not have as much of a chance to make law. These days when you are nominated to an appellate court, when the Supreme Court takes virtually 75 cases a year, that argument does not fly. So I wrote back to Judge Smith, and again I asked him about his views. I made it clear I wanted to know about his personal views, not what the law was, but what his personal views were because we all know that influences a judge greatly when they make decisions.

This idea that judges are part of an ideological system and read the law in the same way is poppycock.

Why is it judges nominated by Democratic nominees read the law differently than judges nominated by Republican nominees? We know ideology plays a role. There is nothing wrong with that. But we ought to let it into our decisionmaking.

Judge Smith dodged again.

I think I am entitled to know what a nominee thinks. I am not going to go about blindly confirming nominees to lifetime seats on the Federal courts without those answers. I am not going to vote to give the judge a lifetime appointment, tremendous power, the most unaccountable power that our Founding Fathers gave to any single person. I am not going to give that judge the power to invalidate the laws passed in this legislative, duly elected body; laws that protect privacy, laws that protect working people, laws that protect women, the environment. I am not going to give a judge the power to validate those laws unless I know what they think of our power, the Congress's power as a coequal branch of Government, when it comes to these important issues.

I have an obligation on behalf of the 19 million New Yorkers I represent to learn those views. They want to know if the judge is too far left or too far right. They want to know about things that affect their lives: How much money they are going to make; safety in the workplace; how the environment is going to be treated; and if they are a member of a minority group, how the judge regards civil rights. They want to know this. I want to know.

I am not going to make the mistake that this body made with Clarence Thomas, who came before this body. I was not here then. I was in the House. We don't, of course, vote on judges. He said he had no views on Roe v. Wade. I am not making that mistake again. I don't think any Member should. We all know Judge Thomas had strong views on Roe v. Wade, but he came here and said he had none, he had never discussed it.

If D. Brooks Smith had given me legitimate answers to my questions, I might have supported him. But his answers were not answers at all.

Now, I understand we cannot ask judges to precommit themselves on issues that come before them, even though that is what Judge Smith did in his VAWA speech. I don't want to put nominees in that position. When it comes to issues already decided, when it comes to discussing their judicial philosophy, when it comes to Supreme Court cases that will never come before this judge, I don't get why we shouldn't know what that judge thinks.

Every semester, first year law students are asked to critique Supreme Court opinions. But someone up for a Federal judgeship will not tell us what they think about the seminal Supreme Court cases?

On the latest nominee for whom we had a hearing, Judge Owen, I asked her views. She said she doesn't think that way. She was asked to write papers in law school. She was asked to make opinions this way. She did not want to tell us.

There is a trend here. There is a trend. They don't want us to know what they think because they are so far out of the mainstream that they never could get picked if they told us their real views. They would never get supported by this body. They will not be honest about their views regarding Brown v. Board of Education or Korematus v. United States or Miranda v. Arizona or Roe v. Wade?

Judge Smith says what he thinks about the constitutionality of a statute the Supreme Court has yet to rule on, but he will not say what he thinks about Supreme Court opinions that have already been issued? Something is wrong with that. This nominee has it all turned around and it doesn't make sense.

The fact is, we are in the midst of a conservative judicial revolution. The very same people who decried the liberal activists, who took too many things too far—I am very critical of some of those opinions—are now doing the same thing themselves. When the hard right members of the conservative movement in the 1980s realized they could only get so much of their agenda implemented through elected branches because they were too far over for the American people, they turned their focus to the courts. They started a campaign that ran through the Reagan administration, through the first Bush administration, and continues through this administration. President Bush would like to portray himself as a moderate to the American people. Maybe he is. When I talk to him he sounds that way to me, one-on-one.

But if you look at who he nominates, there is hardly a moderate among them, particularly at the appellate court level. The nominees are committed to an ideological agenda which turns the clock back to maybe the 1930s, maybe the 1890s. They hate the Government and its power, by and large. They think the Federal Government has far too much power, which, let me tell you, in our post-September 11 world makes no sense.

So for the better part of the last decade, the commerce clause has been under assault and a whole host of laws protecting women, senior citizens, the disabled, and the environment have been invalidated. Now they turn their attention to the spending clause. To the average person, this sounds like mine-numbing stuff. But unfortunately, it has real impact on real people and it has to stop.

