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Senate

The Senate met at 9:55 a.m. and was called to order by the Honorable BILL NELSON, a Senator from the State of Florida.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, You have promised leaders who trust You the gift of discernment. We claim that gift today. Give the Senators x-ray penetration into the deeper issues in each decision they must make. Remind them that You are ready to give them the discernment for what is not only good, but Your best, not only expedient, but excellent. Help them to know that the need before them will bring forth the gift of discernment You have inspired within them. You have done this for the great leaders of our history and we claim nothing less today. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable BILL NELSON 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 26, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BILL NELSON, a Senator from the State of Florida, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Florida thereupon assumed the Chair as Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Mr. President, we are going to vote in just a minute on the nomination of Julia S. Gibbons to be U.S. Circuit Judge for the Sixth Circuit. There was some question as to whether there would be a vote following that. There will not be. That will be done by voice vote. This will be the first and last vote of today.

Following this vote, we will resume consideration of the prescription drug bill. The minority has an amendment that they are going to offer.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF JULIA SMITH GIBBONS, OF TENNESSEE, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT—Resumed

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the cloture vote on Executive Calendar No. 810.

Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the

Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 810, the nomination of Julia Smith Gibbons, of Tennessee, to be U.S. Circuit Judge for the Sixth Circuit.

Harry Reid, Tom Daschle, Charles Schumer, Mitch McConnell, Fred Thompson, Bill Frist, Phil Gramm, Jon Kyl, Charles Grassley, Wayne Allard, Trent Lott, Don Nickles, Larry E. Craig, Craig Thomas, Mike Capo, Jeff Sessions, Pat Roberts, Jim Bunning, John Ensign, Orrin G. Hatch.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call under the rule has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 810, the nomination of Julia Smith Gibbons, of Tennessee, to be U.S. Circuit Judge for the Sixth Circuit, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Hawaii (Mr. INOUE), the Senator from Georgia (Mr. MILLER), and the Senator from Washington, (Mrs. MURRAY), are necessarily absent.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. BOND), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Texas (Mrs. HUTCHISON) the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

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

The yeas and nays resulted—yeas 89, nays 0, as follows:

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



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[Rollcall Vote No. 193 Exe.]

YEAS—89

Akaka	Dorgan	McCain
Allard	Durbin	McConnell
Allen	Edwards	Mikulski
Baucus	Ensign	Murkowski
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Bingaman	Feinstein	Nickles
Breaux	Fitzgerald	Reed
Brownback	Frist	Reid
Bunning	Graham	Roberts
Burns	Grassley	Rockefeller
Byrd	Gregg	Santorum
Campbell	Hagel	Sarbanes
Cantwell	Harkin	Schumer
Carnahan	Hatch	Sessions
Carper	Hollings	Shelby
Chafee	Inhofe	Smith (NH)
Cleland	Jeffords	Smith (OR)
Clinton	Johnson	Snowe
Cochran	Kennedy	Specter
Collins	Kerry	Stabenow
Conrad	Kohl	Stevens
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Dodd	Lott	Wyden
Domenici	Lugar	

NOT VOTING—11

Biden	Helms	Miller
Bond	Hutchinson	Murray
Boxer	Hutchinson	Thomas
Gramm	Inouye	

The PRESIDING OFFICER. On this vote, the yeas are 89, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. HATCH. Mr. President, this morning we moved closer to the confirmation of Judge Julia Smith Gibbons of Tennessee to the 6th Circuit Court of Appeals. In so doing, we will bring relief to a Circuit with a 50 percent vacancy rate, with 9 empty seats out of 18, despite the fact that the President nominated 6 fine public servants to fill those seats on May 9, 2001, well over 400 days ago. I look forward to confirming her finally.

I rise this morning to express my most profound concern for the course of judicial confirmations in general and my support for the confirmation of Justice Priscilla Owen of Texas. The Judiciary Committee gave Justice Owen a 5-hour hearing earlier this week, which I am afraid did not do credit to the Committee.

I will comment on Justice Owens' qualifications, and to address some of the deceptions, distortions and demagoguery orchestrated against her nomination, that we have all read in the national and local papers.

I would like first to comment on the two jingos that are being used about her record as if they had substance: namely, that Justice Owen is "conservative" and that she is "out of the mainstream." Of course, this comes from the Washington interest groups, in many cases, who think that mainstream thought is more likely found in Paris, France, than Paris, Texas.

