, high-payoff research.

(2) Annual reports by Federal research agencies on activities relating to high-risk, high-payoff research.

(3) Criteria to establish the duration of funding for high-risk, high-payoff research projects.

(4) Objectives for high-risk, high-payoff research projects.

(5) Such other criteria, objectives, or other matters as the Director of the Office of Science and Technology Policy considers appropriate.

(d) PUBLIC COMMENT.—The Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences, or similar entity, to solicit public comment, through a broad media solicitation, on the guidelines required by subsection (a) before the final issuance of such guidelines.

(e) REVIEW.—The President's Committee of Advisors on Science and Technology shall, not less often than once every two years, conduct a review to determine whether or not Federal research agencies are allocating basic research funds in accordance with the guidelines required by subsection (a).

(f) ANNUAL REPORTS TO CONGRESS.—

(1) REPORTS REQUIRED.—The Director of the Office of Management and Budget shall, in consultation with the Director of the Office of Science and Technology Policy, submit to Congress each year a report on the use by Federal research agencies of basic research funds for high-risk, high-payoff research during the preceding fiscal year.

(2) TIME FOR SUBMITTAL.—The Director of the Office of Management and Budget shall submit the report required by paragraph (1) for a year together with the budget of the President for the fiscal year beginning in such year (as submitted to Congress under section 1105 of title 31, United States Code).

(g) DEFINITIONS.—In this section:

(1) FEDERAL RESEARCH AGENCY.—The term ''Federal research agency'' means a major organizational component of a department or agency of the Federal Government, or other establishment of the Federal Government operating with appropriated funds, that has as its primary purpose the performance of scientific research.

(2) MAJOR ORGANIZATIONAL COMPONENT.—The term ''major organizational component'', with respect to a department, agency, or other establishment of the Federal Government, means a component of the department, agency, or other establishment that is administered by an individual whose rate of basic pay is not less than the rate of basic pay payable under level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 214. PRESIDENT'S INNOVATION AWARD.

(a) AUTHORITY TO AWARD.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall, subject to the approval of the President, award each year to one or more individuals an award that recognizes recent innovations in science and engineering in the United States.

(2) DESIGNATION.—The award made under this section shall be known as the ''President's Innovation Award''.

(3) PRESENTATION.—The presentation of awards made under this section shall be made by the President.

(b) SELECTION OF RECIPIENTS.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall identify recipients of the award under this section from among individuals whose achievements are recognized in the most recent document entitled ''Interagency Research and Development Priorities'' published by the Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy.

(2) SOLICITATION OF RECOMMENDATIONS.—In identifying potential recipients of the award under this section, the Director of the Office of Science and Technology Policy shall solicit recommendations from the heads of Federal agencies and the general public.

(c) NATURE OF AWARD.—The award made under this section shall consist of the following:

(1) A medal, of such design as the Director of the Office of Science and Technology Policy shall determine (subject to the approval of the President).

(2) A certificate of recognition.

(3) A cash prize, in such amount as the Director considers appropriate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Office of Science and Technology Policy each fiscal year $1,000,000 for the making of awards under this section.

Subtitle B—National Aeronautics and Space Administration Matters

SEC. 221. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the National Aeronautics and Space Administration for early-career scientists and engineers for purposes of pursuing independent research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term ''eligible early-career researcher'' means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration shall award not less than 45 grants per year to outstanding eligible early-career researchers to support the work of such researchers in universities, private industry, or federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Administrator of the National Aeronautics and Space Administration an application at such time, in such manner, and accompanied by such information as the Administrator may require.

(3) SPECIAL CONSIDERATION.—In awarding grants under this section, the Administrator of the National Aeronautics and Space Administration shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) DURATION AND AMOUNT.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) USE OF FUNDS.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at a university, private industry, or federally-funded research and development center.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(A) $4,500,000 for fiscal year 2007;

(B) $9,000,000 for fiscal year 2008;

(C) $13,500,000 for fiscal year 2009;

(D) $18,000,000 for fiscal year 2010; and

(E) $22,500,000 for fiscal year 2011.

SEC. 222. AUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION FOR BASIC SCIENCES.

(a) IN GENERAL.—There is hereby authorized to be appropriated for the National Aeronautics and Space Administration for basic sciences for research specified in subsection (b), amounts as follows:

(1) $2,768,000,000 for fiscal year 2007.

(2) $3,044,000,000 for fiscal year 2008.

(3) $3,349,000,000 for fiscal year 2009.

(4) $3,684,000,000 for fiscal year 2010.

(5) $4,052,000,000 for fiscal year 2011.

(6) $4,457,000,000 for fiscal year 2012.

(7) $4,903,000,000 for fiscal year 2013.

(b) COVERED RESEARCH.—The research specified in this subsection is research under programs as follows:

(1) The Solar System Exploration Research Program.

(2) The Mars Exploration Research Program.

(3) The Astronomical Search for Origins Research Program.

(4) The Structure and Evolution of the Universe Research Program.

(5) The Earth–Sun Connection Research Program.

(6) The Earth Systems Science Research Program.

(7) The Earth Science Applications Research Program.

(8) The Biological Sciences Research Program.

(9) The Physical Sciences Research Program.

(10) The Aeronautics Program.

(11) Such other basic research programs as the Administrator of the National Aeronautics and Space Administration may determine to be appropriate, after notifying the appropriate committees of Congress of the Administrator's intent to make the determination.

Subtitle C—Communications Matters

SEC. 231. SENSE OF SENATE ON POLICIES TO ACCELERATE DEPLOYMENT OF ACCESS TO BROADBAND INTERNET.

It is the sense of the Senate that Congress and the Federal Communications Commission should work together to ensure the implementation of regulatory policies that facilitate and accelerate the deployment of access to broadband Internet to order to provide broadband Internet service to as many residences, businesses, and schools as possible in both urban areas and rural areas.

Subtitle D—Science Parks

SEC. 241. DEVELOPMENT OF SCIENCE PARKS.

(a) FINDING.—Section 2 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701) is amended by adding at the end the following new paragraph:

''(12) It is in the best interests of the Nation to encourage the formation of science parks to promote the clustering of innovation through high technology activities.''.

(b) DEFINITION.—Section 4 of such Act (15 U.S.C. 3703) is amended by adding at the end the following new paragraphs:

''(14) 'Science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

''(15) 'Business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

''(16) 'Science park infrastructure' means facilities that support the daily economic activity of a science park.''.

(c) PROMOTION OF DEVELOPMENT OF SCIENCE PARKS.—Section 5(c) of such Act (15 U.S.C. 3704(c)) is amended—

(1) in paragraph (14), by striking ''and'' at the end;

(2) in paragraph (15), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(16) promote the formation of science parks.''.

(d) SCIENCE PARKS.—Such Act is further amended by adding at the end the following new section:

''SEC. 24. SCIENCE PARKS.

''(a) DEVELOPMENT OF PLANS FOR CONSTRUCTION OF SCIENCE PARKS.—

''(1) IN GENERAL.—The Secretary shall award grants for the development of feasibility studies and plans for the construction of new or expansion of existing science parks.

''(2) LIMITATION ON AMOUNT OF GRANTS.—The amount of a grant awarded under this subsection may not exceed $750,000.

''(3) AWARD.—

''(A) COMPETITION REQUIRED.—The Secretary shall award any grant under this subsection pursuant to a full and open competition.

''(B) ADVERTISING.—The Secretary shall advertise any competition under this paragraph in the Commerce Business Daily.

''(C) SELECTION CRITERIA.—The Secretary shall publish the criteria to be utilized in any competition under this paragraph for the selection of recipients of grants under this subsection. Such criteria shall include requirements relating to—

''(i) the number of jobs to be created at the science park each year for a period of 5 years;

''(ii) the funding to be required to construct or expand the science park over the first 5 years;

''(iii) the amount and type of cost matching by the applicant;

''(iv) the types of businesses and research entities expected in the science park and surrounding community;

''(v) letters of intent by businesses and research entities to locate in the science park;

''(vi) the capacity of the science park for expansion over a period of 25 years;

''(vii) the quality of life at the science park for employees at the science park;

''(viii) the capability to attract a well trained workforce to the science park;

''(ix) the management of the science park;

''(x) expected risks in the construction and operation of the science park;

''(xi) risk mitigation;

''(xii) transportation and logistics;

''(xiii) physical infrastructure, including telecommunications; and

''(xiv) ability to collaborate with other science parks throughout the world.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2007 through 2012, $7,500,000 to carry out this subsection.

''(b) REVOLVING LOAN PROGRAM FOR DEVELOPMENT OF SCIENCE PARK INFRASTRUCTURE.—

''(1) IN GENERAL.—The Secretary shall make grants to six regional centers for the development of existing science park infrastructure through the operation of revolving loan funds by such centers.

''(2) SELECTION OF CENTERS.—

''(A) IN GENERAL.—The Secretary shall select the regional centers to be awarded grants under this subsection utilizing such criteria as the Secretary shall prescribe.

''(B) CRITERIA.—The criteria prescribed by the Secretary under this paragraph shall include criteria relating to revolving loan funds and revolving loan fund operators under paragraph (4), including—

''(i) the qualifications of principal officers;

''(ii) non-Federal cost matching requirements; and

''(iii) conditions for the termination of loan funds.

''(3) LIMITATION ON LOAN AMOUNT.—The amount of any loan for the development of

existing science park infrastructure that is funded under this subsection may not exceed $3,000,000.

''(4) REVOLVING LOAN FUNDS.—

''(A) IN GENERAL.—A regional center receiving a grant under this subsection shall fund the development of existing science park infrastructure through the utilization of a revolving loan fund.

''(B) OPERATION AND INTEGRITY.—The Secretary shall prescribe regulations to maintain the proper operation and financial integrity of revolving loan funds under this paragraph.

''(C) EFFICIENT ADMINISTRATION.—The Secretary may—

''(i) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

''(ii) assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation, and a third party may retain assets of the fund to defray costs related to liquidation; and

''(iii) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

''(D) TREATMENT OF ACTIONS.—An action taken by the Secretary under this paragraph with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

''(E) PRESERVATION OF SECURITIES LAWS.—

''(i) NOT TREATED AS EXEMPTED SECURITIES.—No securities issued pursuant to subparagraph (C)(iii) shall be treated as exempted securities for purposes of the Securities Act of 1933 or the Securities Exchange Act of 1934, unless exempted by rule or regulation of the Securities and Exchange Commission.

