

year. Our deficit in vegetables and fruits reached \$2.5 billion last year.

These deficits come from a very simple fact: Our markets are open to foreign products; foreign markets are closed to ours. Too often the products that flood into this marketplace are products made by 12-year-olds working 12 hours a day being paid 12 cents an hour, and it is not fair trade.

Let me use Bangladesh as an example. The fourth largest producer of garments for the U.S. market is Bangladesh. Workers in Bangladesh get paid on average 1.6 cents for every baseball cap they sew, under contract to an Ivy League school. That same baseball cap for which a worker gets 1.6 cents to sew is sold on the campus of this particular Ivy League college for \$17.

Each year Americans buy over 900 million garments made in Bangladesh, and yet workers in Bangladesh still cannot make the 34 cents an hour they need as basic subsistence.

If workers in one of the poorest countries of the world cannot even get paid 34 cents an hour, how do U.S. workers and U.S. businesses compete against that kind of trade?

Some say these trade deals are a way of getting other nations to improve their labor and environmental standards, but the fact is, our trade negotiators do not think about that and do not do anything about that. If one needs evidence of that, take a look at the trade agreement that was just negotiated with Singapore, which is going to come to the Senate floor at some point soon for a vote.

This agreement has a provision that would allow massive transshipment of products through Singapore into this country from countries with abysmal labor and environmental records.

How would that work? Article 3.2 of the agreement says the products made in third countries will be treated as Singapore products as long as the products are on a list approved by U.S. trade officials, which includes electronics, semiconductors, computers, cell phones, photocopiers, medical instruments. This chart shows what it says in that Singapore free trade agreement.

The Carnegie Endowment for International Peace issued a paper saying in that Singapore agreement this provision could very well torpedo the entire agreement. This is what a former senior official at the Department of State on labor matters wrote about what has happened in Indonesia:

Government enforcement of child labor laws is weak or nonexistent.

There is a long-standing pattern of collusion between police and military personnel and employers, which usually takes the form of intimidation of workers by security personnel in civilian dress, or by youth gangs.

She quotes a State Department study which says:

Institutions required for a democratic system do not exist, or are at an early stage of development.

So we have a free trade agreement with Singapore. And what happens with that free trade agreement? What is going to happen is we will get products from Burma or Indonesia which go to Singapore and are transshipped into this country. As long as they are going on the product list, what we are going to see is transshipment into this country of products coming from areas with abysmal records with respect to child labor and workers' rights.

This Senate has decided it would like to fit itself out with a straightjacket by unwisely passing something called the fast track agreement. The President called it TPA, which was a euphemism for a fast-track agreement, I should say. Under fast track rules, trade deals come to the Congress for an up-or-down vote, and there will be no amendments offered under any circumstance. And this very flawed Singapore free trade agreement will come to the Senate under fast track rules.

The fact is, our trade negotiators don't care what happens after they negotiate a trade deal.

We did a bilateral trade agreement with China a couple of years ago, and we did it so that China could then get into the WTO. When they joined the WTO in November 2001, the Chinese agreed to significantly expand the amount of imported wheat that could come into China at relatively low tariffs. China agreed that it would set a tariff rate quota of imported wheat at 8½ million metric tons. That meant 8½ million metric tons could enter the market at low tariffs.

According to the CRS, the Congressional Research Service, the Chinese imports were less than 8 percent of that amount. In fact, the Chinese Agriculture Minister was reported in the South Asia Post saying: 8½ million metric tons does not really mean that is what we are going to bring into our country.

This is a country that has a \$103 billion trade surplus with us, that reaches a trade agreement with us saying they are going to buy some of your wheat but never really intends to. What do we do about it? Well, we say it does not matter so much. Nobody is going to do too much about it.

It is unforgivable that this goes on. In fact, a U.S. trade official in charge of agricultural trade with China recently said China has not lived up to its promise. That official said the United States would be justified in filing a World Trade Organization case against China. The same official said the evidence of unfair trade by the Chinese was "undeniable," and the Chinese themselves privately acknowledged they are cheating on agricultural trade.

This official said the administration is reluctant to take action against China because the Chinese might be offended. The official said the administration is worried that a WTO case would be seen as "in your face" so soon after China joined the WTO.

Well, what is in your face is what these trade officials are doing to farmers, to workers, and to businesses all around the country. It is not fair. In my judgment, we expect and demand that there be action to enforce trade agreements.

I believe my time is about up. I am going to speak at greater length about China trade in the coming days, but I did want to say today that this is an area that is desperately in need of attention by Congress and the administration.

And the Singapore trade agreement is a terrible agreement. We ought to pay some attention to that.

Finally, going back to where I started, this fiscal policy does not add up. Everyone in the country understands it, and I hope when we talk about the need to increase the Federal indebtedness by \$1 trillion this Senate will ask itself: Does this make any sense at all?

The major subject before us is more tax cuts when we have the largest deficits in history for the next 10 years and a requirement to increase the Federal debt limit by \$1 trillion.

I come from a really small town. We had a guy living there named Grampy. He knew everything about everybody and everything about everything. I always wondered what would Grampy think if you explained to Grampy where we are—deep in debt as far as you can see; a requirement to increase the debt limit by \$1 trillion; and the next big thing on the agenda is to cut your revenue, the benefit of which will go largely to the upper income people.

I think Grampy from my hometown would say: Are you nuts? Can't you add? This is not higher math. This does not add up for the country and will not produce one new job. It will produce more despair, more concern, and less economic growth.

Get your fundamentals right. Make things add up and put things back on the right track.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF DEBORAH L. COOK, OF OHIO, TO BE A UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. The hour of 12:45 having arrived, the Senate will proceed to executive session to consider Executive Calendar No. 34, which the clerk will report.

The assistant legislative clerk read the nomination of Deborah L. Cook, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, it is my great honor to come to the Senate floor this afternoon to speak in favor of the nomination of Deborah Cook to sit on the Sixth Circuit Court of Appeals.

Deborah Cook is from Akron, OH. She is currently serving her second term as an Ohio Supreme Court Justice, a post to which she was first elected in 1994.

I will take a few minutes to tell my colleagues in the Senate about Justice Cook and why I am so pleased this afternoon to support her nomination.

Justice Cook received her law degree in 1978 and an honorary doctor of law degree in 1996, both from the University of Akron. Prior to serving on the Ohio Supreme Court, she served on the Ohio Court of Appeals for the Ninth District from 1991 to 1994. And, from 1976 until 1991, she worked for the Akron law firm of Roderick, Myers & Linton. She was the first female associate hired by the firm, later becoming the firm's first female partner.

Justice Cook is an excellent judge and a gracious and giving individual who has dedicated a great deal of her personal time and energy to helping the underprivileged in her community and in the State of Ohio. First, let me tell my colleagues a little bit about her work as a judge.

Justice Cook has been an appellate judge for over 12 years—4 years on the Ohio Court of Appeals and over 8 years on the Ohio Supreme Court. While Justice Cook was on the Ohio Court of Appeals, she participated in deciding over 1,000 cases. Overall, she had a very low reversal rate.

She has worked on hundreds of additional cases in the Ohio Supreme Court. But rather than focus on these hundreds of cases, I would like to draw my colleagues' attention to just a small handful of Ohio Supreme Court opinions that have been considered by the United States Supreme Court, during Justice Cook's tenure. As my colleagues are aware, the U.S. Court reviews few State supreme court cases.

But this statistic is still worth considering for Justice Cook. During her time on the Ohio Supreme Court, the U.S. Supreme Court has reviewed five Ohio Supreme Court decisions and has agreed with Justice Cook in all five of those cases.

One of those cases was simply a unanimous Ohio Supreme Court decision affirmed by the U.S. Supreme Court 8 to 1. In the other four cases, Justice Cook has dissented in the underlying Ohio case. And, in each of these four cases, the U.S. Supreme Court reversed the Ohio Supreme Courts' majority opinion and reached the same conclusion as Justice Cook.

These were not all just the close 5 to 4 decisions that we sometimes see in the U.S. Supreme Court. For example, in a fifth amendment self-incrimination case, the Supreme Court sided with Justice Cook 9 to 0. Another case went 8 to 1, again siding with Justice Cook's dissent. So it is clear from this

record that Justice Cook's decisions have been well founded.

Another useful gauge of a sitting judge's abilities is the evaluations she gets from objective observers who watch the court on a day-to-day basis.

In my home State of Ohio, the major newspapers closely watch our high Court. After observing Justice Cook on the Ohio Supreme Court for a full 6-year term, Justice Cook was endorsed by all the major newspapers in Ohio for her 2000 reelection campaign.

These newspapers included the Cleveland Plain Dealer, the Columbus Dispatch, the Cincinnati Enquirer, the Akron Beacon Journal, the Dayton Daily News, and the Toledo Blade.

Here's what several Ohio papers have said about her nomination to the Sixth Circuit. The Cincinnati Post wrote on January 8, 2003:

Cook is serving her second term on the Ohio Supreme Court, where she has been a pillar of stability and good sense. Her role on that court—one, which in the last few years, has repeatedly marched on 4 to 3 votes into the realm of policy making—has often been writing sensible dissents.

On December 29, 2002, insisting that the Senate Judiciary Committee act on Justice Cook, the Cleveland Plain Dealer wrote:

Cook is a thoughtful, mature jurist—perhaps the brightest on the state's highest court.

The Akron Beacon Journal wrote on January 6, 2003:

Those who watch the Ohio high court know Cook is no ideologue. She has been a voice of restraint in opposition to a court majority determined to chart an aggressive course, acting as problem-solvers . . . more than jurists. In Deborah Cook, they have a judge most deserving of confirmation, one dedicated to judicial restraint.