I must admit that it's curious to hear it argued that a nominee twice elected by the people of the most populous State in the Circuit for which she is now nominated is "out of the main-

stream." Texans are no doubt entertained to hear that.

Listening to some of my colleagues' commentary on judges, I sometimes think that main-stream for them is a northeastern river of thought that travels through New Hampshire early and often, widens in Massachusetts, swells in Vermont, and deposits at New York City. Well, the mainstream that I know, and that most Americans can relate to, runs much broader and further than that.

The other mantra repeated by Justice Owen's detractors is that she is "conservative." I believe that the use of political or ideological labels to distinguish judicial philosophies has become highly misleading and does a disservice to the public's confidence in the independent judiciary, of which the Senate is the steward.

I endorse the words of my friend, and former Chairman of the Judiciary Committee, Senator BIDEN, when he said some years ago that:

"[Judicial confirmation] is not about pro-life or pro-choice, conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third co-equal branch of the Government."

I believe it is our duty to confirm judges who stand by the Constitution and the law as written, not as they would want to rewrite them. That was George Washington's first criterion for the Federal bench, and it is mine. I also want common sense judges who respect American culture. I believe that is what the American people want.

I believe we do a disservice to the independence of the Federal judiciary by using partisan or ideological terms in referring to judges.

My reason was well stated by Senator BIDEN when he said that: "it is imperative [not to] compromise the public perception that judges and courts are a forum for the fair, unbiased, and impartial adjudication of disputes."

We compromise that perception, I believe, when we play partisan or ideological tricks with the judiciary. Surely, we can find other ways to raise money for campaigns and otherwise play at politics, without dragging this nation's trust in the judiciary through the mud, as some of the outside groups continue to do.

All you have to do to see my point is read two or three of the fund-raising letters that have become public over the past couple of weeks that spread mistruths and drag the judiciary branch into the mud, as many recent political campaigns increasingly find themselves.

On a lighter note, while on ideology, let me pause to point out that one of the groups deployed against Justice Owen is the Communist Party of America, but then I don't know that they have come out in favor of any of President Bush's nominees. I suspect after the fall of the Berlin Wall, they must have a lot of time on their hands.

Today I wish to address just why a nominee with such a stellar record, a respected judicial temperament, and as fine an intellect as Justice Owen has, who graduated third in her class from Baylor's law school, a great Baptist institution, when few women attended law school, let alone in the South, who obtained the highest score in the Texas Bar examination, and who has twice been elected by the people of Texas to serve on their Supreme Court, the last time with 83 percent of the votes and the support of every major newspaper of every political stripe, I would like to address just why such a nominee could get as much organized and untruthful opposition from the usual leftist, Washington special interest groups that we see. I will peel through what is at play for those groups. We need to expose and repel what is at play for the benefit and independence of this Senate.

And I would like to address also the reasons why I am confident that she will be confirmed notwithstanding. Not least of which is that, far from being the "judicial activist" some would have us believe her to be, she garnered the American Bar Association's unanimous rating of "well qualified." The Judiciary Committee has never voted against a nominee with this highest of ratings.

The first reason for the organized opposition, of course, is plain. Justice Owen is from Texas, and Washington's well paid reputation destroyers could not help but attempt to attack the widely popular President of the United States, at this particular time in an election year, by attacking the judicial nominee most familiar to him. Justice Owen, welcome to Washington.

But as I prepared more deeply for the Hearing earlier this week, the second reason became apparent to me. In my 26 years on the Judiciary Committee I have seen no group of judicial nominees as superb as those that President Bush has sent to us, and he has sent both Democrats and Republicans.

In reading Justice Owen's decisions, one sees a judge working hard to get it right, to get at the legislature's intent and to apply binding authority and rules of judicial construction. It is apparent to me that of all the sitting judges the President has nominated, Justice Owen is the most outstanding nominee. She is, in my estimation, the best, and despite what her detractors say, she is the best judge that any American, any consumer and any parent could hope for.