''(ii) PRESERVATION.—Except as provided in clause (i), no provision of this paragraph or any regulation issued by the Secretary under this paragraph shall supersede or otherwise affect the application of the securities laws (as such term is defined in section 2(a)(47) of the Securities Exchange Act of 1934) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization thereunder.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2007 through 2012, $60,000,000 to carry out this subsection.

''(c) LOAN GUARANTEES FOR SCIENCE PARK INFRASTRUCTURE.—

''(1) IN GENERAL.—The Secretary shall guarantee up to 80 percent of the loan amount for loans exceeding $10,000,000 for projects for the construction of science park infrastructure.

''(2) LIMITATIONS ON GUARANTEE AMOUNTS.—The maximum amount of loan principal guaranteed under this subsection may not exceed—

''(A) $50,000,000 with respect to any single project; and

''(B) $500,000,000 with respect to all projects.

''(3) SELECTION OF GUARANTEE RECIPIENTS.—The Secretary shall select recipients of loan guarantees under this subsection based upon the ability of the recipient to collateralize the loan amount through bonds, equity, property, and other such criteria as the Secretary shall prescribe.

''(4) TERMS AND CONDITIONS FOR LOAN GUARANTEES.—For purposes of this section, the loans guaranteed shall be subject to such terms and conditions as the Secretary may prescribe, except that—

''(A) the final maturity of such loans made or guaranteed shall not exceed (as determined by the Secretary) the lesser of—

''(i) 30 years and 32 days; or

''(ii) 90 percent of the useful life of any physical asset to be financed by such loan;

''(B) no loan made or guaranteed may be subordinated to another debt contracted by the borrower or to any other claims against the borrowers in the case of default;

''(C) no loan may be guaranteed unless the Secretary determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States;

''(D) no loan may be guaranteed if the income from such loan is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986, or if the guarantee provides significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded;

''(E) any guarantee shall be conclusive evidence that said guarantee has been properly obtained, that the underlying loan qualified for such guarantee, and that, but for fraud or material misrepresentation by the holder, such guarantee shall be presumed to be valid, legal, and enforceable;

''(F) the Secretary shall prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans;

''(G) the Secretary must find that there is a reasonable assurance of repayment before extending credit assistance; and

''(H) new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

''(5) PAYMENT OF LOSSES.—For purposes of this section—

''(A) IN GENERAL.—If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Secretary may require, the Secretary determines that the holder has suffered a loss, the Secretary shall pay to such holder the percentage of such loss (not more than 80 percent) specified in the guarantee contract. Upon making any such payment, the Secretary shall be subrogated to all the rights of the recipient of the payment. The Secretary shall be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this section.

''(B) ENFORCEMENT OF RIGHTS.—The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section.

''(C) FORBEARANCE.—Nothing in this section may be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary, if budget authority for any resulting subsidy costs (as defined under the Federal Credit Reform Act of 1990) is available.

''(D) MANAGEMENT OF PROPERTY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right in the Secretary's discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Secretary pursuant to the provisions of this section.

''(6) REVIEW.—The Comptroller General of the United States shall, within 2 years of the date of enactment of this section, conduct a review of the subsidy estimates for the loan guarantees under this subsection, and shall submit to Congress a report on the review conducted under this paragraph.

''(7) TERMINATION.—No loan may be guaranteed under this subsection after September 30, 2012.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

''(A) $35,000,000 for the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of guaranteeing $500,000,000 of loans under this subsection; and

''(B) $6,000,000 for administrative expenses for fiscal year 2007 and such sums as necessary thereafter for administrative expenses in subsequent years.

''(d) NATIONAL ACADEMY OF SCIENCES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall enter into an agreement with the National Academy of Sciences under which the Academy shall evaluate, on a tri-annual basis, the activities under this section.

''(2) TRI-ANNUAL REPORT.—Under the agreement under paragraph (1), the Academy shall submit to the Secretary a report on its evaluation of science park development under that paragraph. Each report may include such recommendations as the Academy considers appropriate for additional activities to promote and facilitate the development of science parks in the United States.

''(e) TRI-ANNUAL REPORT.—Not later than March 31 of every third year, the Secretary shall submit to Congress a report on the activities under this section during the preceding 3 years, including any recommendations made by the National Academy of Sciences under subsection (d)(2) during such period. Each report may include such recommendations for legislative or administrative action as the Secretary considers appropriate to further promote and facilitate the development of science parks in the United States.

''(f) REGULATIONS.—

''(1) REGULATIONS.—Consistent with Office of Management and Budget Circular A–129, 'Policies for Federal Credit Programs and Non-Tax Receivables', the Secretary shall prescribe regulations to carry out this section.

''(2) DEADLINE.—The Secretary shall prescribe such regulations not later than one year after the date of enactment of this section.''.

Subtitle E—Authorization of Appropriations for the National Science Foundation for Research and Related Activities

SEC. 251. AUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL SCIENCE FOUNDATION FOR RESEARCH AND RELATED ACTIVITIES.

(a) IN GENERAL.—There is hereby authorized to be appropriated for the National Science Foundation for Research and Related Activities, amounts as follows:

(1) $4,195,000,000 for fiscal year 2007.
(2) $4,614,000,000 for fiscal year 2008.
(3) $5,076,000,000 for fiscal year 2009
(4) $5,584,000,000 for fiscal year 2010.
(5) $6,143,000,000 for fiscal year 2011.
(6) $6,757,000,000 for fiscal year 2012.
(7) $7,432,000,000 for fiscal year 2013.

(b) LIMITATION ON AVAILABILITY.—Amounts authorized to be appropriated for the National Science Foundation by subsection (a) shall not be available for the United States Solar Program and Integrative Activities of the Foundation.

TITLE III—ENSURING THE BEST AND BRIGHTEST REMAIN IN THE UNITED STATES

Subtitle A—Visas for Doctorate Students in Mathematics, Engineering, Technology, or the Physical Sciences

SEC. 311. FINDINGS.

Congress finds the following:

(1) The National Academies, in their congressionally requested report entitled ''Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future'', recommended that Congress—

(A) continue to improve visa processing for international students and scholars by providing less complex procedures and continuing to make improvements on issues such as visa categories and duration, travel for scientific meetings, the technology-alert list, reciprocity agreements, and changes in status;

(B) provide a 1-year automatic visa extension to international students who receive doctorates or the equivalent in science, technology, engineering, mathematics, or other fields of national need at qualified United States institutions to remain in the United States to seek employment;

(C) provide such students with automatic work permits and expedited residence status if they are offered jobs by employers based in the United States and pass a security screening test;

(D) institute a new skills-based, preferential immigration option that gives applicants with doctorate-level education and science and engineering skills priority in obtaining United States citizenship; and

(E) increase the number of H–1B visas by 10,000, which should be allocated for applicants with doctorate degrees in science, or engineering from a United States university; and

(2) Since the publication of the report by the National Academies, the Senate has passed the Deficit Reduction Act of 2005, which authorizes an additional 30,000 H–1B visas per year.

SEC. 312. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Department of State and the Department of Homeland Security have made significant improvements since 2002 in the efficiency with which visas are processed for—

(A) students at colleges and universities in the United States; and

(B) foreign researchers to engage in appropriate scientific research in the United States;

(2) particular improvements have been made to the MANTIS clearance process, which—

(A) reduce wait times from more than 70 days to less than 15 days; and

(B) extend the duration of the MANTIS clearance process up to 4 years, as appropriate, to cover the duration of study for foreign students in the United States;

(3) both departments and related supporting agencies should further improve efficiency and convenience in the granting of visas to foreign students and researchers while protecting national security;

(4) the departments should extend MANTIS clearance for foreign researchers for the duration of a specified scientific research program while balancing security concerns; and

(5) other such improvements should include—

(A) review of the technology-alert list; and

(B) efforts to better facilitate travel for scientific conferences.

SEC. 313. VISAS FOR DOCTORATE STUDENTS IN MATHEMATICS, ENGINEERING, TECHNOLOGY, OR THE PHYSICAL SCIENCES.

(a) CREATION OF NEW VISA CATEGORY.—Section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended—

(1) in clause (i)—

(A) by inserting ''(except for a graduate program described in clause (iv))'' after ''full course of study'';

(B) by striking ''214(*l*)'' and inserting ''214(m)''; and

(C) by striking the comma at the end and inserting a semicolon;

(2) in clause (ii)—

(A) by inserting ''or clause (iv)'' after ''clause (i)''; and

(B) by striking '', and'' and inserting a semicolon;

(3) in clause (iii), by inserting ''and'' at the end; and

(4) by adding at the end the following:

''(iv) an alien described in clause (i) who has been accepted and plans to attend an accredited graduate program in mathematics, engineering, technology, or the physical sciences in the United States for the purpose of obtaining a doctorate degree;''.

(b) REQUIREMENTS FOR OBTAINING AN F–4 VISA.—Section 214(m) of the Immigration and Nationality Act (8 U.S.C. 1184(m)) is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

''(m) NONIMMIGRANT ELEMENTARY, SECONDARY, AND POST-SECONDARY SCHOOL STUDENTS.—''; and

(2) by adding at the end the following:

''(3)(A) An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(iv) shall demonstrate an intent to—

''(i) return to the country of residence of such alien immediately after the completion or termination of the graduate program qualifying such alien for such status; or

''(ii) find employment in the United States related to the field of study of such alien and become a permanent resident of the United States upon the completion of the graduate program, which was the basis for such nonimmigrant status.

''(B) A visa issued to an alien under section 101(a)(15)(F)(iv) shall be valid—

''(i) during the intended period of study in a graduate program described in such section;

''(ii) for an additional period, not to exceed 1 year beyond the completion of the graduate program, if the alien is actively pursuing an offer of employment related to the knowledge and skills obtained through the graduate program; and

''(iii) for an additional period, not to exceed 6 months, while the alien's application for adjustment of status under section 245(i)(4) is pending.

''(C) An alien shall qualify for adjustment of status to that of a person admitted for permanent residence if the alien—

''(i) has the status of a nonimmigrant under section 101(a)(15)(F)(iv);

''(ii) has successfully earned a doctorate degree in mathematics, engineering, technology or the physical sciences at an accredited college or university in the United States; and

''(iii) is employed full-time in the United States in a position related to the knowledge and skills gained while pursuing such degree.''.