And, the Columbus Dispatch wrote on January 6, 2003:

Cook's record is one of continuing achievement. . . . Since 1996, she has served on the Ohio Supreme Court, where she has distinguished herself as a careful jurist with a profound respect for judicial restraint and the separation of powers between the three branches of government.

Mr. President, these quotes are from papers across the political spectrum—all of which endorsed Justice Cook. As these comments make clear, Justice Cook is a talented, serious judge who works diligently to follow the law. At the same time, she also dedicates a great deal of her time to volunteer work and community service.

Justice Cook has served on the United Way Board of Trustees, the Volunteer Center Board of Trustees, the Akron School of Law Board of Trustees, and the Women's Network Board of Directors. She was named Woman of the Year in 1991 by the Women's Network. She has volunteered for the Safe Landing Shelter and for Mobile Meals. She has served as a board member and then president of the Akron Volunteer Center.

Furthermore, Justice Cook has served as a Commissioner on the Ohio Commission for Dispute Resolution and

Conflict Management, where she focused on, among other things, truancy mediation for disadvantaged students.

She has chaired Ohio's Commission on Public Legal Education and has taught continuing legal education seminars on oral argument and brief writing. I find it remarkable that Justice Cook has found the time for this level of commitment to her community—and I have yet to describe the most amazing commitment Justice Cook has made to helping the underprivileged in Ohio. Justice Cook believes that the ticket out of poverty is a quality education. And, over the years, in their everyday lives Justice Cook and her husband, Bob Linton, has come across hard working young people who are making an effort to improve their lives through education.

Tashia Smith is one of those people. Justice Cook met her when Tashia was struggling to put herself through college at Kent State by working as a waitress. Justice Cook assisted her with tuition for several years. Today, Tashia is in her final year of nursing school, carrying a 3.8 grade point average.

Tara King is another of these students. With Justice Cook's help, Tara recently graduated from the University of Akron. She just enrolled in graduate school at Cleveland State University.

After helping several students in this manner, Justice Cook and her husband decided they should structure their assistance so they could help more young people early on in their education.

A little over 4 years ago, they started the "College Scholars" program with a group of 20 disadvantaged third graders from an inner city school. The students were selected to participate based on teacher recommendations, financial need, and level of family support. Justice Cook matched each of the students with a mentor in the community. The students meet with their mentors weekly and participate in other program activities.

If the students maintain good grades and conduct through secondary school, Justice Cook and her husband will pay for 4 years of their tuition at any public university in Ohio. Let me repeat that—Justice Cook is going to pay for 4 years of college tuition for 20 disadvantaged children.

These activities demonstrate a commitment to the community and dedication to helping the disadvantaged that we would like to see in everyone. These are qualities that help make Justice Deborah Cook a great judge on the Federal bench. It tells us what kind of a person, what kind of human being she is. For these reasons and the other reasons I have outlined, I urge my colleagues to support her nomination.

I add, on a personal note, I have known Justice Deborah Cook for many years. She is a fine individual. She is the type of person that should be on the Federal bench. She has a proven track record of fairness, of compassion, of competence. I would not be on the

Senate floor today if I did not trust her. I would not have recommended her name to the President of the United States if I did not have the utmost confidence in her ability.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). Who yields time?

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

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

Mr. DEWINE. Madam President, I ask unanimous consent that any time on the quorum call be taken off both sides at this point.

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

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

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

Mr. KENNEDY. Madam President, I rise to address the nomination of Deborah Cook to serve on the U.S. Court of Appeals for the Sixth Circuit. I welcome the opportunity to speak to the Senate, to express my very deep concerns about the commitment of this nominee to the interests of working families and to the underlying cause of fairness and justice.

I want to say at the outset that I have the highest regard for my friend from Ohio, Senator DEWINE. With his recommendations of a nominee, one has to give not only a first look but a second and a third because the good Senator is so highly regarded and respected here in the institution. Certainly anyone he supports has a very heavy presumption in their favor because of the high regard we have for Senator DEWINE. So I acknowledge that at the outset.

But I must say in reviewing the history of this nominee, there is a pattern of decisionmaking that is of very deep concern for the Senate and for all of us who want to make sure those sitting on the courts of appeal are going to be fair to workers and workers' rights in that district, that district which obviously has so many working families whose rights need to be reaffirmed at different times.

I urge my colleagues to vote against the nomination of Deborah Cook to a lifetime seat on the U.S. Court of Appeals for the Sixth Circuit. Her record demonstrates the extreme length to which she will go to protect corporations and deny the rights of injured workers, victims of discrimination, re-

ligious minorities, schoolchildren, and others. She is the leading dissenter on the predominantly Republican Ohio Supreme Court, objecting repeatedly to decisions by that court that favor the rights of individuals. Often she stands alone as the only dissenter, and again and again her colleagues have criticized her for ignoring precedents, for manipulating the law to reach the results she wants. Her record is extreme, even in comparison with her Republican colleagues on the Ohio Supreme Court, and she consistently seems bent on narrowing laws intended to remedy violation of the rights of individuals.

In cases involving workers' rights, her record is among the worst we have ever seen. Her defenders try to maintain a straight face when they say she is only impartially enforcing the law, but more than any other judge on her court, she seems to think that the law should almost always protect corporations and not injured workers. She consistently dissents from the majority and votes to protect corporations from liability when they harm their employees, and she has even tried to shield these corporations from liability when they attempt to cover up their malfeasance. The pattern is overwhelming.

In 37 cases she has supported the rights of employees only 6 times, and in all but 1 of those 6 cases she was joining a unanimous court. Even where a Republican majority on the court rules in favor of the employee, she dissents almost 80 percent of the time. She has never, in any case we know of, dissented from a decision of the court in favor of an employee. In the majority of the cases where she dissents, she is the only dissenter or is joined by only one other member of the seven-member supreme court.

Her dissents take an extremely narrow view of workers' access to the courts. On more than one occasion she would have protected employers who were accused of lying to their employees. In one extreme case, in *Davis v. Wal-Mart Stores*, she would have penalized the employee when the store had covered up evidence that the workplace was unsafe. In that case, a Wal-Mart worker was killed operating a forklift at work. He was unloading a truck with the forklift when the truck suddenly pulled away from the loading dock. The forklift fell on him and crushed him to death.

His wife brought a tort action to recover damages from Wal-Mart for her husband's death, and during the course of the proceedings on her case, Mrs. DAVIS discovered that Wal-Mart might have withheld evidence and provided false and misleading testimony. Wal-Mart representatives had denied under oath that they were aware of hazardous conditions at the loading docks, and had denied knowledge of incidents similar to those that caused her husband's death. As it turned out, Wal-Mart had improperly concealed documents on similar accidents and had instructed its representatives to lie about them.

If Mrs. Davis had obtained this information sooner, she would have prevailed on some of her claims at the initial trial. With this new evidence, she filed a new claim, in which she alleged that the company's concealment, destruction of evidence and perjury had been used to limit her recovery on her prior claims. All except one of the members of the Ohio Supreme Court ruled that Mrs. Davis's claim that Wal-Mart had concealed and distorted evidence could proceed. One Justice said that concealing evidence as Wal-Mart did "harms the sanctity of the judicial system and makes a mockery of its search for the truth."

Deborah Cook was the only member of the court to dissent from the holding that the case should proceed. She was the only member of the court to conclude that the company was not accountable for its misrepresentations of the evidence. Incredibly, her dissent would have had the effect of rewarding an employer who lied to cover up its wrong doing.

Similarly, in *Norgard v. Wellman*, Cook wrote a dissent that would shield from liability an employer who lied to its employees about their exposure to beryllium on the job. Beryllium is a toxic chemical that causes a serious chronic illness, and exposure to it can be deadly.

The worker in the case developed the disease. The company assured him that he was fine even though it had found through its examinations that he had a heightened sensitivity to beryllium. The company knew that its workers were being exposed to beryllium at the particular job site, and that they were becoming ill from the exposure, but the company concealed these facts from its workers. When the worker learned that the company had withheld information about exposure levels, air-sampling and ventilation problems in the workplace, he filed a lawsuit.

When the case came before the Ohio Supreme Court, the issue was whether the suit had been timely filed. The supreme court held that the suit was still timely, because his employer had concealed the beryllium exposure. It ruled that the time to bring suit begins to run not at the time when the worker becomes ill, but when he learned of his employer's deceit.

Cook, however, rejected this sensible approach. She said that the period to file the suit began to run when the employee had first become ill—even though at that time the employee could not have known that his illness was caused by his unsafe workplace. Under Cook's approach, workers would be responsible for knowing whether or not their employers are lying to them. In her view, if an employer deliberately conceals information about safety violations, the worker has no effective remedy.

Another shameful example of Cook's willingness to strip workers of their legal protections is the case *Petrie v. Atlas Iron Processors Inc.* Petrie

worked in a scrap-yard, and some of the yard's conveyor belts were in a fenced-in enclosure. Petrie was removing ice and debris from one of the machines when his glove was caught in the moving conveyor belt, and his finger was cut off.

Petrie sought additional workers' compensation on the ground that his employer had violated specific safety requirements. Under Ohio law, he had a claim only if the yard's fenced-in enclosure could be considered a "workshop." The Ohio Supreme Court found the answer so obvious that it wrote only a brief three-paragraph opinion holding that the area was a workshop and Petrie could proceed with his claim.

Cook, however, wrote a two-page dissent—joined only by one other justice—insisting that because the machine was not "within a building," it was not a workshop and the employee was not entitled to the protection of state safety rules. The cases Cook cited, however, did not hold that outdoor factory work was exempt from workshop safety rules. Nevertheless, Cook would have held that a scrapmetal conveyor belt in a fenced-in area, is not subject to workplace safety protections, just because there is no roof over this employee's head.