Her opinions, whether majority, concurrences or dissents, could be used as a law school text book that illustrates exactly how, and not what, an appellate judge should think, how she should write, and just how she should do the people justice by effecting their will through the laws adopted by their elected legislatures. Justice Owen clearly approaches these tasks with both scholarship and mainstream American common sense. She does not

substitute her views for the legislature's, which is precisely the type of judge that the Washington groups who oppose her do not want.

She is precisely the kind of judge that our first two Presidents, George Washington and John Adams, had in mind when they agreed that the justices of the State supreme courts would provide the most learned candidates for the Federal bench.

So in studying her record, the second reason for the militant and deceptive opposition to Justice Owen became quite plain to me. In this world turned upside down, simply put, she is that good.

Another reason for the opposition against Justice Owen is the most demagogic, the issue of campaign contributions and campaign finance reform. Some of her critics are even eager to tie her to the current trouble with Enron.

Well, she clearly has nothing to do with that. Neither Enron nor any other corporation has donated to her campaigns, in fact, they are forbidden by Texas law to make campaign contributions in judicial elections. It was embarrassing to me, as it would be to any American who watched the hearing earlier this week, to see Justice Owen defeat these demagogic allegations, but being a Texas woman, she did so with style, elegance, and grace—and without embarrassing her questioners.

Not that there was even a need for more questions. The Enron and campaign contributions questions were amply clarified in a letter to Chairman LEAHY and the Committee dated April 5 by Alberto Gonzales. I will ask unanimous consent, to place this and other related letters into the RECORD. And I would place into the RECORD a retraction from The New York Times saying that they got their facts wrong on this Enron story. Such retractions don't come often, not as often as the invention of facts by the smear groups. And despite the retraction, CNN was repeating the same wrong facts just this week!

Notably, at the hearing Justice Owen received no questions from my Democrat colleagues on her views on election reform and judicial reform, of which she is a leading advocate in Texas. She is also a leader in Gender Bias Reform in the courts and a reformer on divorce and child support proceedings. But my colleagues seemed to take little interest in this, nor in her acclaimed advocacy to improve legal services and funding for the poor.

All of these are aspects of her record her detractors would have us ignore, I certainly did not read these positive attributes in those fancy documents, or should I say booklets, released prior to the hearing by the Washington radical special interests lobby.

I will also ask unanimous consent, to place into the RECORD letters from leaders of the Legal Society and 14 past presidents of the Texas Bar Association, many of whom are leading Texas Democrats.

The fourth reason for the opposition to Justice Owen is the most disturbing to me. For some months now, a few of my Democrat colleagues have strained to point out when they believe they are voting for judicial nominees that they believe to be pro-life. I have disputed this when they have said it because the record contains no such information of personal views from the judges we have reported favorably out of the Judiciary Committee.

Each time they assert it, my staff has scoured the transcripts of hearings and turned up nothing. What does turn up is that each time my colleagues have asserted this, they have done so only for nominees who are men.

I am afraid that the main reason Justice Owen is being opposed, is not that personal views, namely on the issue of abortion, are being falsely ascribed to her, they are, but rather because she is a woman in public life who is believed to have personal views that some maintain should be unacceptable for a woman in public life to have.

Such penalization is a matter of the greatest concern to me because it represents a new glass ceiling for women jurists. And they have come too far to suffer now having their feet bound up just as they approach the tables of our high courts after long-struggling careers.

I am deeply concerned that such treatment will have a chilling effect on women jurists that will keep them from weighing in on exactly the sorts of cases that most invite their participation and their perspectives as women.

The truth is that Justice Owen has never written or said anything critical of abortion rights. In fact, the cases she is challenged on have everything to do with the rights of parents to be involved in their children's lives, and nothing to do with the right to an abortion.

Ironically, the truth is that the cases that her detractors point to as proof of apparently unacceptable personal views are a series of fictions. This is what I mean about exposing the misstatements of the left-wing activist groups in Washington. I will illustrate just three of these fictions.

The first sample fiction is the now often-cited comment attributed to then Texas Supreme Court Justice Alberto Gonzales, written in a case opinion, that Justice Owen's dissent signified "an unconscionable act of judicial activism." Someone should do a story about how often this little shibboleth has been repeated in the press and in several websites of the professional smear groups. The problem with it is that it isn't true. Justice Gonzales was not referring to Justice Owen's dissent, but rather to the dissent of another colleague in the same case.