(c) ADJUSTMENT OF STATUS.—Section 245(i) of the Immigration and Nationality Act (8 U.S.C. 1255(i)) is amended by adding at the end the following:

''(4) The Secretary of Homeland Security may adjust the status of an alien who meets the requirements under section 214(m)(3) to that of an alien lawfully admitted for permanent residence if the alien—

''(A) makes an application for such adjustment;

''(B) is eligible to receive an immigrant visa;

''(C) is admissible to the United States for permanent residence; and

''(D) remits a fee of $1,000 to the Secretary.''.

(d) USE OF FEES.—

(1) JOB TRAINING; SCHOLARSHIPS.—Section 286(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(1)) is amended by inserting ''and 80 percent of the fees collected under section 245(i)(4)'' before the period at the end.

(2) FRAUD PREVENTION AND DETECTION.—Section 286(v)(1) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(1)) is amended by inserting ''and 20 percent of the fees collected under section 245(i)(4)'' before the period at the end.

SEC. 314. ALIENS NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOYMENT-BASED IMMIGRANTS.

(a) IN GENERAL.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

''(F) Aliens who have earned an advanced degree in science, technology, engineering, or math and have been working in a related field in the United States under a nonimmigrant visa during the 3-year period preceding their application for an immigrant visa under section 203(b).

''(G) Aliens described in subparagraph (A) or (B) of section 203(b)(1)(A) or who have received a national interest waiver under section 203(b)(2)(B).

''(H) The immediate relatives of an alien who is admitted as an employment-based immigrant under section 203(b).''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to any visa application pending on the date of enactment of this Act and any visa application filed on or after such date of enactment.

Subtitle B—Patent Reform

SEC. 321. PATENT REFORM.

It is the sense of the Senate that—

(1) the United States Patent and Trademark Office should be provided with sufficient resources to make intellectual property protection more timely, predictable, and effective;

(2) the resources described under paragraph (1) should include a 20 percent increase in overall funding to hire and train additional examiners and implement more capable electronic processing; and

(3) Congress should implement comprehensive patent reform that—

(A) establishes a first-inventor-to-file system;

(B) institutes an open review process following the grant of a patent;

(C) encourages research uses of patented inventions by shielding researchers from infringement liability; and

(D) reduces barriers to innovation in specific industries with specialized patent needs.

TITLE IV—REFORMING DEEMED EXPORTS

SEC. 401. SENSE OF SENATE ON EXEMPTION OF CERTAIN USES OF TECHNOLOGY FROM TREATMENT AS EXPORTS.

(a) SENSE OF SENATE.—It is the sense of the Senate that the use of technology by an institution of higher education in the United States should not be treated as an export of such technology for purposes of section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) and any regulations prescribed thereunder, as currently in effect pursuant to the provisions of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or any other provision of law, if such technology is so used by such institution for fundamental research.

(b) DEFINITIONS.—In this section:

(1) FUNDAMENTAL RESEARCH.—The term ''fundamental research'' has the meaning given that term in National Security Decision Directive 189, entitled ''National Policy

on Transfer of Scientific, Technical, and Engineering Information'' and dated September 21, 1985.

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a).

TITLE V—STRENGTHENING BASIC RESEARCH AT THE DEPARTMENT OF DEFENSE

SEC. 501. DEPARTMENT OF DEFENSE EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the Department of Defense for early-career scientists and engineers for purposes of pursuing independent research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term ''eligible early-career researcher'' means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense shall award not less than 25 grants per year to outstanding eligible early-career researchers to support the work of such researchers in universities, private industry, or federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Secretary of Defense an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(3) SPECIAL CONSIDERATION.—In awarding grants under this section, the Secretary of Defense shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) DURATION AND AMOUNT.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) USE OF FUNDS.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at a university, private industry, or federally-funded research and development center.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(A) $2,500,000 for fiscal year 2007;

(B) $5,000,000 for fiscal year 2008;

(C) $7,500,000 for fiscal year 2009;

(D) $10,000,000 for fiscal year 2010; and

(E) $12,500,000 for fiscal year 2011.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE FOR BASIC RESEARCH.

There is hereby authorized to be appropriated for the Department of Defense for basic (6.1) research, amounts for the research, development, test, and evaluation accounts of the Department, and for other accounts of the Department providing funding for such research, in the aggregate as follows:

(1) $1,616,000,000 for fiscal year 2007.

(2) $1,778,000,000 for fiscal year 2008.

(3) $1,995,000,000 for fiscal year 2009.

(4) $2,151,000,000 for fiscal year 2010.

(5) $2,364,000,000 for fiscal year 2011.

(6) $2,602,000,000 for fiscal year 2012.

(7) $2,862,000,000 for fiscal year 2013.

S. 2199

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting America's Competitive Edge Through Tax Incentives Act of 2006'' or the ''PACE-Finance Act''.

SEC. 2. EXPANSION OF CREDIT FOR RESEARCH AND DEVELOPMENT.

(a) CREDIT MADE PERMANENT.—

(1) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 45C(b) of such Code is amended by striking subparagraph (D).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

(b) CREDIT RATE DOUBLED.—Paragraphs (1) and (2) of section 41(a) of the Internal Revenue Code of 1986 is are each amended by striking ''20 percent'' and inserting ''40 percent''.

(c) NEW REGULATIONS AND GUIDELINES AUTHORIZED.—The Secretary of the Treasury shall issue such regulations or guidelines as are necessary—

(1) to provide uniform conduct of tax audits relating to the credit under section 41 of the Internal Revenue Code of 1986, and

(2) to reflect the changing impact of technology on the character of research and development, such as use of databases provided by external parties and the conduct of research and development through joint ventures.

(d) EXPANSION OF CREDIT TO EXPENSES OF GENERAL COLLABORATIVE RESEARCH CONSORTIA.—Section 41 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''an energy research consortium'' in subsections (a)(3) and (b)(3)(C)(i) and inserting ''a research consortium'',

(2) by striking ''energy'' each place it appears in subsection (f)(6)(A),

(3) by inserting ''or 501(c)(6)'' after ''section 501(c)(3)'' in subsection (f)(6)(A)(i)(I), and

(4) by striking ''ENERGY RESEARCH'' in the heading for subsection (f)(6)(A) and inserting ''RESEARCH'' .

(e) STUDY OF FURTHER EXPANSION OF CREDIT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall study and make recommendations in a report to the President, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives on the following possible methods of expanding the scope of the credit under section 41 of the Internal Revenue Code of 1986:

(1) Modification of the credit to remove the incremental approach of measuring creditable research and development expenditures for taxpayers with significant and consistent annual research and development expenditures.

(2) Expansion of qualifying research and development expenditures to include—

(A) certain employee benefit costs related to qualifying wages,

(B) 100 percent of contract research costs,

(C) all expenditures which would qualify for treatment under section 174 of such Code,

(D) any other costs determined appropriate by the Secretary.

(3) Reduction or elimination of limitation of credit under section 280C(c) of such Code.

(f) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 3. UNITED STATES-BASED INNOVATION INCENTIVES STUDY.

(a) STUDY.—The Secretary of the Treasury, in consultation with the Director of the Office of Management and Budget, shall conduct an analysis of the United States tax system and its effect on this country as a location for innovation investment and related activities. The analysis shall include a comparison of the tax policies of other nations relating to long-term innovation investment and an examination of various features of the United States tax system, including—

(1) the treatment of capital gains, including the appropriate rate for very long-term investments or the appropriate allowance for loss write-offs,

(2) the overall corporate tax rate, and

(3) incentives for high-tech manufacturing and research equipment through tax credits and accelerated depreciation.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall report on the study and analysis described in subsection (a) to the President, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives.

SEC. 4. EMPLOYEE CONTINUING EDUCATION TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45N. EMPLOYEE CONTINUING EDUCATION CREDIT.

''(a) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, the employee continuing education credit determined under this section with respect to any employer for any taxable year is the applicable percentage of qualified continuing education costs paid or incurred by the employer during the calendar year ending with or within such taxable year.

''(2) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage is the percentage determined by the Secretary such that the amount of the credit allowable under this section for any calendar year does not exceed $500,000,000.

''(b) QUALIFIED CONTINUING EDUCATION COSTS.—For purposes of this section, the term 'qualified continuing education costs' means costs paid or incurred by an employer for education to maintain or improve knowledge or skills in science or engineering of an employee whose employment requires knowledge or skills in science or engineering.

''(c) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations establishing standards for educational courses and programs to which this section applies.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting '', and'', and by adding at the end the following new paragraph:

''(27) the employee continuing education credit determined under section 45N(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(e) EMPLOYEE CONTINUING EDUCATION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined under section 45N(a).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45N. Employee continuing education credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2005.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Protecting America's Competitive Edge (PACE) Act that will enable us to build on our existing strengths to help secure America's continued economic prosperity in the twenty-first century.

I want to gratefully acknowledge at the outset that I am introducing this legislation with Senator DOMENICI, Senator ALEXANDER, Senator MIKULSKI, and others. This measure is the product of our combined best efforts from both sides of the aisle, and our sole focus has been only on what is in the best interests of the Nation as a whole.

For the last 200 years, our investments in science and technology, both public and private, have driven our economic growth and improved the quality of life in America. They have generated new knowledge and new industries, created new jobs, ensured economic and national security, reduced pollution and increased energy efficiency, provided better and safer transportation, improved medical care, and increased living standards for the American people.

America's scientists and engineers through their unmatched vitality, creativity, and curiosity have helped us not only imagine but invent the future. In large measure, their contributions have made this new century before us so full of promise—molded by science, shaped by technology, and powered by knowledge.

One of the bedrock policies of our Nation's economic security must be to sustain our investments in science and technology. Today there is no dispute that science, and the technology that flows from it, is duly recognized as the piston that drives the economic engine that enriches the quality of our lives.

Yet today our preeminence is precarious.

Numerous thoughtful leaders in government, industry, and academia who are concerned about sustaining U.S. leadership across the frontiers of scientific knowledge are expressing growing uneasiness over troubling trends regarding the Nation's future prosperity. They warn we are slipping in our world leadership role in science and engineering, and losing sight of the importance of long-term investments in creating the conditions of prosperity.