There are many other examples of Cook's attempts to limit workplace protections. She has opposed allowing employees fired for reporting violations of federal occupational safety and health laws to sue under common law and statutory whistleblower protections. She wrote a lone dissent in the case of a railroad worker who had been repeatedly harassed and threatened on the job and required to work under unsafe conditions. The issue was whether the worker could bring suit under the Federal Employers' Liability Act. Cook alone would have barred the suit, despite the clear language of the statute.

No Senate should confirm a judge so consistently hostile to protections for workers injured or killed on the job. In 2001, there were 5.2 million occupational injuries and illnesses in the private sector, and 6,000 deaths. Many workers in the four states covered by the Sixth Circuit—Kentucky, Michigan, Ohio, and Tennessee—are employed in manufacturing jobs. Often, the workers in such jobs are exposed to a high risk of injury or death in the workplace.

The nation has made genuine progress in reducing injuries and fatalities, but only through careful enforcement of Federal and State safety standards. We rely on the courts to uphold these safety laws and give injured workers the chance to obtain compensation for their injuries. Yet Cook seems bent on denying workers their day in court whenever she can.

Cook has also tried to limit the ability of students in public schools to vindicate their right to an adequately funded public education. The Ohio Con-

stitution, like many State constitutions, guarantees all students what is called a thorough and efficient public education. In many states, public schools are severely underfunded, partly because of heavy reliance on local property taxes to fund education often leads to gross disparities in funding between school districts.

In litigation challenging the constitutionality of Ohio's educational funding system, the Ohio Supreme Court found that many students were attending schools in dangerous disrepair and failed to meet minimum safety requirements. Half of Ohio's schools had unsatisfactory electrical systems, 70 percent lacked adequate fire alarm systems, and more than 80 percent lacked proper heating systems. In one school district, 300 students were hospitalized when carbon monoxide leaked out of heaters and furnaces. In another district, elementary schools, more than 100 years old, had floors so thin that a teacher's foot went through the floor.

In another school, students were breathing coal dust from the coal heating system. The system was in such disrepair that the coal dust often covered students' desks after accumulating overnight. In another district, buildings were crumbling and chunks of plaster were falling from the walls and ceilings. In some districts, classes were held under leaking roofs and in former coalbins. Funding of teachers and supplies was also inadequate. Some districts had to ration basic supplies such as paper and chalk and even toilet paper.

The majority of the Ohio Supreme Court found that "school districts were starved for funds, lacked teachers, buildings and equipment, had inferior educational programs, and their pupils were being deprived of educational opportunity." The majority of the supreme court found that.

The Ohio Supreme Court ruled that the education funding system was unconstitutional and had to be changed, but not Ms. Cook. She dissented. Despite the shameful conditions in some schools, and the large disparities that existed between school districts, she insisted that Ohio citizens did not have a right to go to court to enforce the State constitution's guarantees. On at least four separate occasions, she dissented from the majority of the court which has repeatedly ruled that the legislature must fill the Ohio Constitution's commitment.

In her view, the courts had no authority to define the scope of the Ohio Constitution's provisions on funding education. She says that as long as the legislature provides at least some funding, the constitution is satisfied. As the court's majority has said:

[D]eference to the corresponding branches of government does not mean abdication.

The court's majority specifically criticized the dissent failing to face up to the evidence of the school problems. As the court majority wrote:

The dissent recognizes that it could not in good conscience address these facts and then conclude that Ohio is providing the opportunity for a basic education. Therefore, it does the only thing that it could do: it ignores them.

Few issues are more important to the future of our country than ensuring a good education for our children. Courts, of course, do not have the principal responsibility to remedy all these problems. But a majority of the Ohio Supreme Court clearly ruled that the State constitution gave the Ohio courts a role in assuring that a State provides a basic education to its children. But Cook said no, as she always tries to do in such cases.

In another basic area discrimination case, Cook again seeks to narrow remedies and reverse jury awards. The Nation has made great progress in combating discrimination against minorities and women, but discrimination and harassment continue to exist. Victims of discrimination rely on courts to remedy such discrimination when other avenues have failed.

Cook has joined dissents to protect employers from liability in harassment cases, no matter how flagrant the violation. She has voted to reverse jury verdicts for employees in age discrimination cases and gender discrimination cases, despite the high presumption of the validity of those verdicts on appeal and the clear and abundant evidence of discrimination.

In a case on religious freedom, she adopted a position opposed by all of her colleagues on the court. A Native American employee of a State agency was asked to cut his hair by his employer. His religious beliefs prevented him from doing so, and he tried to be accommodating by pinning his hair under his cap. The Ohio Supreme Court accepted that accommodation, but Cook alone dissented. Despite previous Ohio Supreme Court decisions, Cook wanted a higher standard before plaintiffs could prevail in cases involving violations of religious freedom.

For reasons such as these, Cook's nomination has generated intense opposition from groups that know her record and that represent women, racial minorities, labor, and consumers. I have more than 100 letters in opposition. I ask unanimous consent to have relevant material printed in the RECORD.

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

NATIONAL EMPLOYMENT LAWYERS
ASSOCIATION,
January 24, 2003.

Hon. ORRIN HATCH,
Chairman, Senate Judiciary Committee, Hart
Office Building, Washington, DC.

Hon. PATRICK LEAHY,
Senate Judiciary Committee, Russell Senate Of-
fice Building, U.S. Senate, Washington, DC.

DEAR SENATORS HATCH AND LEAHY: I am writing as President of the National Employment Lawyers Association to urge the Senate Judiciary Committee to reject Justice Deborah Cook's nomination for appointment to the Sixth Circuit Court Appeals. NELA is

the country's only professional organization that is exclusively comprised of lawyers who represent individual employees in cases involving employment discrimination and other employment-related matters. NELA and its 67 State and local affiliates have more than 3000 members. The Ohio Employment Lawyers Association is among NELA's largest affiliates.

Justice Cook's record and temperament display all the characteristics of a bad judge. She is dogmatic, often in an unprincipled manner, insensitive and biased in her decision-making. Our Ohio affiliate joined several other statewide organizations in opposing Justice Cook's nomination. I have attached a copy of the letter these Ohio organizations have sent to the Committee. Their description of Justice Cook is apt:

"What is most striking about Justice Cook's career on the bench, particularly her tenure on our state Supreme Court, is her heartlessness. She repeatedly displays a cold indifference to the most tragic situations confronted by the individuals who appear before her. Worse, she routinely adopts strained or extreme legal propositions to deny meaningful relief to those most in need of justice from our courts. Her body of opinions demonstrates that she lacks the compassion, sensitivity and legal integrity which are the hallmark of a jurist who enforces both the letter and spirit of the law. Any objective reading of her decisions, makes it clear she is not a fair-minded judge."

Although this letter is sent in my capacity as president of NELA, I also write as an Ohio lawyer who has appeared before the Ohio Supreme Court many times during my 27 years of practice. I have represented a wide array of individuals and organizations in the Court both before and during Justice Cook's tenure as a Justice. Justice Cook's anti-civil rights, anti-worker and anti-consumer record on the Court is unparalleled.

Justice Cook is the most frequent dissenter (often the lone dissenter) on a Court consisting of five (5) Republicans and only two (2) Democrats. Justice Cook has taken the position: (1) that even overt racist, sexist and ageist statements and epithets are irrelevant in most discrimination cases. See *Byrnes v. LCI Communications Holdings Co.* (1996), 77 Ohio St. 3d 125, 672 N.E. 2d 145; (2) that blind people are not qualified because of their disability to go to medical school notwithstanding the testimony of successful blind practitioners to the contrary. See *Ohio Civil Rights Comm'n. v. Case Western Reserve University* (1996) 76 Ohio St.3d 168, 666 N.E.2d 1376; (3) that an employer cannot be sued for destroying, concealing or lying about evidence. See her lone dissent in *Davis v. Wal-Mart Stores, Inc. dba Sam's Club* (2001), 93 Ohio St.3d 488, 756 N.E.2d 657; (4) that railroad workers subjected to severe harassment, including threats of serious physical injuries, cannot pursue a claim under the Federal Employers' Liability Act. See her lone dissent in *Vance v. Consol. Rail Corp.*, (1995) 73 Ohio St.3d 222, 625 NE 2d 776; (5) that an employer can avoid liability by lying to its employees about the presence of dangerous chemicals in the workplace so that fatally affected employees will miss applicable time limits for filing an action against the employer. See *Norgard v. Brush Wellman, Inc.* (2002) 95 Ohio St.3d 165; (6) that employers can disregard their own handbooks and promises to their employees with impunity. See her lone dissent in *Wright v. Honda of America Mfg., Inc.* (1995) 73 Ohio St.3d 571, 653, N.E.2d 381.

In light of the letter signed by Denise Knecht, chairperson of our Ohio affiliate, which reviews more of Justice Cook's opinions in particular cases, I will not detail here the many unfathomable and unjust votes and opinions issued by Justice Cook.

At the request of our Ohio affiliate, my firm undertook a study of all of the employment decisions which were decided on the merits by the Ohio Supreme Court during Justice Cook's tenure. The purpose of the study was to do a complete review of Justice Cook's employment law record (including civil rights cases) to measure the full extent of Justice Cook's propensities in these cases. The review covered all employment related cases other than workers' compensation matters. The cases reviewed included discrimination actions, intentional workplace torts, breach of contract suits, promissory estoppel claims, whistle-blower cases, public policy wrongful discharge cases and alleged violations of statutes governing procedures for termination of public employees.