The second sample fiction is the smear group's misrepresented portrayal of a case involving buffer zones and abortion clinics. In that case, the majority of the Texas Supreme Court

ruled for Planned Parenthood and affirmed a lower court's injunction that protected abortion clinics and doctor's homes and imposed 1.2 million dollars in damages against pro-life protestors. In only a few instances, the court tightened the buffer zones against protestors. Justice Owen joined the majority opinion and was excoriated by dissenting colleagues, who were, by that way, admittedly pro-life.

When describing that decision then, abortion rights leaders hailed the result as a victory for abortion rights in Texas. Planned Parenthood's lawyer said the decision "isn't a home run, it's a grand slam."

Of course, that result hasn't changed, but the characterization of it has. This is how Planned Parenthood describes this same case in their fact sheet on Justice Owen: "[Owen] supports eliminating buffer zones around reproductive health care clinics . . ."

In fact, her decision did exactly the opposite.

The third and most pervasive sample fiction concerns Justice Owen's rulings in a series of Jane Doe cases which first interpreted Texas' then-new parental involvement law. The law, which I think is important to emphasize was passed by the Texas legislature, not by Justice Owen, with bipartisan support, requires that an abortion clinic give notice to just one parent 48 hours prior to a minor's abortion. Unlike States with more restrictive laws such as Massachusetts, Wisconsin, and North Carolina, consent of the parent is not required in Texas. A minor may be exempted from giving such notice if they get court permission.

Since the law went into effect, over 650 notice bypasses have been requested from the courts. Of these 650 cases, only 10 have had facts so difficult that two lower courts denied a notice bypass, only 10 have risen to the Texas Supreme Court.

Justice Owen's detractors would have us believe that in these cases, she would have applied standards of her own choosing. Ironically, in each and every example they cite, whether concurring with the majority or dissenting, Justice Owen was applying not her own standards but the standards enunciated in the *Roe v. Wade* line of decisions of the United States Supreme Court, which she followed and recognized as authority.

For example, detractors take pains to tell us that Justice Owen would require that to be sufficiently informed to get an abortion without a parent's knowledge, that the minor show that they are being counseled on religious considerations. They appear to think this is nothing more than opposition to abortion rights. They are so bothered with this religious language that various documents produced by the abortion industry lobby italicize the word religious. But this standard is not Justice Owen's invention, but rather the words of the Supreme Court's pro-choice decision in *Casey*.

Should she not follow one Supreme Court decision, but be required to follow another? Is that what we want our judges to do, pick and choose which decisions to follow? That appears to be the type of activist judge these groups want, and this Senate should resist all such attempts.

The truth is that rather than altering the Texas law, Justice Owen was trying to effect the legislator's intent. No better evidence of this is the letter of the pro-choice woman Texas Senator stating her "unequivocal" support of Justice Owen.

Senator Shapiro says of Justice Owen: "Her opinions interpreting the Texas [parental involvement law] serve as prime example of her judicial restraint." I understand why the Washington left-wing groups don't like that in a judge, but the Senate and the Judiciary Committee should applaud and commend such restraint and temperament.

The truth is that, rather than being an activist foe of Roe, Justice Owen repeatedly cites and follows Roe and its progeny as authority. She has to, it's what the Court has said is the law. Compare this to Justice Ruth Bader Ginsburg who wrote in 1985 that the Roe v. Wade decision represented "heavy handed judicial intervention" that was "difficult to justify."

In relation to this, I would like briefly to comment on the mounting offensive of some to change the rules of judicial confirmation by asking nominees to share personal views or to ensure that nominees share the personal views of the Senator on certain cases.

To illustrate my view, I'll tell you that many people have recently called on the Judiciary Committee to question nominees as to their views on the pledge of allegiance case. My full-throated answer to this is no, as much as I think that that case was wrongly decided. I also happen to think that the recent School Voucher case is the most important civil rights decision since Brown but I am not going to ask people what they think about that case either.

Such questions threaten the heart of the independent judiciary and attempt to accomplish by hidden indirection what Senators cannot do openly by constitutional amendment. It is an attempt to make the courts a mere extension of the Congress.

I speak against this practice in the strongest terms, and, in my view, any nominee who answers such questions would not be fit for judicial office and would not have my vote.