Other nations are coming up fast behind us on the scientific track and are pouring resources into their scientific and technological infrastructure. There is the distinct possibility that U.S. competitiveness in key high-tech areas will fall behind the major Pacific Rim countries of India, China, Taiwan, and South Korea.

Moreover, the focus of our fundamental R&D has shifted away from the physical sciences, mathematics, and engineering—the critical areas of R&D most closely correlated with innovation and economic growth.

Many of our foremost research programs that have been curtailed or cut back in recent years have been the cornerstone for much of our economic progress and spurred the creation of high paying jobs. Budget increases have been disproportionately concentrated primarily in two departments—Defense and Homeland Security—leaving other vital R&D agencies with very modest increases, or with an increase for some agencies offset by flat funding, or cuts in others.

In the name of national security, we have been building a swaying tower of insecurity.

We are on the brink of a new industrial and commercial world order. The reality of the twenty-first century global economy is that China, India, and other nations once considered economic backwaters have discovered how to build strong economies around very sophisticated technology.

On the Pacific Rim, China has increased spending on colleges and universities almost tenfold in the last decade, and is doubling the proportion of GDP invested in that same period on R&D to promote competitiveness and growth. India is raising its funding of science agencies by 27 percent, and Japan is increasing its investments in life science by 32 percent, while South Korea is upgrading research spending by 8.5 percent.

As our share of the world's technical graduate workforce slips, European and Asian universities are churning out ever greater numbers of workers in scientific fields. And while young Americans may shy away from technical careers because they perceive better opportunities in other high-level occupations, there are still sufficient rewards to attract ever-increasing numbers of foreign graduate students eager to pursue science and engineering degrees.

All of these signs, granted, are a cause for concern. Yet none of them, however, is a cause for panic. To state the facts frankly is not to despair about the future, nor is it to indict the past. Our task today is not to fix the blame for yesterday, but to set the proper and prudent course for tomorrow.

These revolutionary changes in the global marketplace for highly skilled technical workers are dislodging the long-standing dominance of the U.S. scientific enterprise.

That is causing our comparative advantage in high tech production to suffer and, despite the extraordinary power and resilience of our economy, signals a lengthy and difficult period of adjustment for American industry, its workforce, and ultimately our strong middle class standard of living which makes this country great.

It also flags a pivotal moment in American history—a time of national peril, as well as a time of national opportunity.

What should we do about these international challenges? We have absolutely no choice but to emphasize what we do best in this coming rivalry. Our most important strengths have always been education and innovation. Our can-do spirit of commercializing technological innovation has always been America's core competence. We do it far better than anyone else—we have done it before, and we can continue to excel at it.

Last May, Senator LAMAR ALEXANDER and I asked the National Academy of Sciences to conduct a study to identify ''specific steps our government should take to ensure the preeminence of America's scientific and technological enterprise to enable us to successfully compete, prosper, and be secure in the global community of the 21st century.''

The Academy assembled an extraordinarily distinguished panel of America's best scientific minds, including three Nobel Prize winners, business executives, and university leaders and reported their findings back to us in October in a sobering report entitled, Rising Above the Gathering Storm.

The National Academy's report proposes four broad recommendations: 1. Increase America's talent pool by vastly improving K–12 science and mathematics education; 2. sustain and strengthen the Nation's traditional commitment to long-term basic research; 3. make the United States the most attractive setting in which to study and perform research; and 4. ensure that the United States is the premier place in the world to innovate.

First and foremost, we need to fix our math and science education system from kindergarten through high school. We should establish a merit-based, 4 year undergraduate scholarship program to annually recruit 10,000 students per year to careers teaching math and science who then commit to working for at least 4 years in K–12 public schools.

Using incentives and scholarships, our aim should be to quadruple the number of America students enrolled in advanced math and science courses to four and a half million by 2010.

A U.S. high school student has about a 70 percent chance of being taught English by a teacher with an English degree, but only a 40 percent chance of being taught chemistry by a teacher with a degree in chemistry. And the situation is worse for middle school students: 70 percent of them are taught math by a teacher lacking a certificate or major in math.

It takes many years to educate a citizen. There are no short term solutions

to this problem, and workforce issues rarely respond to quick fixes and often span generations.

That is why there is such a sense of urgency to recruit thousands of new math and science teachers in the years ahead through the award of competitive scholarships. Additionally, we must strengthen 250,000 current teachers' math and science teaching skills with enhanced training and education by leveraging the expertise of the world's best physicists, mathematicians, and engineers to help provide that training.

This legislation will also provide greater opportunities for students to take advanced math and science classes by increasing the number of students who enroll in Advanced Placement and International Baccalaureate science and math courses.

Second, we must steadily increase our investment by 10 percent each year for the next 7 years in long-term basic research, with special attention devoted to the physical sciences, engineering, mathematics, and information sciences.

The Federal Government supports a majority of the Nation's basic research and nearly 60 percent of the R&D is performed in U.S. universities. At the same time, this investment at universities and colleges plays a key role in educating the next generation of scientists and engineers and a technically skilled workforce. We ought to provide 200 new research grants annually—worth $500,000 each payable over 5 years—to the Nation's most outstanding early-career researchers.

Additionally, we should consider creating a revolutionary agency in the Energy Department modeled on the highly successful Defense Advanced Research Projects Agency to sponsor research to meet the Nation's long-term energy challenges that industry by itself cannot or will not support.

Just as Olympic-caliber athletes need the finest equipment and training protocols to triumph in their events, so do scientists, engineers and their students need the most modern research instruments and facilities with the best capabilities, the farthest reach, and the finest accuracy and resolution. To enable us to push beyond the frontiers of our current knowledge, we should create a centralized research infrastructure fund of $500 million annually over the next 5 years to ensure we have the equipment necessary for breakthrough scientific discoveries.

Third, we must increase the number of U.S. citizens earning science, engineering, and math degrees. We must redouble our efforts to encourage gifted young American men and women to pursue these high tech disciplines which require so much from them and which have so much to offer all of our people. We can do so by providing annually 25,000 competitive undergraduate scholarships in physical sciences, engineering, and mathematics, and fund 5,000 new portable graduate fellowships in those fields.

Equally important, we need a global recruitment strategy to attract the best and brightest to learn and live in America as part of our high tech workforce. Our visa, immigration and export control policies desperately need reform. Delays and difficulties in obtaining visas to the U.S. are contributing to a declining in-flow of scientific talent.

We need to ensure the best and brightest come here, stay here, and obtain legal residency after college to contribute to our national economy instead of being forced back to their home countries to compete against us.

Finally, we need to be able to assure investors that the U.S. is the preferred site for investments in new or expanded businesses that create the best jobs and provide the best services.

To spur U.S.-based research and experimentation to meet global competition, we need to modernize the patent system, realign our tax policies to encourage long-term investments in innovation, and ensure the Nation meets the goal of affordable broadband Internet access by 2007.

Our patent laws must also be reformed by moving to a first-to-file instead of a first-to-invent, thus bringing us into line with the rest of the world while reducing expensive litigation. Infrastructure planning grants and loan guarantees could also ensure that U.S. science parks are competitive with those throughout Asia.

Additionally, we should eliminate uncertainty by doubling the R&D tax credit and making it permanent. Studies document that this tax credit encourages as much R&D spending as it costs in foregone revenue—and perhaps even twice that amount over the long haul.

We face a competitive challenge of historic proportions today due to several new factors: The growing number of countries with advanced skills, multinational corporations placing their R&D centers, fueled by high education and low labor costs, wherever the profits are the greatest, and virtually every service being electronically communicable.

It will be difficult to ever match our populous economic competitors in the quantity of their scientists and engineers. Ours is an even tougher task: to stay far ahead in the quality of our research and to keep pioneering scientific fields so cutting edge that others, for the most part, cannot duplicate them.

We can readily meet this challenge and enjoy a prosperous future, even though these investments in education and research require incurring costs now for benefits later.

The PACE Act will sustain our vibrant science and technology sector and with it our well-being, health, environment, and security.

It will encourage education at home and attract talented scientists and engineers from abroad, as well as nurture a business environment that transforms new knowledge into new opportunities for creating high quality jobs and reaching shared goals.

The passage of this farsighted public investment program will ensure that the United States is stronger, smarter, and leads the world in scientific and technological innovation in the twenty-first century.

Mr. ALEXANDER. Mr. President, today I join with Senators DOMENICI, BINGAMAN, MIKULSKI, and more than 25 other senators, in introducing the Protecting America's Competitive Edge (PACE) Act—a package of three bills to enhance American brainpower.

America is now playing in a tougher league. China and India are competing for our jobs. The best way to keep those jobs in America is to maintain our brainpower edge in science and technology.

The story of this bill really began last May, when Senator JEFF BINGAMAN and I, with the encouragement of Senate Energy Committee Chairman PETE DOMENICI, asked the National Academies this question: ''What are the ten top actions, in priority order, that Federal policy makers could take over the next decade to help the United States keep our advantage in science and technology?''

To answer the question, the Academies assembled a distinguished panel of business, government, and university leaders headed by Norm Augustine, former CEO of Lockheed Martin, that included three Nobel Prize winners. They took our question seriously. We asked them for 10 recommendations; they gave us 20 when they released their report in October.

In October, the Energy Committee held a hearing to learn more about those recommendations from Mr. Augustine and the Academies. It was the first opportunity Congress had to hear the Academies' answer to our question.

Following those hearings, Chairman DOMENICI, Senator BINGAMAN, and I convened a series of ''homework sessions'' with members of the Academies, outside experts, and some officials in the Administration. These off-the-record sessions allowed Senators and Administration officials to grapple with the Academies' recommendations and consider how best to implement them.

Last November, Norm Augustine led a dinner discussion hosted by Senator FRIST with about 30 Senators on the report's recommendations right here in the Capitol. And then, in December, Senators DOMENICI, BINGAMAN, and I met with President Bush where he graciously listened to our ideas. The President was very engaged and knew these issues well.

Now, as the Senate begins its session for the year, we are introducing this legislation to implement the recommendations of the Augustine Report. Next week, when the President addresses the nation in his State of the Union address, it is my hope that he will make this a focus of the address and his remaining three years in office.

This bill is all about brainpower and the relationship of brainpower to good American jobs.