During Justice Cook's tenure on the Court there were 37 such employment cases in which the Court issued decisions on the merits. Attached to this letter are the results of the study. The study demonstrated the following about Justice Cook's record: (1) Justice Cook has never dissented from any decision of the Court favorable to an employer; (2) Justice Cook dissented 23 times, in cases in which the Court ruled in favor of an employee (or 79 percent of the time); (3) Justice Cook only voted in favor of an employee on 6 occasions (notably, 5 of those 6 cases were "no brainers" in which the Court decision for the employee was unanimous); (4) Justice Cook has voted in favor of an employee in only 1 case in which there was a split vote of the Court in favor of the employee (that case, not surprisingly, was a 6 to 1 decision for the employee); (5) Of Justice Cook's 23 dissents from a ruling in favor of an employee, she was either the lone dissenter or joined by only one other Justice 61 percent to the time; (6) Overall, Justice Cook voted in favor of employers in 83 percent of the cases and, as noted above, her few votes in favor of employees were almost always in cases in which the Court was unanimous.

Both Justice Cook's actions and her words demonstrate that she is not fit for a lifetime appointment as a federal judge. As a state court judge she voted to weaken protections for working Americans, undermined equal employment opportunity laws and spurned the pleas of those who have suffered catastrophic injuries caused by intentional misconduct of their employers.

Judges must be fair-minded and impartial. Justice Cook lacks both of these traits. Her hostile an extreme views concerning laws governing the workplace have no place on the Federal bench. Her nomination is a disservice to working men and women. Her appointment will only serve to encourage unscrupulous and prejudiced employers.

I will be happy to provide any further information that the Committee may desire concerning Justice Cook's record.

Very truly yours,

FREDERICK M. GITTES,

President.

Mr. KENNEDY. The groups opposed to her nomination include the Ohio Organization for Women, the National Employment Lawyers Association, and the AFL-CIO. Many of those who have written to oppose her are lawyers who have participated before her and are familiar with her record and approach. Their message is clear: Justice Cook displays a hostility to workers' rights, consumer rights, and civil rights, and she lacks the fairness and balance we expect of our Federal judges.

Many of our Republican colleagues say that when we oppose nominees such as Cook, we are somehow ob-

structing the President's right to put his nominees on the Federal courts. If fact, the Senate has confirmed 120 of President Bush's judicial nominees—100 of them when Democrats controlled the Senate. Today, our Federal courts have the lowest vacancy rate in more than a decade.

When nominees' records raise concern about whether they will be fair, whether they will enforce Federal rights and protections, the Senate does have the constitutional right to withhold our consent. The Constitution is clear that the Senate's role is not simply to rubberstamp nominees. The Framers clearly intended to avoid vesting too much power in the President. The role of the Senate on Presidential nominations is one of the fundamental checks and balances in the Constitution. From the earliest days of the Nation, the Senate has exercised its duty of advice and consent, rejecting Presidential nominees it has found unsuitable.

Far too many of President Bush's nominees are controversial and divisive. They are clearly part of a plan to pack the Federal courts, particularly the courts of appeals, with judges who will advance an ideological agenda that is hostile to civil rights, hostile to workers' rights, hostile to environmental protections, and hostile to the right to privacy and a woman's right to choose.

We in the Senate do not have to go along for the ride. We should have our constitutional responsibility to safeguard the independence of the judiciary, and to ensure that the courts are not stacked with judges as a part of a White House master plan to tilt the Federal courts as far right as possible.

Deborah Cook's record demonstrates she lacks the fairness the Nation expects from the judiciary, and I urge the Senate to reject her nomination.

I have a number of items. I will not take a great deal of time, but I will read excerpts from a few of these letters. This one is from the National Employment Lawyers Association.

I am writing as President of the National Employment Lawyers Association to urge the Senate Judiciary Committee to reject Justice Deborah Cook's nomination for appointment to the Sixth Circuit Court of Appeals. NELA is the country's only professional organization that is exclusively comprised of lawyers who represent individual employees in cases involving employment discrimination and other employment-related matters. NELA and its 67 state and local affiliates have more than 3000 members. The Ohio Employment Lawyers Association is among NELA's largest affiliates.

Justice Cook's record and temperament display all the characteristics of a bad judge. She is dogmatic, often in an unprincipled manner, insensitive and biased in her decision-making.

And he continues:

Justice Cook's anti-civil rights, anti-worker and anti-consumer record on the Court is unparalleled. . . .

Both Justice Cook's actions and her words demonstrate that she is not fit for a lifetime appointment as a Federal judge. As a State

court judge she voted to weaken protections for working Americans, undermine equal employment opportunity laws and spurned the pleas of those who have suffered catastrophic injuries caused by intentional misconduct of their employers.

Judge's must be fair-minded and impartial. Justice Cook lacks both of these traits. Her hostile and extreme views concerning laws governing the workplace have no place on the federal bench. Her nomination is a disservice to working men and women. Her appointment will only serve to encourage unscrupulous and prejudiced employers.

These are the organizations, the lawyers who represent workers who have been suffered injury and have been discriminated against. This is the national organization. This is as strong a letter as we have received in opposition to a judge by the lawyers who have represented workers who have been before that court. That is a powerful commentary.

We also have a letter from the Ohio Academy of Trial Lawyers:

I write to you on behalf of the Academy

Throughout Justice Cook's tenure, I and numerous other Academy members have had a first hand opportunity to observe Justice Cook's temperament, demeanor and decision making as a member of the Ohio Supreme Court. Our observations of her record demonstrate to our Association that Justice Cook is willing to disregard precedent, misinterpret legislative intent and ignore constitutional mandates in an effort to achieve a result that favors business over consumers. Justice Cook's personal background is from big business and she has allowed her background to bias her decision making. She has consistently in our view voted to limit citizens' access to the courts and routinely articulated positions which would leave members of the public without remedies.

In our view, Justice Cook is among the most conservative activist justices who have served on the Court.

Our Court is viewed by most objective observers as moderate and bipartisan. However, the Court does have extremely conservative Republican members. Justice Cook is to the right of all of them. She has authored 313 dissents, more than any other Justice.

Then it continues:

Another reason for the Academy's concern about Justice Cook stems from her decisions in the area of basic constitutional rights. Justice Cook issued a sole dissent in a religious free exercise case that would have seriously undermined key rights provisions of our Ohio Constitution.

Another example of Justice Cook's lack of commitment to constitutional principles, including due process, can be found in the *Bray v. Russell* decision. In *Bray*, Justice Cook dissented from a 5-2 decision striking a state statute which empowered the patrol board add "bad time" to a prisoners' sentencing punishment of misconduct occurring during imprisonment.

It continues along:

... there is hardly a case in which Justice Cook does not side with the insurance company over its policyholder no matter how outrageous the circumstances.

... Justice Cook is not only out of touch with many of the core values shared by most Americans but she lacks the proper judicial temperament and a meaningful sense of justice. She does not afford individual Ohioans a fair opportunity to be heard by an impartial adjudicator. She neither deserves nor is

she qualified for a lifetime appointment to the Sixth Circuit Court of Appeals. Her presence on that Court would be even more harmful to the public as she would turn many balanced panels toward extreme positions which will jeopardize access to the courts, civil rights and equal justice. For these reasons, we ask the Committee to carefully study Justice Cook's decisions in their entirety before any vote...

We have given some examples of cases. I may have the opportunity to do that a little later in the afternoon.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, I ask unanimous consent that during consideration of the nomination, the time during all quorum calls be equally divided.

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

Mr. DEWINE. Madam President, I certainly have a great deal of respect for my friend and colleague from Massachusetts. We have discussed this nomination in the Judiciary Committee. We are continuing our discussion on the Senate floor today. I would like to respond to a few of his comments.

My colleague has stated Justice Cook has been a dissenter on the Ohio Supreme Court. That certainly is true. She has been a dissenter. I am not sure that is a sin. I am not sure that is a reason someone should not be confirmed by this body. If that was the criteria for turning someone down, some of our greatest justices would not be on the Supreme Court, would not have been confirmed, nor would be on the Federal bench.

Justice Cook has had five cases where the Ohio Supreme Court has been reviewed by the U.S. Supreme Court. In all five of those cases, the Ohio Supreme Court has agreed with Justice Cook. It is interesting that in four of those cases, Justice Cook was a dissenter. Yes, she was a dissenter in the Ohio Supreme Court. The case went up to the U.S. Supreme Court and the U.S. Supreme Court said the majority on the Ohio Supreme Court was wrong. But Justice Cook, the dissenter, was right. So the dissenter, Justice Cook, at least according to the highest Court in this country, the U.S. Supreme Court, was right.

As I have outlined, for some of those decisions by the U.S. Supreme Court, it was not even a close call. So much for that horrible label of being a dissenter.

My colleague and friend from Massachusetts has talked about several cases. I would like to talk about them as well. As the man on the radio says: "to tell the rest of the story."

It has been charged that in the case of *Davis v. Wal-Mart*, Justice Cook voted to shield corporations from the legal consequences of their action. It has been asserted Justice Cook's dissent in that case would have allowed Wal-Mart to get away scot-free. At least that seems to be what has been asserted. But that is simply not what the facts are. In fact, there were two

separate legal actions in *Davis v. Wal-Mart*. We really only hear about one.

In the first case, Justice Cook did not intervene, and Mrs. Davis received almost \$3 million. In the second case, when Mrs. Davis attempted to get additional payment for the same event, Justice Cook did vote against her position based on a well-known legal principle.

Let me tell the story. The facts in this case involved a terrible incident in which Mr. Davis, a Wal-Mart employee, was killed on the loading docks while at work. Mrs. Davis sued Wal-Mart, and she won. She won a jury verdict of \$2 million because there was evidence that Wal-Mart had failed to provide a safe working environment for Mr. Davis. In addition, the trial court found Wal-Mart had attempted to hide evidence during the trial and, as punishment for that, the trial court awarded interest on the \$2 million to Mrs. Davis covering the time from when the case was first filed to the time when the jury found for Mrs. Davis.

Wal-Mart's appeal at the court of appeals failed. The Ohio Supreme Court, including Justice Cook, declined to even consider Wal-Mart's appeal of that decision. So Wal-Mart was punished. Mrs. Davis had her day in court and won a significant verdict plus interest. That is what Justice Cook found.