The truth is that there are many who, like Justice Ginsburg, think that cases like Griswold or Roe were wrongly decided as a constitutional matter even if they agree with the policy result, just as the great liberal Justice Hugo Black did in his dissent in Griswold.

A few weeks ago we heard testimony from Boyden Gray, a former White Counsel and a former Supreme Court clerk, that Chief Justice Warren

though that Brown v. Board of Education was his worst ruling as matter of constitutional law, but not his least necessary to end desegregation.

Some of Justice Owen's detractors have made much about the fact that she is not afraid to dissent. Of course, they fail to mention dissents like her opinion in Hyundai Motor v. Alvarado, in which Justice Owens' reasoning was later adopted by the United States Supreme Court on the same difficult issue of law.

They also overlooked here dissent in a repressed memory/sexual abuse case where she took the majority to task with these words: "This is reminiscent of the days when the crime of rape went unpunished unless corroborating evidence was available. The Court's opinion reflects the attitudes reflected in that era."

Perhaps, they thought that this dissent showed her too representative of American women. Despite deceptive opposition I think that Justice Owen should be confirmed.

I will ask unanimous consent to place into the RECORD an editorial of earlier this week from The Washington Post, a liberal publication, calling on us to be fair and calling on this Senate to confirm Justice Owen.

I have hope that my Democrat colleagues on the Judiciary Committee will be led by the time-tested standards well-stated by Senator BIDEN, and look again to qualifications and judicial temperament, not base politics. Whether the Biden standard will survive past our time, will be tested now.

If we fail the test we will breach our responsibility as auditors of the Washington special interest groups and the Judiciary's stewards on behalf of all the people, and not just some.

Mr. President, I ask unanimous consent that the documents to which I have referred be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, DC, April 5, 2002.

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

DEAR CHAIRMAN LEAHY: In our recent conversations, you suggested that the White House should examine whether contributions Justice Owen received for her campaigns for the Texas Supreme Court raise any legitimate issue with respect to her fitness to serve on the Fifth Circuit. We have done as you have suggested, and I see no basis to question Justice Owen's fitness to serve on the Fifth Circuit. The record reflects that she has at all times acted properly and in complete compliance with both the letter and the spirit of the rules relating to judicial campaign finance.

I am certain you will agree that it was entirely proper for Justice Owen's campaign to receive contributions. Article 5 of the Texas Constitution provides that candidates for the state judiciary run in contested elections, which are partisan under Texas election law, and Canon 45(1) of the Texas Code of Judicial Conduct provides that the candidates may solicit and accept campaign funds. Like Senators, therefore, candidates for the state judiciary in Texas may receive contributions to finance their campaigns.

To be sure, Justice Owen and many others would prefer a system of appointed rather than elected state judges. In fact, Justice Owen has long advocated appointment of judges (coupled with retention elections). She has written to fellow Texas attorneys on the issue, committed to a new system in League of Women Voters publications, and appeared as a pro-reform witness before the Texas Legislature. She has explained even to partisan groups why judges should be selected on merit. But the people in some states, including Texas, have chosen a system of contested elections for judges. Elected state judges certainly are not barred from future appointment to the federal judiciary; on the contrary, some notable federal appellate judges whom President Clinton nominated and you supported were state judges who had run and been elected in contested elections—Fortunato Benevides and James Dennis, for example, from the Fifth Circuit.

I am also certain you would find nothing inappropriate about the sources from which Justice Owen's campaign received contributions. In her 1994 and 2000 elections, Justice Owen's campaign quite properly received contributions from a large number of entities and individuals, with no single contributor predominating. In the 1994 election cycle, her campaign received approximately \$1.2 million in contributions from 3,084 different contributors. Included in that total was \$8,800 from employees of Enron and its employee-funded political action committee. Employees of Enron thus contributed less than 1% of the total contributions to her campaign. And Justice Owen's campaign, of course, received no corporate contributions from Enron or any Enron-affiliated corporation, as such corporate contributions are not permissible under Texas law. Notably, in the 1994 election, not only did Justice Owen comply with all campaign laws, she went beyond what the law required and voluntarily limited contributions when many other judicial candidates did not do so.