The United States produces more than 25 percent of all the wealth in the world (in terms of GDP)—but has only 5 percent of the world's population. We are a fortunate country indeed. The Academies explain this phenomenon in this way: ''. . . as much as 85 percent of measured growth in U.S. income per capita is due to technological change.''

This technological change is the result, in the report's words, of an outpouring ''of well trained people and the steady stream of scientific and technological innovations they produce.''

Most of this good fortune comes from the American advantage in brainpower: an educated workforce, and our technological innovation. The United States has the finest system of colleges and universities on earth, attracting more than 500,000 of the brightest foreign students. No country has national research laboratories to match ours. Americans have won the most Nobel prizes in science and registered the most patents. We have invented electricity, the computer chip, and the internet.

As one scientist noted, we don't have science and technology because we're rich. We're rich because we have science and technology.

Yet we worry that America may be losing its brainpower advantage. American experts who travel to China, India, Finland, Singapore, Ireland, and elsewhere come home saying, ''Watch out.''

The Augustine Report found that we are right to be worried: Only 6 percent of American college-age students earn degrees in the natural sciences or engineering, trailing students in China and India and a dozen other countries, many of which have doubled or tripled their degree output over the last decade. For the cost of one chemist or engineer in the United States, a company can hire five chemists in China or 11 engineers in India. China is spending billions to recruit the best Chinese scientists from American universities to return home to build up Chinese universities.

The report also found signs that we are not keeping up: U.S. 12th graders performed below the average of 21 countries on tests of general knowledge in math. In 2003 only three American companies ranked among the top 10 recipients of new U.S. patents. Of 120 new chemical plants being built around the world with price tags of $1 billion or more, one is in the United States and 50 are in China.

To maintain America's global leadership in research and development, the Augustine Report made twenty wide-ranging and urgent recommendations for U.S. schools, universities, research, and economic policy that include: Recruit 10,000 new science and math teachers with 4-year scholarships and train 250,000 current teachers in summer institutes. Create a new coordinating office to manage a centralized research infrastructure fund of at least $500 million per year. Provide 30,000 scholarships and graduate fellowships for scientists. Increase federal funding for basic research in the physical sciences by 10 percent a year for 7 years. Give American companies a bigger research and development tax credit so they will keep their good jobs here instead of move them offshore. Create a new agency in the Department of Energy modeled on the Defense Advanced Research Projects Agency to conduct breakthrough R&D, that will lessen our dependence on foreign sources of energy.

Some may wince at the price tag—$9 billion in the first year, and then it edges upward over the full seven year period. I believe the cost is low, relative to the benefits. Maintaining America's brainpower advantage will not come on the cheap.

This year, one third of State and local budgets go to fund education. More than 50 percent of American students have a Federal grant or loan to help pay for college. The Federal Government spends nearly $30 billion per year on research at universities and another $34 billion to fund 36 national research laboratories.

Just last year, Congress spent $85 billion to fight the war in Iraq, $71 billion for hurricane recovery, and $352 billion to finance the national debt. If we fail to invest the funds necessary to keep our brainpower advantage, we'll not have an economy capable of producing enough money to pay the bills for war, social security, hurricanes, Medicaid, and debt.

The legislation we are introducing today has strong bipartisan support. It is our hope President Bush will make it a focus of his State of the Union Address and of his remaining 3 years in office—and that future candidates for president will make it the center of their campaigns. Aside from our national security, there is no greater challenge than maintaining our brainpower advantage so we can keep our good paying jobs and strengthen our economy. That is the surest way to keep America on top.

I hope my colleagues will join us in this critical effort to protect America's competitive edge.

Ms. MIKULSKI. Mr. President, I'd like to thank my colleagues: Senator PETE DOMENICI, Senator JEFF BINGAMAN and Senator LAMAR ALEXANDER for their effort in moving this issue. I am so proud of our great bipartisan team. I can't say enough about the appreciation that many of us in the Senate feel about their initiation of the report, ''Rising Above the Gathering Storm,'' which is the basis for our legislation, the PACE Act.

America must remain an innovation economy. This legislation creates the building blocks that we need for a smarter America. Our Nation is in an amazing race—the race for discovery and new knowledge. The race to remain competitive and to foster an innovation society, to create new ideas that lead to new breakthroughs, new products and new jobs. The innovations that have the power to save lives, create prosperity and protect the homeland. The innovation to make America safer, stronger and smarter.

Our legislation is called ''Protecting America's Competitive Edge'' Act or PACE. It is divided into 3 sections: Energy, Education and Tax. It calls for: getting new ideas by doubling Federal funding for basic research in the Department of Energy with special attention going to physical sciences, engineering, math and information sciences; getting the best minds with scholarships for future math and science teachers including $20,000 scholarships from the National Science Foundation (NSF) for undergraduate students majoring in math or science along with teacher certification; visa reform for foreign science and math students so the best and brightest can stay here, creating a new student visa for doctoral students studying math and science so they can stay in the U.S. longer; and an extension of the R & D tax credit, doubling the current R & D credit, from 20 percent to 40 percent, expanding the credit to cover all research—since current law only allows credit for energy research.

Why is this so important? Because a country that doesn't innovate, stagnates. The whole foundation of American culture and economy is based on the concept of discovery and innovation. That's part of our culture. When you look at what has made America a superpower, it's our innovation and our technology. We have to look at where the new ideas are going to come from that are going to generate the new products for the 21st century.

I want America to win the Nobel prizes and the markets. This legislation will help to set the framework. It will make sure that we're helping our young people with scholarships and new visas, and helping our science teachers and those working in science with funding and research opportunities. We also are forming partnerships with the private sector, and building an innovation-friendly government.

This is so important to me and I'm going to use my committee responsibility and my work and expertise in the United States Senate to make it happen. Whether it's my position on the HELP Committee, working to pass the education piece, or in my seat as an appropriator and Vice Chair on the subcommittee that funds Science. I will work to make sure that there is money in the federal checkbook to support these important proposals.

By Mr. LUGAR:

S. 2200. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise today to offer legislation urging the

Administration to develop a United States—Poland Parliamentary Youth Exchange Program.

The purpose of this exchange program is to demonstrate to the youth of the United States and Poland the benefits of friendly cooperation between the U.S. and Poland based on common political and cultural values. I have long been an active supporter of the Congress-Bundestag Exchange program and am hopeful that this new endeavor will make similarly important lasting contributions to the U.S.-Polish relationship.

As a Rhodes Scholar, I had the opportunity to discover international education at Pembroke College—my first trip outside of the United States. The parameters of my imagination expanded enormously during this time, as I gained a sense of how large the world was, how many talented people there were, and how many opportunities one could embrace. Student exchange programs do more than benefit individual scholars and advance human knowledge. Such programs expand ties between nations, improve international commerce, encourage cooperative solutions to global problems, prevent war, and give participants a chance to develop a sense of global service and responsibility.

Funding a great foreign exchange program is a sign of both national pride and national humility. Implicit in such a program is the view that people from other nations view one's country and educational system as a beacon of knowledge—as a place where international scholars would want to study and live. But it is also an admission that a nation does not have all the answers—that our national understanding of the world is incomplete. It is an admission that we are just a part of a much larger world that has intellectual, scientific, and moral wisdom that we need to learn.

The United States and Poland have enjoyed close bilateral relations since the end of the Cold War. Most recently, Poland has been a strong supporter of efforts led by the United States to combat global terrorism, and has contributed troops to and led coalitions in both Afghanistan and Iraq. Poland also cooperates closely with the United States on such issues as democratization, human rights, regional cooperation in Eastern Europe, and reform of the United Nations. As a member of the North Atlantic Treaty Organization, NATO, and the European Union, EU, Poland has demonstrated its commitment to democratic values and is a role model in its region.

I believe that it is important to invest in the youth of the United States and Poland in order to strengthen long-lasting ties between both societies. After receiving for many years international and U.S. financial assistance, Poland is now determined to invest its own resources toward funding a U.S.-Poland exchange program. To this end, the Polish Foreign Minister unambiguously stated that Poland welcomed the opportunity to be an equal partner in funding important efforts.

I ask my colleagues to support this legislation.

By Mr. OBAMA (for himself, Mr. INOUYE, Mrs. MURRAY, and Mr. LAUTENBERG):

S. 2201. A bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. OBAMA. Mr. President, in the hours after the terrorist attacks on 9/11, America's air traffic controllers rose to meet the tremendous challenges of that day.

After halting all takeoffs, controllers began clearing the skies over America. Under unprecedented conditions, controllers guided 4,500 planes carrying 350,000 passengers to safe landings. They also rerouted more than 1,100 of the 4,500 flights within the first 15 minutes of the landing order—about one every second—and cleared the skies over America within 2½ hours.

That kind of performance was wholly dependent on the caliber and training of the world's finest air traffic controllers. And as I come to the floor of the Senate today, there are hundreds of pilots flying commercial airplanes under an air traffic controller's guidance. Each and every day, the lives of thousands of people are in the hands of each and every air traffic controller.

Because what they do is vital to our safety, I became very concerned by a letter I received from Illinois air traffic controller Michael Hannigan last December. He wrote that ''the air traffic controllers, who work aircraft everyday, often six days a week, are not being allowed to negotiate in good faith with the Federal Aviation Administration.'' And he asked for me to help ''the hard working Federal employees that want the protections as a labor union that they should have a right to bargain for.''

What was clear in Michael's plea was the sense that he and his colleagues felt that they were being treated unfairly. I looked into it and came to the conclusion that if we did not restore a fair negotiation procedure, it would threaten agency morale and effectiveness.

The problem is this: lower courts have determined that the FAA Administrator currently has the extraordinary authority to impose wages and working conditions on her workers without arbitration. In order to do that, she merely has to declare an impasse in negotiations and if Congress does not set everything else aside and stop her from imposing her terms and conditions within 60 days, the Administrator can go ahead and act unilaterally. That authority denies air traffic controllers and all other FAA employees the opportunity to engage in and conclude negotiations in good faith.

To diffuse the management-labor tension at the agency and bring the FAA together, I am introducing ''The FAA Fair Labor Management Dispute Resolution Act of 2006''. I am also proud to say that Senator INOUYE, the co-chair of the Senate Commerce, Science and Transportation Committees; Senator MURRAY, the ranking member on the Transportation Appropriations Subcommittee; and Senator LAUTENBERG, a member on the Commerce Committee Subcommittee on Transportation, are joining me in this effort.