As I noted earlier, the interest award was on the \$2 million during the entire time the case was pending. I believe it was about 4 years' worth of interest. I haven't done the math, but it must have been about \$800,000 in interest during that period of time—roughly that. Justice Cook did not affect that verdict in any way. So that was the first case in which Mrs. Davis received approximately \$3 million, as she should have.

The unfounded complaints about Justice Cook are based on a second case against Wal-Mart that was filed by the plaintiff's lawyer. In the second case, the plaintiff's lawyer filed a new lawsuit claiming Wal-Mart had covered up evidence during the first trial. Mrs. Davis lost her second case at the trial court because that judge found all the supposedly new evidence was discovered during the original case, and Wal-Mart had already been punished for covering up the evidence. Specifically Wal-Mart had been punished by the award of that interest money, approximately \$800,000.

So just to summarize, we have a case in which Wal-Mart engaged in wrongful conduct both at its workplace and in defense of a lawsuit. Wal-Mart was then punished for wrongful conduct in both instances.

Justice Cook in no way interfered with any of that process or punishment. After the jury verdict and after the favorable decision on interests were final, the plaintiff's lawyers tried to take a second bite of the apple. Not surprisingly, they lost the second case at the trial court. The plaintiff's lawyers appealed the loss, and a majority

of the supreme court overturned the trial court and ruled in favor of Mrs. Davis.

The entire supreme court, including Justice Cook, agreed on the legal standard to be applied that such new claims could be brought only if new evidence of wrongful conduct was discovered. The majority of the court said, though, there was new evidence, but they never said what they thought was new. In contrast, Justice Cook agreed with the trial court judge that there was no new evidence. So Justice Cook said there was no new evidence and applied the well-known doctrine of *res judicata*. In other words, because the issue had already been decided, the case could not be retried.

Reasonable people, reasonable jurists—a disagreement. Justice Cook and the trial court judge agreed; the rest of the supreme court were on the other side. Somehow this agreement about a technical legal issue has been turned into an argument that somehow Justice Cook was attempting to shield Wal-Mart and undercut the rights of the plaintiff after Wal-Mart had already been ordered to pay Mrs. Davis \$2 million plus interest.

Those are the facts. That is the rest of the story.

Let's turn to another case that was cited by my friend from Massachusetts, *Norgard v. Brush Wellman*. *Norgard* was another tragedy, a tragedy about an individual who contracted chronic beryllium disease while he worked for Brush Wellman. The facts of the case are egregious, especially facts that Brush Wellman withheld information about the causes of the disease.

The legal issue, however, was a simple one. It was a statute of limitations case. A statute of limitations, of course, as we know, is a time within which an individual has to file a claim. In Ohio, the statute of limitations is, as it is in every State, set by the State legislature. The statute of limitations for this type of case in Ohio set by the legislature is 2 years.

As in most States, there is an exception to the statute of limitations called the discovery rule. That rule provides that the 2 years does not start until an injured party discovers he is injured and knows the source of the injury.

In this case, the evidence before the court showed Mr. Norgard knew he was injured and that his injury was caused by his exposure to beryllium at work. He knew that at the latest by August of 1992 when he was formally diagnosed by a doctor.

Even though the company had tried to hide evidence from Mr. Norgard, in a legal sense, it really did not make a difference. He still knew about his exposure by August of 1992. The company's conduct, though horribly reprehensible, did not change the legal fact that Mr. Norgard discovered his illness and the source of his illness. Accordingly, the 2-year statute of limitations required the lawsuit to be filed by August 1994. Instead, tragically, Mr.

Norgard did not file his claim until 1997, more than 2 years after his time to do so expired. After the case was filed, the trial court applied the statute of limitations and granted summary judgment against Mr. Norgard.

We know what summary judgment is. It is a ruling that rejects a party's claim without even going to trial. Because summary judgment circumvents the trial, under the law, a court can only grant summary judgment motions if it finds the claimant cannot possibly win even if it gives the plaintiff every benefit of the doubt.

In this instance, the court had to consider all the allegations against Brush Wellman to be true, including the allegations that Brush Wellman outright lied to Mr. Norgard about his exposure to beryllium. They had to accept those as true.

That is what happened in this case. The trial judge gave Mr. Norgard the complete benefit of the doubt to which he legally was entitled. In spite of what we all think about this horrible conduct by Brush Wellman, the trial judge thought he had no choice but to follow the laws laid down by Ohio's legislature and grant summary judgment.

As I noted earlier, legally, unfortunately, it did not make a difference that Brush Wellman had tried to hide the facts. Norgard still knew about his exposure as a fact. So he still had to file his claim by August of 1994.

The court of appeals unanimously upheld the trial court's decision. Justice Cook and two other Ohio Supreme Court justices simply applied the statute of limitations and upheld the decisions of the trial court and the court of appeals.

A four-judge majority in the Ohio Supreme Court was troubled by the facts of the case and decided to follow their policy preferences. The new result was one that was favorable to the Norgard family.

This is what the Akron Beacon Journal had to say about the case:

In her dissent, Cook did not carry an ideological banner cold heartedly proclaiming the company above all. She sided with workers in many cases. In this instance, she followed the law. Justices do not have a task of changing the statute of limitations. That job belongs to the legislature.

Madam President, I ask unanimous consent to print in the RECORD the Akron Beacon Journal editorial about this case.

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

[From the Akron Beacon Journal, Feb. 27, 2003]

COOK AND THE LAW

The demonization of Deborah Cook has reached full froth. So much for assessing a judicial nominee on her record.

The Senate Judiciary Committee is expected to vote this morning on the nomination of Deborah Cook to sit on the 6th U.S. Circuit Court of Appeals in Cincinnati. Almost two years have passed since she was first tapped by President Bush to join the federal bench. The delay reflects understand-

able payback from Democrats who watched strong nominees of Bill Clinton linger for longer as Republicans played political games. Unfortunately, part of the game played by both parties and their allies involves the crude caricature (and worse) of judicial nominees.

A fresh example of the distortion and even recklessness can be found on today's Commentary page. Adam Cohen, an editorial writer for the New York Times, delivers a slashing critique of the Cook record as a justice on the Ohio Supreme Court the past eight years. Too bad his assessment lacks the necessary context, let alone a full grasp of the issues at work in the cases he discusses.

Cohen notes "the predominantly Republican court" and later adds that Cook "frequently breaks with her Republican colleagues." The objective is to portray the justice, "the court's most prolific dissenter," as extreme, even for a Republican court. Those who pay cursory attention to the Ohio Supreme Court know that party labels do not tell the story of recent years.

Two of the Republicans have been among the most liberal members, siding regularly with the two Democrats to form a majority in such areas as employment and tort liability law. To say the court is predominantly Republican may be convenient. It doesn't add to an understanding of Cook.

We have noted in the past our sharp disagreements with Cook, especially in the landmark school-funding case. What offends in the current confirmation process is the attempt to demonize the Akron resident, arguing (as Cohen does) that "often she reaches for a harsh legal technicality to send a hapless victim home empty-handed," that she shills for "big business and insurance companies."

Actually, the description is funny, in view of the mish-mash the "bipartisan" majority made of insurance law in the state. Cook has been a frequent dissenter. That doesn't mean she stands alone. Cohen addresses a half-dozen cases. In four, Cook sided with the rulings of both the trial court and the state appeals court. In the remaining two, she would have upheld the trial court or the appeals court.

Were these courts reaching for "a harsh legal technicality"? Is there a vast right-wing conspiracy? Sorry, not in Ohio. If anything, Cook and two Republican colleagues (Chief Justice Thomas Moyer, ideologue?) often objected to the majority departing from precedent, hardly a radical position.

Cook critics overlook the majority opinion she wrote rejecting the claims of employers and concluding that punitive damages are available to workers who have suffered discrimination in the workplace. The opinion reveals much about the Cook judicial philosophy. She precisely examined legislative intent in crafting the law.

That is the Cook familiar to many Ohioans. She gives great deference to the legislature. She reflects the principle that this is a nation of laws, not of men or women.

Who doesn't sympathize with David Norgard, a worker exposed to beryllium on the job who has been ailing for two decades? The issue before the Ohio Supreme Court was whether Norgard filed suit within the statute of limitations. The majority ruled he had. Cook dissented.

Cohen suggests Norgard knew little about his illness because the company stonewalled. In truth, Norgard knew for years. He sought advice about hiring an attorney. The trial court dismissed his case on summary judgment. The appeals court unanimously upheld the lower court. Cook objected to the majority casting aside settled law on the statute of limitations. Her interpretation followed the practice of courts across the country.

The ruling of the Ohio Supreme Court in the case of Phyllis Ruth Mauzy provoked cries of amazement in courthouses. Cook dissented from the majority's far-flung and poorly reasoned departure from the way Ohio and almost every other state applied federal civil-rights law. Again, Cook wasn't by herself. She argued the mainstream interpretation.

The impression promoted by Cohen is that Cook is results-oriented, serving corporate masters, denying the little guy his due. Read the cases cited in the Cohen column and many others, and the conclusion is plain: Cook criticizes the majority for bending the law to fit its desired result.

We share concerns about Bush nominees who "will radically reshape the federal judiciary for a generation" (as Cohen puts it). Jeffrey Sutton, another selected to sit on the federal appeals court in Cincinnati, may give too little deference to legislative intent. Its the argument that Cook gives too much? A silly argument? It is almost as silly as surveying the many Bush nominees and concluding that Cook offers reason for Americans to be "very worried."

In this crowd, she is reassuring.

Other nominees deserve harsh words. Yet, in seeking to demonize Cook, critics risk their credibility. When trouble really enters the committee room, the howls will be dismissed as the usual fare. That ill serves the federal judiciary. The Adam Cohens could learn something from Deborah Cook. They could argue their case more carefully.

