

And I want to thank you all for your time. I'm glad to be back here in Texas. I miss my friends in Texas. I am—you know, people say, "Are you looking forward to coming home?" Yes, I'm looking forward to living here, but in the meantime, it looks like I'm going to have a lot of work to do between today and when the new President takes office. But Laura and I are glad to be with our friends, and thank you for your time. Thank you all very much.

NOTE: The President spoke at 10:44 a.m. at Olmos Pharmacy. In his remarks, he referred to Betty Garza, owner, Olmos Pharmacy.

### Remarks to the Cincinnati Chapter of the Federalist Society in Cincinnati, Ohio

October 6, 2008

Thank you very much. Peter, thank you very much for the introduction and the invitation.

Laura and I are thrilled to be with you. We have just come from Texas. I spent this morning in San Antonio with some small-business owners. They were rightly concerned about our economy and their ability to get credit. They were wondering about a man they know who believes strongly in free markets, and wondering why I promoted a significant piece of legislation to deal with what I believe and others believe is a significant problem, and that is the inability of credit to move as freely as we want.

And I told them, if I thought that the problem would be contained only to Wall Street, I would have taken a particular point of view, but I told them I was concerned about them—just like I'm concerned about you—and, therefore, proposed with the Congress a big rescue plan to deal with a big problem.

I believe that this plan will work over time. I signed the bill on Friday. It's going to take time for the Treasury Department to put a plan in place that won't waste your money and that will achieve the objective.

I believe in the long run this economy is going to be just fine. It's a resilient economy; it's a productive economy with good workers. This is a reminder that we have been through tough times before, and we're going to come

through this just fine. And so, I'm telling my fellow citizens, like the three people I had coffee with there in San Antonio, that this plan is big for a reason. And the plan is going to take time to implement. And I—in the meantime, I told them to keep selling their products and working hard.

So I want to thank you for giving me a chance to come and talk about judges, but before I did so I wanted to share with you my morning. And I'm sure you hear the same thing—people are just wondering, are these banks going to freeze up? And my answer is, we got a plan to deal with it.

And we got a plan to deal with judges too. It's something I've been implementing for 7½ years. And so today I want to thank Peter and Chip Miller—happens to be the president of the Cincinnati lawyers chapter of the mighty Federalist Society; Fred Finks, the president of Ashland University; Gene Meyer, the president of the Federalist Society, for giving me a chance to come and talk about the judiciary.

I appreciate Ed Meese, former Attorney General, for joining us; Paul Clement. The former secretary of State of Ohio; thanks for coming, Mr. Secretary. And thank you all. I understand there are members of the Federalist Society who are viewing this program from afar, over the Internet. So we welcome you via the wonders of modern technology.

Before Oliver Wendell Holmes took his seat on the Supreme Court, he met a supporter who wished him well in his new duties. The supporter expressed satisfaction that Holmes would be going to Washington to administer justice. Holmes replied, "Don't be too sure. I'm going there to administer the law." Holmes was trying to make clear what he believed was the proper role of judges: to apply the laws as written, and not to advance their own agendas. He knew that it was up to elected officials, not appointed judges, to represent the popular will.

Our Founders gave the judicial branch enormous power. It's the only branch of Government whose officers are unelected. That means judges on the Federal bench must exercise their power prudently, cautiously, or some might even say, conservatively. [*Laughter*] And that means that the selection and

confirmation of good judges should be a high priority for every citizen.

We've seen the profound impact that judges can have on the daily lives of every citizen. We saw the power of judges in 2002, when the Ninth Circuit Court of Appeals declared the Pledge of Allegiance unconstitutional because it contained the words "under God."

We saw the power of judges in the *Kelo* decision, a 5–4 majority of the Supreme Court that ruled that governments could seize people's homes for private development. The government decided the seizure was for the greater good.

We saw the power of judges in *Boumediene v. Bush*. There, a 5–4 majority rejected the carefully crafted procedures Congress established for detainees held at Guantanamo Bay in response to a prior Supreme Court decision. And for the first time, the Court awarded foreign terrorists held overseas legal rights previously reserved for American citizens.

Recently, we've also seen the important role of judges in the rulings of a very different 5–4 majority. We saw this last year, when five members of the Supreme Court upheld a law banning the grisly practice of partial birth abortion. We saw it again this June, when that same slender majority stood up for the plain meaning of our Constitution and upheld the rights of citizens under the second amendment.