The FAA Fair Labor Management Dispute Resolution Act replaces the FAA Administrator's arbitrary authority with neutral binding arbitration in the case of an impasse in labor-management negotiations. In arbitration, both labor and management would have to make concessions, and both would be able to accept the outcome as fair.

We need this legislation now because the FAA Administrator is engaged in contract negotiations with the agency's two largest groups of workers—the National Air Traffic Controllers Association (NATCA) and Professional Airways Systems Specialists (PASS). In both cases, negotiations have been contentious. And the FAA's workers fear that the Administrator is not intent on reaching fair, voluntary agreements given her previous negotiations. Indeed, the Administrator has already used her authority to impose wages and working conditions without arbitration or agreement on NATCA's 11 non-air traffic controller bargaining units, and she stands at impasse with four of PASS's five bargaining units.

The Administrator has made three arguments in defense of her actions: 1. the FAA needs the authority ''to operate more like a business''; 2. air traffic controller pay is ''inappropriate given the financial circumstances of the airline industry the system serves''; and 3. changing the law to send an impasse to binding arbitration would essentially ''change the rules of the game during halftime.''

But the agency's employees point out that the agency is not a business driven to cut costs in pursuit of profit, it is a public agency with no margin for error. They also argue that the nation's air safety should not depend on how well or poorly the airlines are doing financially. And, if the rules are unfair, the employees argue they should be changed before negotiations conclude.

Regardless of the merits of each side's positions, if the Administrator is able to impose her chosen conditions on air traffic controllers, it will have two negative effects on the agency: 1. it will lead to an erosion of talent at the agency with vital, retirement-eligible air traffic controllers interpreting such agency action as an invitation to

retire; and 2. it will make recruiting needed replacement employees that much more difficult.

I recognize that negotiations between the Administrator and the air traffic controllers are difficult. However, it is in the best interest of the agency and public safety to have management and labor cooperate in contract negotiations and if that is impossible, then no one side should be able to impose its views on the other. Only neutral arbitration can produce a fair outcome that the entire organization can accept.

More than 2,900 air traffic controllers will be eligible to retire this year, and 7,100 controllers could leave the agency within the next nine years. Meeting this management challenge will require cooperation between labor and management. Moreover, rising tension between the FAA Administrator and FAA employees threatens this vital agency's effectiveness at every level and, as a result, threatens the safety of passengers.

Again, the legislation we are introducing today would encourage both sides in all FAA labor-management negotiations to reach a voluntary agreement and in the case of impasse, it would allow the FAA to move forward after binding arbitration, bring its workers together, and focus on other challenges because no one side will have had arbitrary authority.

The FAA's employees are dedicated, hard working public servants responsible for helping ensure the safety of the flying public. It is stressful, important work. We must value that work and treat them fairly.

By Mr. LEAHY (for himself, Mr. KERRY, and Mr. FEINGOLD):

S. 2202. A bill to provide for ethics reform of the Federal judiciary and to instill greater public confidence in the Federal courts; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased to introduce the Fair and Independent Judiciary Act of 2006 because ensuring a fair and independent judiciary is critical to the system of checks and balances established in our Constitution. This legislation seeks to preserve the public confidence that our Federal courts enjoy, and that our courts need to adequately fulfill their constitutional role in our system. Revelations that judges and justices are receiving gifts from parties that may appear before them or have a financial interest in a litigating party undermine the public's trust.

For the past 4 years, editorial boards across the country have called our attention to the appearance of impropriety that occurs when Federal judges accept gifts and attend lavish private seminars sponsored by well-heeled corporations. I have proposed similar legislation in previous Congresses to address the problem of private judicial seminars. Last year, despite my ongoing concerns about reports of judicial activities that undermine public confidence, I withheld these provisions from a judicial pay raise bill. I had hoped that the Federal judiciary would engage in self-regulation on these timely and substantive ethical issues. Unfortunately, recent press reports show continued appearances of impropriety, even by a member of the Supreme Court. This legislation does not prohibit judges and justices from attending educational seminars. Instead, it simply requires them to learn and disclose the private sponsors of the seminars and make that information public. Then, they would be allowed to attend the seminars, but at the court's expense, instead of having special interests pick up their tabs.

Another issue that threatens to undermine confidence in our judicial impartiality was highlighted at the recent hearings for Judge Alito. Some judges fail to monitor their financial holdings so that they can properly recuse themselves from cases where there may be a conflict of interest. One way to be sure that the recusal laws Congress enacted are being followed by all Federal judges is to allow more transparency of a judge's financial conflicts. This legislation contains a provision to improve the public's access to the recusal lists that all judges keep within their chambers or clerks' offices.

Because the public's trust is at stake, it is important to require that private seminar providers fully disclose the litigation interests of their sponsors and to improve access to judicial conflicts. The American people deserve a Federal judiciary that is beyond reproach—in appearance, and otherwise. The Fair and Independent Judiciary Act seeks to ensure continued public confidence in our Federal courts. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows.

S. 2202

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Judiciary Ethics Reform Act of 2006''.

SEC. 2. JUDICIAL EDUCATION FUND.

(a) ESTABLISHMENT.—Chapter 42 of title 28, United States Code, is amended by adding at the end the following:

''§ 630. Judicial Education Fund

''(a) In this section, the term—

''(1) 'institution of higher education' has the meaning given under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

''(2) 'private judicial seminar'—

''(A) means a seminar, symposia, panel discussion, course, or a similar event that provides continuing legal education to judges; and

''(B) does not include—

''(i) seminars that last 1 day or less and are conducted by, and on the campus of, an institute of higher education;

''(ii) seminars that last 1 day or less and are conducted by national bar associations or State or local bar associations for the benefit of the bar association membership; or

''(iii) seminars of any length conducted by, and on the campus of an institute of higher education or by national bar associations or State or local bar associations, where a judge is a presenter and at which judges constitute less than 25 percent of the participants;

''(3) 'national bar association' means a national organization that is open to general membership to all members of the bar; and

''(4) 'State or local bar association' means a State or local organization that is open to general membership to all members of the bar in the specified geographic region.

''(b) There is established within the United States Treasury a fund to be known as the 'Judicial Education Fund' (in this section referred to as the 'Fund').

''(c) Amounts in the Fund may be made available for the payment of necessary expenses, including reasonable expenditures for transportation, food, lodging, private judicial seminar fees and materials, incurred by a judge or justice in attending a private judicial seminar approved by the Board of the Federal Judicial Center. Necessary expenses shall not include expenditures for recreational activities or entertainment other than that provided to all attendees as an integral part of the private judicial seminar. Any payment from the Fund shall be approved by the Board.

''(d) The Board may approve a private judicial seminar after submission of information by the sponsor of that private judicial seminar that includes—

''(1) the content of the private judicial seminar (including a list of presenters, topics, and course materials); and

''(2) the litigation activities of the sponsor and the presenters at the private judicial seminar (including the litigation activities of the employer of each presenter) on the topic related to those addressed at the private judicial seminar.

''(e) If the Board approves a private judicial seminar, the Board shall make the information submitted under subsection (d) relating to the private judicial seminar available to judges and the public by posting the information on the Internet.

''(f) The Judicial Conference shall promulgate guidelines to ensure that the Board only approves private judicial seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded judiciary.

''(g) There are authorized to be appropriated for deposit in the Fund $2,000,000 for each of fiscal years 2006, 2007, and 2008, to remain available until expended.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 42 of title 28, United States Code, is amended by adding at the end the following:

''630. Judicial Education Fund''.

SEC. 3. PRIVATE JUDICIAL SEMINAR GIFTS PROHIBITED.

(a) DEFINITIONS.—In this section, the term—

(1) ''institution of higher education'' has the meaning given under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

(2) ''private judicial seminar''—

(A) means a seminar, symposia, panel discussion, course, or a similar event that provides continuing legal education to judges; and

(B) does not include—

(i) seminars that last 1 day or less and are conducted by, and on the campus of, an institute of higher education;

(ii) seminars that last 1 day or less and are conducted by national bar associations or

State or local bar associations for the benefit of the bar association membership; or

(iii) seminars of any length conducted by, and on the campus of an institute of higher education or by national bar associations or State or local bar associations, where a judge is a presenter and at which judges constitute less than 25 percent of the participants.

(3) ''national bar association'' means a national organization that is open to general membership to all members of the bar; and

(4) ''State or local bar association'' means a State or local organization that is open to general membership to all members of the bar in the specified geographic region.

(b) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Judicial Conference of the United States shall promulgate regulations to apply section 7353(a) of title 5, United States Code, to prohibit the solicitation or acceptance of anything of value in connection with a private judicial seminar.

(c) EXCEPTION.—The prohibition under the regulations promulgated under subsection (b) shall not apply if—

(1) the judge participates in a private judicial seminar as a speaker, panel participant, or otherwise presents information;

(2) Federal judges are not the primary audience at the private judicial seminar; and

(3) the thing of value accepted is—

(A) reimbursement from the private judicial seminar sponsor of reasonable transportation, food, or lodging expenses on any day on which the judge speaks, participates, or presents information, as applicable;

(B) attendance at the private judicial seminar on any day on which the judge speaks, participates, or presents information, as applicable; or

(C) anything excluded from the definition of a gift under regulations of the Judicial Conference of the United States under sections 7351 and 7353 of title 5, United States Code, as in effect on the date of enactment of this Act.

SEC. 4. RECUSAL LISTS.

Section 455 of title 28, United States Code, is amended by adding at the end the following:

''(g)(1) Each justice, judge, and magistrate of the United States shall maintain a list of all financial interests that would require disqualification under subsection (b)(4).

''(2) Each list maintained under paragraph (1) shall be made available to the public at the office of the clerk for the court at which a justice, judge, or magistrate is assigned.''

By Mrs. CLINTON (for herself and Mr. NELSON of Florida):

S. 2203. A bill to amend title XVIII of the Social Security Act to eliminate cost-sharing under part D of such title for certain full-benefit dual eligible individuals; to the Committee on Finance.

Mrs. CLINTON. Mr. President, today I rise to introduce legislation to address yet another serious flaw in the Medicare prescription drug benefit that has come to light.

On January 1, the new Medicare prescription drug benefit went into effect. Overnight, millions of seniors and disabled Americans found themselves thrown into a confusing and complex transition.