Mr. DEWINE. This case was not about Justice Cook standing up for big business. This case was about a very specific legal question: The statute of limitations for this type of lawsuit in Ohio. Justice Cook interpreted the law as it was written by the Ohio Legislature. That was her job as a supreme court justice, and she did her job.

Whether we like the law or not, whether the legislature was right or not, the justice followed the law, and that is a simple fact.

My friend from Massachusetts has talked about the school funding decision, a case that in Ohio is referred to as the Rolf decision.

It may surprise my friend from Massachusetts and I may surprise some of my friends from Ohio when I say that I disagree with Justice Cook on that case. I did not hear all the evidence, but I suspect if I had been on the court, I probably would have ruled the other way. But I think my friend is confusing what was really in front of the court because it was a tough case.

The Ohio Supreme Court is not a superlegislature, and the decision in front of the supreme court was not whether they liked the way Ohio was funding the schools or whether it was the best way or whether it was the fairest way or whether it was constitutional.

That, I would submit, was a very tough decision. The Ohio Supreme Court talks about school funding in these terms and the obligation of a State. It says the State has the obligation to provide a thorough and efficient education for the children of the State. That is the constitutional obligation.

In a similar case, I believe in 1979, if I have my date correct, the Ohio Supreme Court had ruled that Ohio was

providing a constitutional education for all of the children. Most observers of the court, most observers of education in Ohio would say that things had not gotten more unconstitutional in that period of time since 1979. In fact, people would argue that, if anything, it had gotten better as far as more equity since 1979.

In a sense, Justice Cook's decision when she dissented was consistent with prior decisions of the Ohio Supreme Court. So while she was dissenting in this case, while she was not in the majority, it was certainly not an unreasonable decision. It was a decision that was consistent with prior precedent of the court. So it was not a decision that was in any way out of bounds.

I will speak later as our debate continues, but I conclude by again talking about my great admiration for Justice Cook. I have known Justice Cook for many years. I know her as an individual. I know her as a public official in the State of Ohio. She is a person of great personal integrity and honesty. In the 2 years she has been nominated for this position, I have had the opportunity to read many of her cases. The one thing that is very clear when one reads her decisions is this is someone a person would want deciding their case, someone who does not have an axe to grind, someone who is very deferential, frankly, to a legislature. I say to my colleagues on the other side of the aisle who are concerned about activist judges, she is someone who I believe will be deferential, as she was to the Ohio Legislature, and who will respect the authority of the legislative body; someone who will be deferential within the proper constitutional framework and bounds to the U.S. Congress and who will understand the separation of powers between the different branches of Government. This is someone with great integrity, great honesty, and someone who will be a fine Federal judge.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I listened carefully to the comments of my friend, Senator DEWINE. No one is suggesting in the cases that I mentioned, which were cases where she was a dissent, that they were overturned by the Supreme Court of the United States. I listened carefully to his explanation of these cases.

To summarize very quickly, in the Wal-Mart case, it is difficult for me to understand how Cook's position in the Wal-Mart case is defensible. Here is a widow who was trying to move forward on certain claims but could not because Wal-Mart had hid the evidence, and Cook was the only one who dissented. That is the bottom line. That is the bottom line of the case. She is the only one who dissented.

In the Norgard case, the employee did not know that he could sue and he did not know he had a claim because the employer had lied. She dissented,

making it harder for the employees to recover.

These are just two examples, but to come back to the earlier point, if we look over the history of her dissents, we will find that when the Ohio Supreme Court dissented—or when the Ohio Supreme Court ruled for the employees, which was not a great number of times, but whenever they did, she dissented from that 80 percent of the time. Even when the court ruled for the employees, she dissented 80 percent of the time.

Justice Cook never dissented from any decision of the court when it favored the employer. These are statistics. The examples I have cited are illustrative of a series of instances where the rights of workers were not adequately recognized or respected and where she took a very extreme position, in many of these cases in isolation. In some, she was joined by other members.

I believe there is a consistency and a pattern of insensitivity in terms of workers' rights and workers' needs and the fairness to those workers. That is what both the statistics very clearly demonstrate and what these cases themselves demonstrate.

The idea that one could do legal gymnastics to find out that when you have the employer involved in actually lying to an employee, the employee gets sick, the employer knows it is because of beryllium, does not tell the worker that it is because of beryllium, and he finally brings the case and only later on finds out that it is beryllium and that the company has lied to him, for her to say he should have known he was sick a long time ago, and the statute of limitations really went on during that period of time, it is too bad that the employer lied to that person, endangered that person's health, and disadvantaged that person's health in a dramatic degree, and she finds a technicality and says they might have been sick during the time, but even though the company knew that they could have been devastatingly sick and die from this kind of toxic chemical, she looked for the very narrow niche in order to disadvantage the worker.

When one finds in the case at the Wal-Mart a coverup was taking place and then discovers in a second case that there was a whole diary where the Wal-Mart had lied and then came back in, how Justice Cook could even at that time—and there was such deception and such deceit by the company—find a way to diminish the rights and the interests and the protections of the workers seems to me to be well out of the mainstream.

We are talking about people who should be in the mainstream, and the statistics do not indicate, when it comes to workers' rights and workers' rights cases, that she is in the mainstream.

In age discrimination, in religious tolerance issues, I gave examples where she drew the line in a way that I think

is outside of the common understanding or common interpretation of the law, and we are being asked to give a lifetime appointment to this individual. It seems to me that we can find people to serve on the Sixth Circuit who are going to be fair and balanced and are going to be in the mainstream in terms of their protection of workers' rights and the workers themselves.

This nominee is clearly on the fringes in protecting workers' rights. This circuit court has an enormous responsibility of protecting workers in a major industrial area of our country, and those rights need to be protected when those plaintiffs are up before the judge; they are going to look up at the judge and say: I know from the background, I know from the Senate hearings I am going to get a fair shake. We have the list of letters and reports, all from the representatives of workers, that say they do not believe they will ever get a fair shake. Are they all out of common sense? All these notes and letters representing workers in cases where they have been short shrifted, are they out of the mainstream? I don't believe so.

Those who come before our committee should be able to meet the requirement of fairness in the range of different constitutional issues. They ought to understand what the constitutional issues are, and they ought to have a record of fairness and balance in interpreting those. I do not believe this nominee meets that requirement.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. AL-LARD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. VOINOVICH. Mr. President, I am very pleased today to speak on behalf of Deborah Cook, an exceptional lawyer and a longtime friend from the State of Ohio. The President nominated her to serve on the United States Court of Appeals for the Sixth Circuit on May 9, 2001, 2 years ago. In fact, I was at the White House when President Bush nominated Deb, and I remember how enthusiastic he was about her record, not only as a distinguished judge but as a dedicated volunteer and role model in her community.

Now, 2 years later, we are finally voting on her nomination. I am extremely disappointed at the length of time it has taken for this highly qualified nominee to reach the floor but am grateful that this day has come.

I have had the privilege of knowing Deborah Cook for over 25 years. She is not only a brilliant lawyer but a wonderful person. She graduated from the University of Akron School of Law in 1978 and immediately went to work for the law firm of Roderick, Myers & Linton, Akron's oldest law firm. She was the first female lawyer to be hired

by this firm, and 5 years later, in 1983, she became its first female partner.

Deborah remained at Roderick Myers until 1991 when she was elected to Ohio's Ninth District Court of Appeals. She remained on this bench until 1995 when she successfully won election to the Ohio Supreme Court, an office she continues to hold.

Deb has always devoted her life to her family, community and profession. Married to Robert Linton, Deborah has always acted on her belief that a member of the bar and judiciary has responsibilities to the community. In this regard, she has given generously of her time to the Akron Women's Network, Akron Volunteer Center, the University of Akron School of Law Intellectual Property Advisory Council, Summit County United Way, and the Akron Art Museum, to name just a few.

In 1999, Deb and her husband established a foundation, Collegescholars, Inc., with their own private funds to foster the education of underserved public school students and encourage them to seek higher education. Students were selected upon finishing third grade based on teacher recommendations, financial need and family support of the program. This group of students is promised a 4-year tuition scholarship to any public university in Ohio. The students, called "scholars," remain eligible for the scholarship by maintaining good grades and conduct and participating with the other college scholars in activities organized for their benefit, including a one-hour, instructed mentor meeting weekly during the school year.

Deb has always recognized that she has a responsibility to help strengthen the legal profession and honors this responsibility through her work with the Ohio and American Bar Associations. She chaired the Commission on Public Legal Education, was a member of the Ohio Courts Futures Commission, and the Ohio Commission on Dispute Resolution and Conflict Management. She is a past president of the Akron Bar Association Foundation, a fellow of the American Bar Foundation, and was a member of the Akron Bar Association disciplinary committee from 1981 to 1993.

Throughout these past 25 years, I have found Deborah Cook to be a woman of exceptional character and integrity. Her professional demeanor and thorough knowledge of the law make her truly an excellent candidate for an appointment to the Sixth Circuit. Deb has served with distinction on Ohio's Supreme Court since her election in 1994 and reelection in 2000.

My only regret is that with her confirmation to the Sixth Circuit, we will lose an outstanding justice on the Supreme Court of Ohio. However, she will be a tremendous asset to the Federal bench.

With 10 years of combined appellate judicial experience on the Ohio Court of Appeals and the Ohio Supreme Court, Deborah Cook also possesses a

keen intellect, a record of legal scholarship and consistency in her opinions. She is a strong advocate of applying the law without fear or favor and of not making policy towards a particular constituency. Deborah Cook is committed to upholding the highest standards of her profession and she is a trusted leader. It is my pleasure to give her my highest recommendation for this nomination.

When it was announced that Deb was nominated by the President, the response from the major newspapers in our State was wonderful and amazing. Newspapers from all over Ohio have echoed my sentiments.