In the 2000 election cycle, Justice Owen's campaign received approximately \$300,000 in contributions from 273 different contributors. In that cycle, her campaign received no contributions from Enron or its affiliates, from employees of Enron, or from Enron's political action committee. In addition, Justice Owen ultimately had no Democratic or Republican opponent in the 2000 election cycle, and she closed her campaign office and returned most of her unspent contributions, an act that I believe is unusual in Texas judicial history.

It was entirely proper for Justice Owen's campaign to receive campaign contributions, including the contributions from Enron employees. Indeed, seven of the nine current Texas Supreme Court Justices received Enron contributions, and several of them received more than Justice Owen's campaign received. As this record demonstrates, elected judges certainly did not act improperly in the past, before anyone knew about Enron's financial situation, by receiving contributions from employees of Enron—any more than it could be said that Members of Congress acted improperly in the past by receiving contributions from Enron.

If, as is evident from the foregoing discussion, there was nothing amiss with the fact that Justice Owen received donations or with the sources from which she received them, the only other possible area of concern with her conduct relating to campaign contributors would be her decisions from the bench. Texas Code of Judicial Conduct Canon 3(B)(1) provides that a judge "shall hear and decide matters assigned to the judges except those in which disqualification is required or recusal is appropriate." And it is

well-established that judicial recusal is neither necessary nor appropriate in cases involving parties or counsel who contributed to that judge's campaign. See *Public Citizen, Inc. v. Bomer*, 274 F.3d 212, 215 (5th Cir. 2001); *Apex Towing Co., v. Tolin*, 997 S.W.2d 903, 907 (Tex. App. 1999), rev'd on other grounds, 41 S.W.3d 118 (Tex. 2001); *Aguilar v. Anderson*, 855 S.W.2d 799, 802 (Tex. App. 1993); *J-IV Invs. v. David Lynn Mach., Inc.*, 784 S.W.2d 106, 107 (Tex. App. 1990). Indeed, in any state with elected judges, any other rule would be unworkable. The primary protections against inappropriate influence on judges from campaign contributions are disclosure of contributions and adherence to the tradition by which judges explain the reasons for their decisions. If the people of a state deem those protections insufficient, the people may choose a system of appointed judges rather than elected judges, as Justice Owen has advocated for Texas.

Surmising that the concerns you raised would likely focus on her sitting in cases in which Enron had an interest, we have undertaken a review of her decisions in such cases. We have reviewed Texas Supreme Court docket records and Enron's 1994-2000 SEC Form 10Ks to determine the cases in which Enron or affiliates of Enron were parties to proceedings before the Court since January 1995 (when Justice Owen took her seat). The decisions of the Texas Supreme Court since January 1995 in proceedings involving Enron have been ordinary and raise no questions whatsoever.

A judge's decisions are properly assessed by examining their legal reasoning, not by conducting any kind of numerical or statistical calculations. But even those who would attempt to draw conclusions based on such calculations would find nothing in connection with these Enron cases. To begin with, we are aware of no proceeding involving Enron in which Justice Owen cast the deciding vote. In six proceedings in which we know that Enron was a party, Justice Owen's vote can be characterized as favorable to Enron in two cases and adverse in two cases. With respect to the remaining two, one cannot be characterized either way, and she did not participate in the other case because it had been a matter at her law firm when she was a partner. Eight other matters came before the Court in which we know that Enron or an affiliate was a party, but the court declined to hear them. In those matters, the Court's actions could be characterized as favorable to Enron in four cases, adverse in three cases, and one was dismissed by agreement of the parties. We will supply the Judiciary Committee copies of the cases on request.

There has been some media attention on one case involving Enron in which Justice Owen wrote the opinion for the Court. See *Enron Corp. v. Spring Creek Independent School District*, 922 S.W.2d 931 (Tex. 1996). The issue in that case concerned the constitutionality of an ad valorem tax statute that allowed market value of inventory to be set on one of two different dates. The Court held that the statute did not violate the state constitution—and the decision was unanimous. I understand that two Democratic Justices who sat on the Court at that time (Justice Raul Gonzalez and Rose Spector) have written to you to explain the case, indicating that Justice Owen's participation in the case was entirely proper. Moreover, the lawyer who represented a part opposing Enron in this case (Robert Mott) recently was quoted as saying that criticism of Justice Owen for her role in this case is "nonsense" *Texas Lawyer* (April 1, 2002). In my judgment, this case raises no legitimate issue with respect to Justice Owen's confirmation.