Some of our poorest and most vulnerable beneficiaries, those in assisted living facilities, have found themselves suddenly forced to produce copayments to get the medications they need.

These are beneficiaries with serious mental illnesses who have been stabilized on medications, and people with developmental and physical disabilities who have little or no incomes and no way to afford the medicines that they depend on.

The bill I am introducing will fix this problem by waiving copayments for this group of vulnerable beneficiaries and reimbursing them for any copayments they have already been forced to shoulder.

This is just one of so many problems we have seen plaguing this program. The first 26 days of this program have been a disaster for far too many seniors and disabled across New York and across the country.

We have heard reports from our poorest seniors, who were being charged hundreds of dollars for drugs. We have heard reports of disabled individuals asked to provide doctor's notes certifying a need for their medications and of beneficiaries leaving pharmacies without the drugs they depend on to keep them healthy.

As a result of problems with computer systems, phone lines, and the inability of Medicare and private plans to provide correct information to those on the front lines of care, millions of people around the country have faced problems receiving this new benefit.

I am working on all fronts to help Medicare beneficiaries weather this transition. Before this program went into effect, it was clear that those dually eligible for Medicare and Medicaid, our poorest and most vulnerable seniors and disabled, would have a particular challenge navigating this transition. I was very concerned that many these Medicare recipients would walk up to their pharmacy counters on January 1 and be unable to get their prescriptions filled.

In anticipation of these problems, I introduced legislation in December to keep these Medicare recipients from falling through the cracks by stepping up outreach and education to pharmacists and providing reimbursement to pharmacists who are charged a transaction fee to access beneficiary information through Medicare. I also cosponsored legislation to give Medicare beneficiaries more time to enroll in the new program.

And I issued a resource guide, now available in both English and Spanish, to help New Yorkers navigate this new program. To date more than 75,000 copies of the guide have been distributed.

Since the new program went into effect, I have repeatedly urged the Bush administration to address the problems plaguing this program. And last week, I introduced comprehensive legislation along with several of my Senate colleagues, that includes my bill to help pharmacists help their customers, and makes the other fixes I have been calling for: provisions to improve outreach and education, fix problems with drug plans transition programs, protect the benefits of seniors who also have coverage from a retiree drug plan, and make sure that States and low income beneficiaries are reimbursed for excessive costs they have been forced to shoulder by the inept implementation of the new benefit.

We owe it to our seniors and disabled Americans to get this right. And I will keep fighting to ensure that we do.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 354—HONORING THE VALUABLE CONTRIBUTIONS OF CATHOLIC SCHOOLS IN THE UNITED STATES

Mr. VITTER submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 354

Whereas Catholic schools in the United States have received international acclaim for academic excellence while providing students with lessons that extend far beyond the classroom;

Whereas Catholic schools present a broad curriculum that emphasizes the lifelong development of moral, intellectual, physical, and social values in the young people of the United States;

Whereas Catholic schools in the United States today educate 2,420,590 students and maintain a student-to-teacher ratio of 15 to 1;

Whereas the faculty members of Catholic schools teach a highly diverse body of students;

Whereas more than 27.1 percent of school children enrolled in Catholic schools are minorities, and more than 13.6 percent are non-Catholics;

Whereas Catholic schools saved the United States $19,000,000,000 in educational funding during fiscal year 2005;

Whereas Catholic schools produce students strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development; and

Whereas in the 1972 pastoral message concerning Catholic education, the National Conference of Catholic Bishops stated, ''Education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person and building of community. Community is central to education ministry, both as a necessary condition and an ardently desired goal. The educational efforts of the Church, therefore, must be directed to forming persons-in-community; for the education of the individual Christian is important not only to his solitary destiny, but also the destinies of the many communities in which he lives.'': Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of Catholic Schools Week, an event cosponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops that recognizes the vital contributions of thousands of Catholic elementary and secondary schools in the United States; and

(2) congratulates Catholic schools, students, parents, and teachers across the United States for their ongoing contributions to education, and for the vital role they play in promoting and ensuring a brighter, stronger future for this Nation.

SENATE RESOLUTION 355—HONORING THE SERVICE OF THE NATIONAL GUARD AND REQUESTING CONSULTATION BY THE DEPARTMENT OF DEFENSE WITH CONGRESS AND THE CHIEF EXECUTIVE OFFICERS OF THE STATES PRIOR TO OFFERING PROPOSALS TO CHANGE THE NATIONAL GUARD FORCE STRUCTURE

Mr. NELSON of Nebraska (for himself, Mr. GRAHAM, Mr. ALLEN, Mr. TALENT, Mrs. DOLE, Mr. DEWINE, Ms. MURKOWSKI, Ms. SNOWE, Mr. THUNE, Mr. ISAKSON, Ms. LANDRIEU, Mr. NELSON of Florida, Mr. HARKIN, Mr. DORGAN, Mr. LAUTENBERG, Mr. BINGAMAN, Mr. AKAKA, Mr. BAUCUS, Mrs. CLINTON, Mr. KOHL, Ms. MIKULSKI, Mr. BAYH, Ms. CANTWELL, Mr. PRYOR, Mr. SALAZAR, Mr. LIEBERMAN, Mr. BIDEN, Mr. CONRAD, Mr. KENNEDY, Mr. FEINGOLD, Mr. MENENDEZ, Mr. JOHNSON, and Mr. DURBIN) submitted the following resolution; which was referred to the Committees on Armed Services:

S. RES. 355

Whereas the Army National Guard and Air National Guard of the United States, representing all 50 States, Guam, Puerto Rico, the United States Virgin Islands, and the District of Columbia, have played an indispensable role in the defense of our country;

Whereas during one phase of the Global War on Terrorism, Army National Guard soldiers comprised nearly half of the United States combat forces in Iraq;

Whereas National Guard personnel are currently deployed in Afghanistan, Bosnia, Kosovo, and more than 40 other countries around the world;

Whereas 90 percent of the troops on the ground in Louisiana and Mississippi responding to Hurricane Katrina were members of the National Guard;

Whereas while performing these critical missions, the National Guard continues to experience significant equipment shortages, especially vehicle and radio shortages;

Whereas members of the National Guard are not ''weekend warriors'', but citizen-soldiers and airmen who serve full-time when their country needs them to do so;

Whereas the National Guard is a resource shared by the chief executive officers of the States and the President;

Whereas the National Guard is America's militia;

Whereas deployment to fight terrorism on two fronts overseas, while protecting our homeland, has stretched the National Guard thin;

Whereas the future of the National Guard could be determined by the Quadrennial Defense Review (QDR) currently underway;

Whereas the Army and Air Force could recommend changes in the force structure of the National Guard;

Whereas reductions in force structure could impact numerous Army National Guard armories and Air National Guard wings;

Whereas reductions in force structure combined with the lack of adequate equipment for the National Guard threaten its capacity to discharge its missions and its ability to respond in emergencies;

Whereas homeland defense is the most important mission of the Department of Defense; and

Whereas the National Guard is the force best suited to defend the homeland and therefore the element from which resources should not be cut: Now, therefore, be it

Resolved, That the Senate—

(1) supports the vital Federal and State missions of the Army National Guard of the United States and the Air National Guard of the United States, including support of ongoing missions in Iraq and Afghanistan and homeland defense and disaster assistance and relief efforts;

(2) recommends that the Department of Defense propose fully funding the equipment needs of the National Guard;

(3) believes that the Department of Defense should, as soon as possible, consult with the chief executive officers of the States, as well as Congress, on any proposed changes to the National Guard force structure;

(4) requests that any plan of the Department of Defense regarding the National Guard force structure take into account the role of the National Guard role in homeland defense and other State missions as defined by the chief executive officers of the States;

(5) requests that the Department of Defense prepare budget projections that detail cost savings from any changes in National Guard force structure, as well as projected costs in the event large personnel increases are necessary to respond to a national emergency; and

(6) requests that the Department of Defense assure Congress and the chief executive officers of the States that potential changes in the National Guard force structure will not impact the safety and security of the United States people.

Mr. NELSON of Nebraska. Mr. President, I rise today to speak on behalf of a resolution I am submitting with Senator GRAHAM and 31 other senators, many of whom are members of the National Guard Caucus like me and Senator GRAHAM. I am also very proud to note that the National Guard Association of the United States has endorsed our resolution.

This resolution honors the service of the National Guard and requests consultation by the Department of Defense with the Congress and our Nation's Governors prior to offering proposals that could change the force structure of the Guard. In my opinion, it could not be timelier or more important.

We all know the tremendous sacrifices the National Guard is making around the globe today. The Army National Guard and the Air National Guard represent 50 states, Guam, Puerto Rico, the U.S. Virgin Islands and the District of Columbia and they are currently hard at work in Iraq, Afghanistan, Bosnia, Kosovo and over 40 other countries around the world.

Long gone is the phrase ''weekend warrior''. The Guard is made up of citizen-soldiers and airmen who serve full-time when their country calls on them. Since September 11, they have responded and represented America's militia with great honor.

Currently, the Nebraska National Guard has 364 personnel in Iraq. Their units are the 1-167th Cavalry which provides combat support to the Marines, the 67 Area Support Group which is responsible for command and control and the 189th Truck Company which handles convoy operations. In Afghanistan, there are 65 National Guard members of the 2nd Battalion at the Regional Training Institute helping to train the Afghan National Army. Their Adjutant General, Major General Roger L. Lempke, leads the Nebraska National Guard with great pride and distinction. He is a credit to the National Guard, Nebraska and the Nation he represents.

The Guard is unique in that it's a shared resource between the Governors and the President. The National Guard is the first to respond to domestic emergencies which range from natural disasters to homeland defense. Ninety percent of the troops on the ground in Louisiana and Mississippi responding to Hurricane Katrina were members of the National Guard.

Most Nebraskans will recall the blizzard that roared out of Colorado in October 1997 and slammed into Nebraska causing extensive damage that would take weeks to clean up. It was fall and most trees still had their leaves. Branches snapped under the weight of more than a foot of heavy, wet snow and ice. The resulting power outages left 125,000 Nebraskans without electricity for days and even weeks.

As governor of Nebraska then, it was the responsibility of my office to declare a state of emergency which activated the National Guard to help in clean up and rescue operations. The Guard responded with troops and equipment that made the effort proceed smoothly and efficiently.