D. Brooks Smith is going to become a judge. We all know he has the vote. Tomorrow morning he will join a long line of judges, confirmed by the Senate, who appear to be intent on curtailing congressional power to protect the people who elect us.

At some point this Senate needs to wake up to the fact that our President and his Department of Justice are playing by different rules when it comes to nominating judges. They are using ideology as litmus tests, and then, when we want to ask about ideology, they say no, that is off the table. They are doing it to the detriment of the courts and the people the courts are supposed to protect.

I yield the floor.

The PRESIDING OFFICER. In my capacity as a Senator from Nevada, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from New Jersey, Mr. TORRICELLI.

SENATE ETHICS COMMITTEE INVESTIGATION OF SENATOR ROBERT TORRICELLI

Mr. TORRICELLI. Mr. President, for the last 7 months, the Senate Ethics Committee has reviewed documents and statements relating to allegations made against me by a former political contributor and friend. I am now in receipt of the conclusions of the committee.

I thank the members of the Ethics Committee for their hours of deliberation. I also apologize to each of them for subjecting them to the painful ordeal of sitting in judgment of a colleague.

In closing its preliminary inquiry into this matter, the Ethics Committee has concluded that in several specific instances rules of the Senate were violated. As a consequence, the committee has admonished me. I want my colleagues in the Senate to know that I agree with the committee's conclusions, fully accept their findings, and take full personal responsibility.

It has always been my contention that I believed that at no time did I accept any gifts or violate any Senate rules. The committee has concluded otherwise in several circumstances and directed me to make immediate payment in several instances to assure full compliance with the rules of the Senate. I will comply immediately.

I apologize to the people of New Jersey for having placed the seat of the Senate that they have allowed me to occupy in this position. The day I was elected to the Senate remains among the most cherished of my life.

During recent weeks, I have spent long nights tormented by the question of how I could have allowed such lapses of judgment to compromise all that I have fought to build. It might take a lifetime to answer that question to my own satisfaction.

The question I want every person in New Jersey to have answered today is that all during this ordeal I never stopped fighting for the things in which I believe. I never compromised in the struggle to make the lives of the people I love better.

I am grateful that this matter has come to a close, regretful as they might be, sorrowful as I remain. I thank my colleagues for their time and their attention.

Mr. President, I yield the floor.

GREATER ACCESS TO PHARMACEUTICALS ACT

Mr. HATCH. Mr. President, I rise to speak again on the pending legislation—S. 812—the Greater Access to Pharmaceuticals Act.

First, let me say that I am hopeful the on-going talks among interested Senators and affected parties will succeed in reaching an acceptable compromise on a Medicare Prescription Drug Benefit. That is a promise to seniors we need to honor. I remain committed to achieving that goal.

I think that Senator SNOWE made a good point when she said earlier today that there is no reason to pull the bill down and halt the negotiations over the Medicare drug benefit at his point. Why not encourage these talks to continue over the August recess?

Although we got off to a rocky start when the Majority Leader decided to by-pass the Finance Committee to avoid the Tripartisan bill being reported by the Committee, I remain hopeful that we can come together if we stick to it.

Whether those talks succeed or fail, the Senate will have to dispose of the underlying legislation, S. 812. This is the legislation first introduced by Senators MCCAIN and SCHUMER that was almost completely rewritten by the HELP Committee via the Edwards-Collins substitute amendment.

In many respects, the Committee substitute is an improvement over the McCain-Schumer language. Let me hasten to say, though, there are still major problems with the language.

I have laid out in some detail the shortcomings in the provisions of the bill that purport to fix the problems associated with the statutory 30-month stay. We designed this stay to permit a reasonable period of time to litigate the status of pioneer drug patents, but has been used in several cases by brand name drug manufacturers to forestall improperly generic competition.

As this barely three-weeks old language is scrutinized by experts, many are concluding that it comes up short. For example, there is an interesting and growing correspondence between the architect of the pending legislation, my friend from Massachusetts, Senator KENNEDY, and the organization that represents the Nation's biotechnology companies—BIO, the Biotechnology Industry Organization.