In January 6, 2003, the Columbus Dispatch stated that:

Since 1996, she has served on the Ohio Supreme Court, where she has distinguished herself as a careful jurist with a profound respect for judicial restraint and the separation of powers between the three branches of government.

On December 29, 2002, the Cleveland Plain Dealer stated that:

Cook is a thoughtful, mature jurist—perhaps the brightest on the state's highest court.

In a May 11, 2000 editorial the Beacon Journal newspaper stated that what distinguishes Deborah Cook's work:

has been a careful reading of the law, buttressed by closely argued opinions and sharp legal reasoning.

In addition to newspapers, Deb Cook has a bevy of other supporters.

John W. Reece, retired Ohio jurist, stated:

Judge Cook and I served on the Ninth Judicial District Court of Appeals in Ohio from 1991 to 1995. I believe we became friends as well as colleagues, working closely together although she was a Republican and I a Democrat. I became impressed with Judge Cook's work ethic and legal mind. She quickly became a talented Appellate Judge. In fact, in a rather brief period of time she became a leader on the Court. Later, when she was elected to the Ohio Supreme Court, I was privileged to sit by assignment with her on the Court a few times. She has exhibited an ability and willingness to be an independent thinker and member of that Court.

William Harsha, Judge on the Ohio Court of Appeals, Fourth District, stated:

Always courteous and seldom impatient, she is the antithesis of the ill-tempered despot that comes to mind when one thinks of 'black robe fever.' "

Many of us have seen people change once they get on the Federal bench. J. Dean Carro, Director of the Legal Clinic at the University of Akron remarked:

I feel comfortable with expressing an opinion on the qualities I like to see in judges. These qualities are independence, intelligence, and integrity. Justice Cook scores high in all three categories.

This Senator would like to add the characteristic of humility.

With the confirmation of Jeff Sutton last week and Deb Cook today, the Sixth Circuit can begin to breathe a little easier. From 1998 up until September, 2002, the number of vacant

judgeship months in the Sixth Circuit has increased from 13.7 to 91, the highest in the Nation. In addition, during this same time period, the median time from the filing of a notice of appeal to disposition of the case in the Sixth Circuit was 16 months, well above the 10.7 months national average, and the longest in the Nation.

Clearly, the Sixth Circuit is in crisis, and today's confirmation of Deborah Cook will go a long way toward restoring the court's efficiency and ability to deal with cases.

I am sure you will agree that Deborah Cook is exactly what we need on the Federal bench.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. DEWINE. Mr. President, in just a few minutes we will be voting on the nomination of Justice Cook. I would like to take this opportunity to again talk to my colleagues about Justice Cook and to urge her confirmation by the Senate.

I have known Justice Cook for many years. She is a person of great integrity. Senator VOINOVICH and I recommended her to the President. He nominated her. She is someone we both have known for many years. She is someone for whom we both have a great deal of respect.

I wish to take a minute to respond to the comments my colleague, Senator KENNEDY, made a few minutes ago. Let me say what a great pleasure it is to work with Senator KENNEDY. He and I have worked together on many pieces of legislation. Many times we have been on the same side of the legislation. Unfortunately, we are opposed on this particular nomination. It always is a pleasure to work with him. He is always a great debater, always someone who is fun to be with. It is a real pleasure to debate him on this issue.

My colleague came to the floor and talked about the Norgard case. I wish to remind my colleagues about the facts in the Norgard case.

Justice Cook was a dissenter in the Norgard case. The facts in the Norgard case, as I pointed out earlier in this debate, are very simple. It was simply a statute of limitations case. So if any of my colleagues have a problem with the outcome of this case, they should have a problem with the Ohio Legislature.

The Ohio Legislature passed a 2-year statute of limitations. Norgard was diagnosed with his disease in August of 1992. That is when he found out about it. Under the Ohio law, the statute started to run, the time limits started to run in 1992. Tragically, he did not file his lawsuit until 1997. Obviously, more than 5 years had passed, much more than the 2-year statute.

Another point my colleague from Massachusetts made was that Justice Cook had not decided just a few cases in favor of employees. We did a quick search of the decisions.

We found at least 25 cases of employees, a long list. I ask unanimous consent that this list be printed in the RECORD.

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

CASES IN WHICH COOK RULED IN FAVOR OF AN EMPLOYEE

1. Ahern v. Technical Constr., Specialties, Inc. (1992 Ohio App.).
2. Browder v. Narzisi Constr. Co. (1993 Ohio App.).
3. Buie v. Chippewa Local Sch. Dist. Bd. of Educ (1994 Ohio App.).
4. Conley v. Brown (1998 Ohio App.).
5. Douglas v. Administrator BWC (1992 Ohio App.).
6. Edwards v. Douglas Polymer Mixing Corp (1993 Ohio App.).
7. Gibson v. Meadow Gold Dairy (2000 Ohio Sup. Ct.).
8. Hanna v. Goodyear Tire and Rubber Co. (1994 Ohio App.).
9. Harris v. Atlas Single Ply Systems (1992 Ohio Sup. Ct.).
10. Kroh v. Continental General Tire, Inc. (2001 Ohio Supreme Court).
11. Lahoud v. Ford Motor Co. (1993 Ohio App.).
12. Miller-Wagenknecht v. Flowers (1994 Ohio App.).
13. Pytlinski v. Brocar Prod. (2001 Ohio Sup. Ct.).
14. Rice v. Cetainteed Corp (1999 Ohio Sup. Ct.).
15. Ruckman v. Cubby Drilling (1998 Ohio Sup. Ct.).
16. Smith v. Friendship Village of Dublin OH (2001 Ohio Sup. Ct.).
17. Spu Waterproofing of OH v. Zatorski (1999 Ohio App.).
18. SER. David's Cemetery v. Indus. Comm.
19. SER Highfill v. Indus Comm.
20. SER Toledo Neighborhood Housing Serv. v. Indus.
21. SER Minor v. Eschen (1995 Ohio Sup. Ct.).
22. SER MTD Prods v. Indus Comm (1996 Oh. Sup. Ct.).
23. SER Spurgeon v. Indus. Comm (1998 Oh. Sup. Ct.).
24. Tersigni v. Gen. Tire (1993 Ohio App.).
25. Wagner v. B.F. Goodrich Co.

Mr. DEWINE. I hope my colleagues will have a chance to take a look at that. It is long list of 25 different cases where Justice Cook ruled in favor of the employee.

Finally, I ask that my colleagues take a look at an Akron Beacon Journal editorial of February 27. The Akron Beacon Journal is certainly not the most conservative paper in the State. It is a very well-respected paper. It is the paper that endorsed Al Gore for President, and endorsed Tim Hagan, the Democratic nominee for Governor, in the last campaign. It responded in this editorial to an op-ed piece that had been written on the editorial page by Adam Cohen, an editorial writer for the New York Times.

In part, the Akron Beacon Journal stated:

A fresh example of the distortion and even recklessness can be found on today's commentary page. Adam Cohen, an editorial

writer for the New York Times, delivers a slashing critique of the Cook record as a justice on the Ohio Supreme Court the past eight years. Too bad his assessment lacks the necessary context, let alone a full grasp of the issues at work in the cases he discusses.

Cook critics overlook the majority opinion she wrote rejecting the claims of employers and concluding that punitive damages are available to workers who have suffered discrimination in the workplace—

Referencing a case that Justice Cook wrote.

The Akron Beacon Journal continues:

The opinion reveals much about the Cook judicial philosophy. She precisely examined legislative intent in crafting the law. That is the Cook familiar to many Ohioans. She gives great deference to the legislature. She reflects the principle that this is a nation of laws, not of men or women.

Who doesn't sympathize with David Norgard, a worker exposed to beryllium on the job who has been ailing for 2 decades? The issue before the Ohio Supreme Court was whether Norgard filed suit within the statute of limitations. The majority ruled he had. Cook dissented.

Cohen suggests Norgard knew little about his illness because the company stonewalled. In truth, Norgard knew for years. He sought advice about hiring an attorney. The trial court dismissed his case on summary judgment. The appeals court unanimously upheld the lower court. Cook objected to the majority casting aside settled law on the statute of limitations. Her interpretation followed the practice of courts across the country.

Other nominees deserve harsh words. Yet, in seeking to demonize Cook, critics risk their credibility.

I will add one comment of my own and that is we have researched the law and we would find that in the State of Massachusetts, their courts also follow a fairly strict interpretation of the statute of limitations, and we would expect if this case had been decided by the court in Massachusetts they would have come down on the same side as Justice Cook.

Justice Cook is a very fine justice of the Ohio Supreme Court. She will do an excellent job on the Federal bench.

Before I yield the floor, I ask unanimous consent that the last 10 minutes of this debate be evenly divided between both sides.

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

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask that I be allowed to use such time as I may consume as in morning business.

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

(The remarks of Mr. FEINGOLD are printed in today's RECORD under "Morning Business.")

Mr. FEINGOLD. 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. LEAHY. 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. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. There remains 5 minutes on each side prior to the vote on the nomination at 4:45.

Mr. LEAHY. Mr. President, today we consider another controversial and divisive judicial nomination, that of Deborah Cook to the Sixth Circuit Court of Appeals. Just last week we debated and voted on the controversial nomination of Jeffrey Sutton to the Sixth Circuit. The vote on his confirmation received the fewest positive votes in almost 20 years. Only 52 Senators voted in favor of his confirmation and appointment to the Sixth Circuit. This number demonstrates the serious opposition many conscientious Senators have to some of the extreme nominations this administration has been insisting be confirmed in its continuing effort to take ideological control of the Federal courts.