The Guard handles State missions like this every year and every season while experiencing critical equipment shortages, especially vehicle and radio shortages. Congress added $1 billion dollars for new equipment for the Guard last December, but that's only a small portion of what is needed to fully fund the equipment needs of the Guard. And deployments, especially to Iraq and Afghanistan, have stretched the Guard thin.

It's in this environment that the Department of Defense will release the Quadrennial Defense Review next month. The QDR review could impact the future of the Guard. The Army and the Air Force may recommend changes in the force structure which will impact Army National Guard armories and Air National Guard wings throughout the country.

Reductions in the force structure combined with a lack of adequate equipment for the National Guard threaten its missions and ability to respond in an emergency. Homeland defense is the most important mission of the Department of Defense and the National Guard is the force best suited to defend the homeland. It's the very last place resources should be cut from.

Unfortunately, media reports indicate that to pay for modernization programs, the Department of Defense will propose changing the Guard's force structure. In an effort to begin a dialogue with DOD we are offering this resolution which honors the National Guard and recommends that DOD: Fully funding the equipment needs of

the National Guard; requests that the Department of Defense should, as soon as possible, consult with Governors, as well as Congress, on any proposed changes to the National Guard force structure; requests that any plan of the Department of Defense regarding the National Guard force structure take into account the role of the National Guard in homeland defense and other state mission defined by Governors; requests the Department of Defense provide budget projections that detail cost savings from any changes in National Guard force structure, as well as projected costs in the event large personnel increases are necessary to respond to a national emergency; and requests the Department of Defense assure Congress, and Governors, that potential force structure changes will not impact the safety and security of the American people.

Every debate about the defense budget should be held in the context of long-term national security goals. I look forward to engaging with the Department on their QDR proposals for the future of America's militia, the National Guard, and I urge adoption of this resolution by the full Senate.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources to consider the President's Proposed Budget for Fiscal Year 2007 for the Department of Energy.

The hearing will be held on Thursday, February 9 at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Elizabeth Abrams.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Thursday, February 9, 2006 at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to discuss the Energy Information Administration's 2006 Annual Energy Outlook on trends and issues affecting the United States' energy market.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani or Shannon Ewan.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests.

The hearing will be held on Wednesday, February 15, 2006, at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony, to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Frank Gladics or Kristina Rolph of the Committee staff.

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, February 1, 2006, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct an Oversight Hearing on Off-Reservation Gaming: The Process for Considering Gaming Applications lands eligible for gaming pursuant to the Indian Gaming Regulatory Act.

Those wishing additional information may contact the Indian Affairs Committee.

AUTHORITIES FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. TALENT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on January 26, 2005 at 2:30 p.m. to hold a closed briefing.

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

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Yoni Cohen of my staff be granted floor privileges for the duration of today's session.

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

UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that on Tuesday, January 31, at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session and the consideration en bloc of calendar Nos. 440 and 441, the nomination of Ben Bernanke to be a member and Chairman of the Federal Reserve; further, that there be 30 minutes under the control of Senator BUNNING and 60 minutes equally divided between the chairman and ranking member of the Banking Committee.

I further ask unanimous consent that following the use or yielding back of time, the Senate proceed to consecutive votes on the confirmation of calendar Nos. 440 and 411, and that following the votes the President be immediately notified of the Senate's action, and then the Senate resume legislative session.

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

ALITO NOMINATION

Mr. FRIST. Mr. President, earlier today I filed a cloture motion on Judge Alito's nomination in order to bring to close in the not too distant future this outstanding nominee's confirmation process.

The cloture vote is scheduled, as my colleagues know, for 4:30 in the afternoon on Monday. If cloture is invoked—which I believe it will be—we will have a final up-or-down vote on confirmation on Tuesday at 11 o'clock in the morning.

While I believe the Senate has a responsibility to have a thorough debate, a robust debate on every judicial nomination, I am disappointed and it is time to end the delay tactics which we have seen play out over the last several weeks, delay tactics my colleagues on the other side of the aisle are using to obstruct this nominee. Thus, that is why I filed cloture to say enough is enough.

It has been 87 days since the President announced Judge Alito's nomination. I should say, by the way, that it took an average of 63 days from announcement to confirmation of both of President Clinton's nominees.

When Judge Alito was nominated on October 31, or shortly after that—maybe even that day—Chairman SPECTER and I worked in good faith with Senator REID and Senator LEAHY for a timeline on confirmation projecting out where we would be. We agreed to give Judge Alito a fair up-or-down vote after plenty of time for hearings and preparations for the hearings on January 20. We agreed to consider the nomination—it wasn't our preference—after the holidays. We also agreed—again it wasn't our preference—to the Democratic schedules not to begin hearings the week we preferred, January 2.

All of these accommodations were made with the expectation that Democrats on the Judiciary Committee, once they had plenty of time for their hearings themselves, would not delay

the vote coming out of the committee, which would set back the schedule yet a week later, which indeed is what happened. Judge Alito was responsive. He was forthcoming. He answered more than 650 questions. Again, when people hear these numbers, what is the perspective? That is more than double the number of questions that Justice Ginsburg or Justice Breyer answered during their entire confirmation hearings.

But still, the Democrats delayed Judge Alito's vote coming out of committee. Yes, it is within the rules. All of this is within the rules. But we have seen this steady delay, postponement, obstruction. Luckily, the process continues forward. That is where we are today.

We are now scheduled to have a vote on January 31. That is the agreement the Democrat leader and I agreed to in representing our caucuses earlier today. That means we will have had a total of 5 days of floor activity. It is 8 o'clock tonight. We have had speech and debate over the course of the day, and we will have debate tomorrow. As everyone is well aware, we are given plenty of time in the Senate. We could stay here later tonight, tomorrow, tomorrow night. I said we will plow through Saturday until we get this done. It will end up being 5 days in terms of floor action.

Just to put that in perspective, for all of the sitting members on the Supreme Court today, only one other had 5 days of floor debate on a nominee. Again, we are pushing the limits once again. That is why we came forward to file cloture, to bring closure to this process.

Throughout the entire process I have been very consistent: These judicial nominees deserve, in terms of just dignity, but also it is our responsibility, they deserve a fair up-or-down vote. I should add, also, a recent poll shows that a majority of Americans believe Judge Alito should be confirmed. So, tonight, I can say not with absolute certainty but with as much certainty you can get around this place that on Tuesday Judge Alito will get that fair up-or-down vote.

I mentioned the recent poll. That is the general sense people get as we go back to our communities talking about the hearing process and the confirmation process. They broadly support this highly qualified individual. The list goes on and on in terms of his qualifications, his 15 years on the Federal courts, his highest rating with the ABA, the testimony from some of his colleagues in the hearing, now 2 weeks ago, all of which underline his modest judicial temperament, his integrity, his character. The polls show that the American people have spoken in a fairly dramatic way to us as we go back to our States.

I agree with the American people. Next Tuesday, a bipartisan majority will vote to confirm Judge Alito as Justice Alito.

ORDERS FOR FRIDAY, JANUARY 27, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon on Friday, January 27; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to executive session and resume consideration of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States.

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

PROGRAM

Mr. FRIST. To reiterate, today we filed a cloture motion on the nomination of Judge Alito. The cloture vote will be 4:30 on Monday. We will have some more debate time on Monday. I believe we have provided plenty of time for debate on the nomination. I hope and expect cloture will be invoked and that we will proceed to a vote on the confirmation of Samuel Alito on Tuesday at 11 a.m.

ADJOURNMENT UNTIL TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:05 p.m., adjourned until Friday, January 27, 2006, at 12 noon.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S145–S233

Measures Introduced: Nine bills and two resolutions were introduced, as follows: S. 2197–2205, and S. Res. 354–355. **Pages S210–11**

Measures Reported:

S. 1708, to modify requirements relating to the authority of the Administrator of General Services to enter into emergency leases during major disasters and other emergencies. (S. Rept. No. 109–214) **Page S210**

Supreme Court Nomination: Senate continued consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States. **Pages S145–S207**

A motion was entered to close further debate on the nomination and, notwithstanding the provisions of Rule XXII of the Standing Rules of the Senate, and pursuant to the unanimous-consent agreement of January 26, 2006, a vote on cloture will occur at 4:30 p.m., on Monday, January 30, 2006. **Page S197**

A unanimous-consent agreement was reached providing that if cloture is invoked, notwithstanding the provisions of Rule XXII, the Senate vote on confirmation of the nomination at 11 a.m. on Tuesday, January 31, 2006; that all time prior to 11 a.m., be equally divided between the Majority and Democratic Leaders, or their designees; further, that the cloture vote may be vitiated by agreement of the Majority and Democratic Leaders. **Page S1197**

A unanimous-consent-time agreement was reached providing for further consideration of the nomination at 12 noon, on Friday, January 27, 2006. **Page S233**

Bernanke Nomination—Agreement: A unanimous-consent agreement was reached providing that on Tuesday, January 31, 2006, at a time determined by the Majority Leader, after consultation with the Democratic Leader, Senate begin consideration of the nominations of Ben S. Bernanke, of New Jersey, to be a Member of the Board of Governors of the Federal Reserve System, and to be Chairman of the Board of Governors of the Federal Reserve System; that there be 30 minutes under the control of Senator Bunning, and 60 minutes equally divided between the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs; and that following the use, or yielding back, of time, that the Senate vote on confirmation of the nominations. **Page S232**

Executive Communications: **Pages S209–10**

Additional Cosponsors: **Pages S211–12**

Statements on Introduced Bills/Resolutions: **Pages S212–32**

Notices of Hearings/Meetings: **Page S232**

Authorities for Committees to Meet: **Page S232**

Privileges of the Floor: **Page S232**

Adjournment: Senate convened at 9:45 a.m., and adjourned at 8:05 p.m., until 12 noon, on Friday, January 27, 2006. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S233.)

Committee Meetings

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session today. The House is scheduled to meet at 12 noon on Tuesday, January 31, 2006.

Committee Meetings

No committee meetings were held.

COMMITTEE MEETINGS FOR FRIDAY, JANUARY 27, 2006

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No committee meetings are scheduled.

Next Meeting of the **SENATE**

12 noon, Friday, January 27

Senate Chamber

Program for Friday: Senate will continue consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

12 noon, Tuesday, January 31

House Chamber

Program for Tuesday: To be announced.

Congressional Record

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