The lesson should be clear to every American: Judges matter. And that means the selection of good judges should be a priority for all of us. I appreciate that many people listening today and here in this room have worked hard to recruit more Americans to this cause. This work is in all our interests, but the truth of the matter is, the belief in judicial restraint is shared by the vast majority of American citizens.

A lot has happened since 2000, yet I can still remember the heated debate over the kinds of judges Presidents should appoint. One group said that judges ought to look at the Constitution as a document that grows with our country and our history. This concept of a living Constitution gives unelected judges wide latitude in creating new laws and policies without accountability to the people.

And then there was another side, which I happened to be a part of, that said we needed judges who believed that the Constitution means what it says. When asked if I had any idea in mind of the kinds of judges I would appoint, I clearly remember saying, "I do." That would be Judges Scalia and Thomas.

Judge Scalia recently gave an interview on the TV show "60 Minutes." I don't know if you're supposed to call it a TV show, kind of—[laughter]—newsworthy show. [Laughter] He talked about the schoolchildren who visit the Supreme Court and proudly recite what they had been taught about the living Constitution. Judge Scalia noted that he usually had the sad duty of telling the children that the Constitution was never alive. [Laughter] He believed, as I do and many in this hall believe, that the Constitution is not a living document, it is an enduring document, and good judges know the difference.

And I made a promise to the American people during the campaign that if I was fortunate enough to be elected, my administration would seek out judicial nominees who follow that philosophy. We would search from a diverse array of candidates and nominate those who met the highest standards of competence. We would not impose any litmus tests concerning particular issues or cases. Instead, we would seek judges who would faithfully interpret the Constitution, and not use the courts to invent laws or dictate social policy. And with your support, we have kept that pledge. I have appointed more than one-third of all the judges now sitting on the Federal bench, and these men and women are jurists of the highest caliber, with an abiding belief in the sanctity of our Constitution.

The judicial philosophy that I brought to Washington, DC, is demonstrated most clearly by the—some of the judges I have named to the bench—matter of fact, all the judges I've named to the bench. [Laughter] One of them is the son of an Italian American—schoolteachers from Trenton, New Jersey. He graduated from Princeton and Yale Law. He worked in Ronald Reagan's Justice Department, was the U.S. Attorney for New Jersey, and served as a distinguished circuit court judge. When I announced his nomination, this good man was hailed by

Democrats and Republicans alike for his keen mind and impeccable credentials. And America is well served by the 110th Justice of the United States Supreme Court, Samuel A. Alito.

And serving with Justice Alito on the High Court is the former captain of a high school football team who worked summers in the steel mill to help pay for college. He received his bachelor's degree from Harvard in just 3 years and was managing editor of the Harvard Law Review. He later clerked for William H. Rehnquist, the man he would replace as Chief Justice. At his confirmation hearing, this outstanding jurist put his philosophy this way: "Judges are like umpires. Umpires don't make the rules, they apply them. It is a limited role. Nobody ever went to a ball game to see the umpire." I was very proud to nominate for the Supreme Court a really decent man, and a man of good judgment, and that would be Chief Justice of the Supreme Court John Roberts.

Chief Justice Roberts was so obviously well-qualified that he received overwhelming support from Members of the Senate, including many Senators generally considered to be well left-of-center.

Unfortunately, the broad, bipartisan, and timely support for Chief Justice Roberts has increasingly become the exception. Over the years, the advice and consent clause of our Constitution has been subjected to serious abuse. Members of the Senate seem to embrace the advice part; it's the consent part that seems to be the problem.

Perhaps the best demonstration of this problem is the story of Miguel Estrada. Miguel was one of my first nominees to the courts, and he had an inspiring personal history. He was an immigrant from Latin America who came to the United States with little knowledge of English. He came to live the dream. He studied hard, and he worked hard, and he made his way to Columbia Law School, and then Harvard Law School. He was a Supreme Court clerk. He prosecuted crimes in the U.S. Attorney's office in New York, and he served in the Justice Department under President Bill Clinton.

When Miguel Estrada was nominated for a seat on the DC Circuit Court, he received a unanimous well-qualified rating from the

American Bar Association. Yet for more than 2 years he awaited a simple up-or-down vote in the United States Senate; he never got one. For the first time in history, the Senate used a filibuster to block a nominee to the Court of Appeals. This fine American endured years of delay; he had his character unfairly attacked, and ultimately withdrew his name from consideration, all because a minority of Senators thought they would not like his rulings on the bench and worried that a President might one day elevate him to the Supreme Court.