In its letter of July 22, 2002 to Senator KENNEDY, BIO complains about the:

> carte blanche authority of FDA to determine testing methods applicable to full NDAs, [New Drug Applications] loss of the ability to protect our intellectual property because of failure to meet new filing deadlines under food and drug law, and an unwarranted private right of action afforded generic companies to sue members in efforts to ''delist'' patents or ''correct'' patent information. Whatever the purposes of these provisions, we fundamentally disagree with their consequences perhaps the result of producing totally new provisions only 36 hours before mark-up.

Actually, I think this completely new language was not available until 24-hours before the markup.

It is also my information that a meeting last Friday between Senator KENNEDY's staff and BIO staff did little to clear up these objections.

I have no doubt that Senator KENNEDY is aware this bill is opposed by the Massachusetts-based biotech firm, Millennium Pharmaceuticals, as well as the Massachusetts Biotechnology Industry Organization.

As I have laid out previously, in addition to the policy question of the extent to which these new provisions upset the balance of Hatch-Waxman, a broad spectrum of legal analysts who range from Susan Estrich to Judge Bork have raised a number of concerns about the pending legislation on a wide variety of issues, including concerns that the bill runs afoul of the Takings Clause as well as violates the GATT Treaty's intellectual property provisions.

Last week, I included in the RECORD a letter from the American Intellectual Property Law Association opposing the patent forfeiture and private right of action provisions of the bill.

This week I want to highlight a letter to Chairman KENNEDY from the Intellectual Property Owners Association expressing severe reservations about the bill.

The IPO represents U.S.-based owners of patents, trademarks, copyrights, and trade secrets. The organization includes some 100 American firms that are among the largest patent filers in the United States. The membership of the Intellectual Property Owners Association submit about 30 percent of all patents filed with the Patent and Trademark Office.

The IPO letter raises concerns about how the Substitute to S. 812 might conflict with the international Agreement on Trade Related Aspects of Intellectual Property Rights—the TRIPS provisions. Specifically, the IPO complains about the file-it-or-lose-it and sue-on-it-or-lose-it provisions of the bill. The letter states, in part:

> We believe these rigid barriers to enforcement of patent rights may conflict with ''normal exploitation of patent rights'' as that term is used in Article 30 of the TRIPS agreement, or could set a very damaging precedent for interpretation of Article 30 that would be used against the U.S. by its trading partners in other areas of intellectual property enforcement.

The new, untested, Edwards-Collins language has not been embraced by the intellectual property bar nor by the mainstream organizations that represent the interests of America's inventors.

The Administration has already issued a statement in opposition to S. 812.

Before we take any action to adopt the language that has agitated nearly everyone in the IP community, don't you think it would be prudent to factor in what the Patent and Trademark Office has to say about this new language that completely re-wrote the McCain-Schumer bill?

Commissioner James Rogan wrote to me today to give us PTO's initial reactions to re-write of S.812. Here is part of what the Commissioner of Patents and Trademarks says in his letter to me:

> USPTO does recognize that some changes to current law may be necessary to encourage appropriate access to generic substitutes and prevent abuses of the patent laws. But S. 812 clearly is not the answer. In fact, this bill would likely do the opposite of what its title suggests by limiting access to cutting-edge drugs, decreasing innovation, and ultimately harming the quality of treatments available to patients.

In addition to these significant concerns raised by the PTO, I would think that the report that was issued earlier today by the Federal Trade Commission, after a unanimous vote of the Commissioners, would compel my colleagues in the Senate to question the wisdom of adopting the HELP substitute to S. 812. While I am still studying the details of the report, it seems abundantly clear that the major recommendations of the Federal Trade Commission in no way mirror the legislation pending on the floor.

With respect to the 30-month stay, the FTC suggests a policy of one stay per generic drug application for all patents listed in the official FDA Orange Book prior to the date on which the generic drug application is filed.

This is precisely the position I advocated before the HELP Committee back in May.

This is the position that the Ranking Republican Member of the HELP Committee, Senator GREGG, attempted to get adopted by the HELP Committee during the mark-up.

The narrowly-tailored FTC recommendation in this area should be contrasted with the overly-broad Edwards-Collins language that contains the offensive file-it-or-lose-it and sue-