Finally, I am informed that, if confirmed, Justice Owen will donate all of her unspent campaign contributions to qualify tax-exempt charitable and educational institutions, as is contemplated under section 254.205(a)(5) of the Texas Election Code.

I trust that the foregoing will resolve all questions concerning the propriety of Justice Owen's activities in relation to financing her campaigns. As you know, I served with Justice Owen, and I am convinced from my work with her that she is a person of exceptional integrity, character, and intellect. Both Senators from Texas strongly support her nomination. The American Bar Association has unanimously rated Justice Owen "well qualified," and one factor in that rating process is the nominee's integrity.

Despite her superb qualifications and the "Judicial emergency" in the Fifth Circuit declared by the Judicial Conference of the United States, Justice Owen has not received a hearing for nearly 11 months since her May 9, 2001, nomination. We respectfully request that the Committee afford this exceptional nominee a prompt hearing and vote.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

APRIL 1, 2002.

Re Justice Priscilla Owen.

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

DEAR SENATOR LEAHY: We served on the Texas Supreme Court with Justice Priscilla Owen when the case of *Enron Corporation et al. v. Spring Creek Independent School District*, 922 S.W.2d 931 (Tex. 1996) was decided. The issue in this case was the constitutionality of an ad valorem tax statute that allowed market value of inventory to be set on two different dates. In a unanimous opinion, all justices, Democrats and Republican alike, agreed with the opinion authored by Justice Owen that the choice of the valuation date in ad valorem tax statute did not violate a provision of the State Constitution requiring uniformity and equality in ad valorem taxation. We found the decision of the United States Supreme Court and other states instructive on this issue.

In our ruling, we agreed with the rulings of the Harris County Appraisal District and the trial court.

Cordially,

RAUL A. GONZALEZ,
Justice, Texas Supreme Court, 1984-1998.

ROSE SPECTOR,
Justice, Texas Supreme Court, 1992-1998.

PERDUE, BRANDON,
FIELDER, COLLINS & MOTT, L.L.P.,
Houston, TX, July 1, 2002.

Re Justice Priscilla Owen.

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

DEAR CHAIRMAN LEAHY: My name is Robert Mott. I was the legal counsel for the Spring Independent School District in the case of *Enron Corporation et al. v. Spring Independent School District*, 922 S.W.2d 931 (Tex. 1996). We were the losing party in this case.

I have been disturbed by the suggestions that Justice Priscilla Owen's decision in this case was influenced by the campaign contributions she received from Enron employees. I personally believe that such suggestions are nonsense. Justice Owen authored the opinion of a unanimous court consisting of both Democrats and Republican. While my clients and I disagreed with the decision, we were not surprised. The decision of the Court

was to uphold an act of the Legislature regarding property valuation. It was based upon United States Supreme Court precedent, of which we were fully aware when we argued the case.

I firmly believe that there is absolutely no reason to question Justice Owen's integrity based on the decision in this case.

Sincerely,

ROBERT MOTT.

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

Re nomination of the Honorable Priscilla Owen to the U.S. Court of Appeals for the Fifth Circuit.

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

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

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

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

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

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

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

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

Thank you for your attention to this correspondence.

Very truly yours,

HECTOR DE LEON.

TEXAS ASSOCIATION
OF DEFENSE COUNSEL, INC.,
Austin, TX, June 19, 2001.

*Re nomination of Justice Patricia Owen for the
United States Fifth Circuit of Appeals.*

Senator PATRICK LEAHY,
Senate Judiciary Committee,
Washington, DC.

DEAR SENATOR LEAHY: I have had the privilege of knowing Justice Patricia Owen of the Texas Supreme Court, both personally and professionally, for many years. I cannot imagine a more qualified, ethical, and knowledgeable person to sit on the United States Fifth Circuit Court of Appeals.

I accept the reality that politics is a part of our culture, but I know that when it comes to appointing federal judges, we must transcend politics and look to character and ability. Patricia Owen has the character and ability to make all of us, Democrat and Republican, proud.

I ask that your Committee act swiftly to confirm her nomination to the United States Fifth Circuit Court of Appeals.

Thank you.

Sincerely,

E. THOMAS BISHOP.

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

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

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

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

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

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

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

changes that would enhance and improve our state judicial branch of government.