Miguel Estrada deserved better. He deserved a more dignified treatment from the United States Senate. And the American people deserve better behavior from those they send to represent them in Washington, DC.

Unfortunately, Miguel Estrada's experience is not an isolated one. Many other well-qualified nominees have endured uncertainty and withering attacks on their character simply because they've accepted the call to public service. Those waiting in limbo include: Peter Keisler for the DC Circuit Court, Rod Rosenstein for the Fourth Circuit, and dozens of other nominees to district and circuit courts across this country.

Some of these nominees waiting for a simple up-or-down vote would fill court vacancies that have been designated judicial emergencies. While these vacancies remain unfulfilled—unfilled—legal disputes are left unresolved, the backlog of cases grows larger, and the rule of law is delayed for millions of Americans.

The broken confirmation process has other consequences that Americans never see. Lawyers approached about being nominated will often politely decline because of the uncertainty and delay and ruthlessness that now characterizes the confirmation process. Some worry about the impact a nomination might have on their children, who would hear their dad or mom's name dragged through the political mud. This situation is unacceptable, and it's bad for our country. A judicial nomination should be a moment of pride for nominees and their families, not the beginning of an ugly battle. And the confirmation process should benefit the greatest democracy

in the world, and not look like a bad episode of “Survivor.” [Laughter]

It is clear we need to improve the process for confirming qualified judicial nominees. This process will always be somewhat contentious. But there are a few things that the American people expect us to agree on. First, the American people expect nominees and their families to be treated with dignity. Nominees should not have to wait years for the up-or-down vote that the Senate owes them.

The American people expect their elected officials to do the job of screening judicial nominees. We should not cede to any one legal association the exclusive power to veto a nominee before he or she can make their case to Members of the Senate.

The American people expect the nomination process to be as free of partisanship as possible, and for Senators to rive [rise]\* above tricks and gimmicks designed to thwart nominees. For example, Senators have invented a new rule that bans the election-year confirmation of anyone not considered a consensus nominee, with consensus defined as only the nominees they happen to choose. In the end, the people hurt most by these partisan maneuvers are the American people. And that is not what our Founders intended, and Presidents and Senators from both parties ought to say so.

In Washington, it can be easy to get caught up in the politics of the moment. Yet if we do not act to improve the confirmation process, those who are today deploying harmful tactics and maneuvers to thwart nominees will sooner or later find the tables turned. There are things more important, even in Washington, than politics as usual.

Next month, the Senate will hold a lame duck session to finish their legislative business for the year. One item that should be at the top of their agenda is a long list of qualified judicial nominees still waiting for Senate action. If Democrats truly seek a more productive and cooperative relationship in Washington, then they have a perfect opportunity to prove it, by giving these nominees the up-or-down vote they deserve.

\* White House correction.

Our democracy requires us to come together and to get things done for the citizens of this great republic. I’m confident we can do that. And I’m grateful that there are dedicated people like you all who are working so hard to help us put good judges on the courts, and equally important, to help invest the American people in the process.

I salute you for your good work. Appreciate the chance to come and visit with you. May God bless you. And may God bless the American people.

NOTE: The President spoke at 3:02 p.m. at the Hilton Cincinnati Netherland Plaza. In his remarks, he referred to Peter W. Schramm, executive director, Ashbrook Center for Public Affairs, Ashland University, who introduced the President; former U.S. Solicitor General Paul D. Clement; and former secretary of State J. Kenneth Blackwell of Ohio. He also referred to H.R. 1424, approved October 3, which was assigned Public Law No. 110–343. The Office of the Press Secretary also released a Spanish language transcript of these remarks.

### **Memorandum on Waiver of Restriction on Providing Funds to the Palestinian Authority**

*October 6, 2008*

Presidential Determination No. 2009–02

*Memorandum for the Secretary of State*

*Subject:* Waiver of Restriction on Providing Funds to the Palestinian Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 650(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Division J, Public Law 110–161) (the “Act”), as carried forward under section 1417 of the Supplemental Appropriations Act, 2008 (Public Law 110–252) (the “Supplemental”), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 650(a) of the Act, as carried forward under the Supplemental, in order to provide funds appropriated for fiscal year 2009 under the heading Economic Support Funds to the Palestinian Authority.