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

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

DARRELL E. JORDAN.

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

[From the Washington Post, July 24, 2002]

THE OWEN NOMINATION

The nomination of Priscilla Owen to the 5th Circuit Court of Appeals creates understandable anxiety among many liberal activists and senators. The Texas Supreme Court justice, who had a hearing yesterday before the Senate Judiciary Committee, is part of the right flank of the conservative court on which she serves. Her opinions have a certain ideological consistency that might cause some senators to vote against her on those grounds. But our own sense is that the case against her is not strong enough to warrant her rejection by the Senate. Justice Owen's nomination may be a close call, but she should be confirmed.

Justice Owen is indisputably well qualified, having served on a state supreme court for seven years and, prior to her election, having had a well-regarded law practice. So rather than attacking her qualifications, opponents have sought to portray her as a conservative judicial activist—that is, to accuse her of substituting her own views for those of policymakers and legislators. In support of this charge, they cite cases in which other Texas justices, including then-Justice Alberto Gonzales—now President Bush's White House Counsel—appear to suggest as much. But the cases they cite, by and large, posed legitimately difficult questions. While some of Justice Owen's opinions—particularly on matters related to abortion—seem rather aggressive, none seems to us beyond the range of reasonable judicial disagreement. And Mr. Gonzales, whatever disagreements they might have had, supports her nomination enthusiastically. Liberals will no doubt disagree with some opinions she would write on the 5th Circuit, but this is not the standard by which a president's lower-court nominees should be judged.

Nor is it reasonable to reject her because of campaign contributions she accepted, including those from people associated with Enron Corp. Texas has a particularly ugly system of judicial elections that taints all who participate in it. State rules permit judges to sit on cases in which parties or lawyers have also been donors—as Justice Owen did with Enron. Judicial elections are a bad idea, and letting judges hear cases from people who have given them money is wrong. But Justice Owen didn't write the rules and has supported a more reasonable system.

Justice Owen was one of President Bush's initial crop of 11 appeals court nominees, sent to the Senate in May of last year. Of these, only three have been confirmed so far,

and six have not even had the courtesy of a hearing. The fact that President Clinton's nominees were subjected to similar mistreatment does not excuse it. In Justice Owen's case, the long wait has produced no great surprise. She is still a conservative. And that is still not a good reason to vote her down.

[From the New York Times, January 25, 2002]

CORRECTIONS

An article in *Business Day* on Tuesday about criticism of Justice Priscilla Owen of the Texas Supreme Court, a nominee for a federal judgeship who accepted campaign donations from Enron, misstated the amount of money saved by the company because of a decision she wrote, dealing with taxes owed to a local school district. It was \$224,988.65, not \$15 million. The larger sum, cited in her opinion as the district's revenue loss, was the amount by which the value of a piece of the company's land was lowered.

NOMINATION OF CHRISTOPHER C. CONNER, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE

Mr. REID. Mr. President, under the previous order, the Senate will now proceed to the consideration of Executive Calendar No. 826.

The PRESIDING OFFICER. The clerk will state the nomination.

The legislative clerk read the nomination of Christopher C. Conner, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Pennsylvania be recognized for up to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Pennsylvania is recognized for 3 minutes.

Mr. SANTORUM. Mr. President, I thank the Senator from Nevada for agreeing to recognize me.

Now that the nomination has been confirmed by the Senate, I congratulate Kit Conner from outside of Harrisburg, PA, for filling the vacancy in the Middle District. Judge Conner is one of six members from Pennsylvania who are on the Executive Calendar in the Senate. Including him, there are five district judges and one Third Circuit nominee, and I am very gratified we have been able to unlock the logjam on judges and begin the process of moving forward.

Kit Conner is a very distinguished member of the bar in the Middle District in Pennsylvania. He is a tremendous lawyer and advocate, someone who has made substantial contributions to his community and is going to be an excellent Middle District judge. I look forward to his swearing in ceremony very soon.

If we go down the listing of judges in the order in which they appear on the calendar, the next judges to be confirmed are also Pennsylvania judges, at least nominees for judicial vacancies, and they would be Joy Flowers Conti from the Western District of Pennsylvania, John Jones from the Middle District, and then D. Brooks Smith, who is