The nomination of Deborah Cook to be Judge Sutton's colleague on the Sixth Circuit also presents many serious problems. I believe that it is important to make the record clear that her nomination has a unique procedural posture, especially in light of the recent history of Republican obstruction of President Clinton's nominations to that important court. These procedural controversies are in addition to significant substantive concerns raised by Justice Cook's record as an activist State judge. Similar to Justice Priscilla Owen, Deborah Cook's judicial record is replete with evidence of results-oriented reasoning.

Similar to Priscilla Owen, Justice Cook has demonstrated herself to be an activist judge. Justice Cook sits on a court that is numerically dominated by Republicans. Given the partisan politicization of the judiciary by Republicans over the last several years, one might expect that Justice Cook would be part of the Ohio Supreme Court's majority in all but rare instances and that the two Democratic judges might be the most frequent dissenters. However, Justice Cook is the most active dissenter on the Republican-dominated Ohio Supreme Court. She is the most extreme of her colleagues and demonstrates an inability to reach consensus with seemingly like-minded judges. I fear that if confirmed, her inability to reach a consensus would further polarize the Sixth Circuit, as well.

Justice Cook's dissents distort precedent, misinterpret legislative intent and demonstrate results-oriented reasoning in an effort to suppress workers' rights. She has repeatedly voted to protect corporations that have harmed or lied to employees. One example is *Bunger v. Lawson*, where a convenience store employee who had been robbed at gunpoint was denied psychological trauma remedies, while the employer had failed to install basic safety features such as a working phone and door locks. Similar to Justice Priscilla Owen, Justice Cook's own Republican

colleagues have criticized her extremist opinions. The court in *Bunger* called Justice Cook's interpretation of the law "nonsensical," and said that it, "leads to an untenable position that is unfair to employees." Taking the position adopted by Justice Cook in her dissent would be, as the majority clearly stated, "an absurd interpretation that seems borrowed from the pages of *Catch-22*."

Similarly, Justice Cook sought to deny workers compensation benefits to another employee in a case called *Russell v. Industrial Commission of Ohio*. In *Russell*, Justice Cook's dissent ignored the plain language of the statute and the relevant precedent regarding workers compensation benefits. The Court's opinion stated that Justice Cook's dissent:

lacks statutory support for its position [and she] has been unable to cite even the slightest dictum from any case to support its view . . . [the] dissent's argument, which has not been raised by the commission, the bureau, the claimant's employer, or any of their supporting amici, is entirely without merit. *Russell* at 1073-74.

I ask my colleagues, is this the type of judge who should be given a lifetime appointment to the Federal bench?

As a former prosecutor, I am also troubled by Justice Cook's opinions that repeatedly seek to disregard jury findings in powerful discrimination cases. Anyone who has ever tried a case to verdict before a jury knows how much time and effort goes into the lengthy process. For this reason, jury verdicts should be given the utmost respect on appeal. In *Byrnes v. LCI Communications*, Justice Cook voted with a 3-judge plurality to overturn a \$7.1 million jury verdict for employees in an age discrimination case despite powerful evidence of statements made by the employer about the relative merits of having a younger staff. Evidence in the plaintiffs' favor in this case included blatant statements from the employer that he wanted "to bring in young, aggressive staff managers and change out the old folks," and that "some of the older folks there could no longer contribute." In *Byrnes*, the jury also heard testimony that the employer said a certain worker was, "too old to grasp the concepts that he was looking for," and that he did not, "want old marathoners in my sales organization . . . I want young sprinters." These statements are directly relevant to a jury's determination whether the employer engaged in age discrimination. Yet, Justice Cook demonstrated her lack of respect for the jury's role in our system of justice by voting to overturn the jury's determination. Unfortunately, this case is not an isolated incident. Justice Cook also voted to overturn jury verdicts in other discrimination cases such as *Gliner v. St. Gobain Norton Industries* and *Perez v. Falls Financial Incorporated*.

In addition to her apparent bias against workers' rights, Justice Cook opposes the rights of consumers and

victims even in the most compelling cases. For example, in *Sutowski v. Eli Lilly*, Justice Cook wrote for a divided majority that denied plaintiffs the ability to claim damage to their reproductive systems due to in utero exposure to DES, a drug known to cause cancer and reproductive disorders. She denied these victims the ability to rely on the market-share theory in their complaints against the manufacturers even though the market-share theory was virtually invented for DES cases where hundreds of companies manufactured the drug but the victims could have no idea by whose drug they were affected. Her colleagues in dissent severely criticized Justice Cook's opinion stating that she "selectively quoted," from a prior Ohio case:

. . . to create the impression that the General Assembly is the only appropriate body to recognize the market-share liability theory in DES litigation. The majority then uses that misguided impression as a platform for launching into a tortured analysis of Ohio's Products Liability Act. It is here that the majority's shell game becomes most deceptive.

In another case, *Williams v. Aetna Finance*, Justice Cook dissented from the majority's affirmation of the trial courts' holding that an arbitration clause was unconscionable in a case involving a scheme to defraud elderly African American home owners into home improvement loans at exorbitant rates.

These are just a few examples of the hundreds of cases that Justice Cook has decided as a State court judge. They provide a picture of a judge with a proclivity for stretching the boundaries of precedent to rule against victims and workers in favor of corporations. On the substance of her record as a judge, I have concluded that Deborah Cook is a conservative activist who is hostile to consumers, victims, workers and civil rights. The prospect of elevating this activist judge to a lifetime appointment to the Federal bench has generated a significant amount of controversy. We have received letters of opposition from many national organizations that represent labor and consumers, as well as local citizens groups and law professors who oppose her nomination to the Sixth Circuit.

Justice Cook's nomination was forced out of the Judiciary Committee over the objection of the Democratic Senators and in violation of our longstanding Committee rules. The Democratic members of the Committee sought additional time to debate her nomination. Such requests have always before been honored on the Judiciary Committee, which for 24 years had a rule providing protection for minority rights to debate. Rule IV requires the votes of 10 Senators to bring a matter to a vote and one of those votes to end debate must be cast by a member of the minority. In their determination to bring this controversial nominee to the floor in February, Republicans unilaterally overruled the Committee rules by not allowing a vote to end debate

over the objection of Democratic Senators. Along with several other Senators, I voted "present" in protest of this violation of our rules and rights.

Over the last several weeks our Republican and Democratic Senate leadership has discussed the violation of Senators' rights that occurred on February 27. I thank them for their attention to these matters and for working with us to address our concerns.

In addition, there is the serious matter of the mistreatment of previous nominations to the Sixth Circuit by the Republican majority. Deborah Cook is nominated to the Sixth Circuit Court of Appeals, a court to which President Clinton had an impossible time getting his nominees considered. For years, the Sixth Circuit has been one of the prime targets of Republicans intent on ideological court packing. During President Clinton's entire second term, not a single nominee to the Sixth Circuit was allowed a hearing or a vote by the Republican majority. Three highly qualified, moderate nominees to the Sixth Circuit, Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus, were all denied hearings and votes in the years 1997 through 2001. Republicans today fail to acknowledge that the vacancies that have plagued the Sixth Circuit in recent years are the result of their tactics to prevent any action on any of President Clinton's nominees.

Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March 2001. Judge White's nomination may have set an unfortunate but unforgettable record. Her nomination was pending without a hearing for more than four years. She was one of almost 80 Clinton judicial nominees who did not get a hearing during the Congress in which first nominated. Unfortunately, she was also denied a hearing after being renominated a number of times over the next four years, including in January 2001.

Likewise, Kathleen McCree Lewis, a distinguished African American lawyer from a prestigious Michigan law firm was also never accorded a hearing on her 1999 nomination to the Sixth Circuit. This daughter of a former Sixth Circuit judge and Solicitor General of the United States was never accorded a hearing or vote by the Republican majority. Her nomination was withdrawn by President Bush in March 2001 without ever having been considered.

Professor Kent Markus was another outstanding nominee to a vacancy on the Sixth Circuit. He had served at the Department of Justice and was nominated by President Clinton in 1999, but never received a hearing before his nomination was returned to President Clinton without action in December 2000. While Professor Markus' nomination was pending, his confirmation was

supported by individuals of every political stripe, including 14 past presidents of the Ohio State Bar Association and more than 80 Ohio law school deans and professors.

As Professor Markus testified last year, he was told by Republicans that some on the other side of the aisle held these seats open for years for a Republican President to fill, instead of proceeding fairly on the consensus nominees then pending before the Senate. The Republican majority was unwilling to move forward, knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is how the Sixth Circuit was left with eight vacancies, half of its authorized strength, in 2001.

Had Republicans not blocked President Clinton's nominees to the Sixth Circuit, if the three Democratic nominees had been confirmed and President Bush appointed the judges to the other vacancies on the Sixth Circuit, that court would be almost evenly balanced between judges appointed by Republican and Democratic Presidents. That is what Republican obstruction was designed to prevent—balance. The same is true of a number of other circuits, with Republicans benefiting from their obstructionist practices of the preceding six and a half years. This, combined with President Bush's refusal to consult with Democratic Senators about these matters, is particularly troubling.

Long before some of the recent voices of concern were raised about the vacancies on the Sixth Circuit, Democratic Senators in 1997, 1998, 1999 and 2000 implored the Republican majority to give President Clinton's distinguished and moderate Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations. The growing vacancies on the Sixth Circuit were ignored by the Republican majority.

The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The Chief Judge predicted that by the time the next President was inaugurated, there would be at least six vacancies on the Court of Appeals. In fact, there were soon eight. Despite all these pleas, no hearing on a single Sixth Circuit nominee was held in the last three full years of the Clinton Administration. Not one. The situation was exacerbated further as two additional vacancies arose. And regrettably, despite my best efforts, this White House has rejected all suggestions to redress the legitimate concerns of Senators in that circuit that qualified, moderate nominees were blocked by Republican Senators during the previous administration. In-

stead, the White House forwarded several extreme nominees to fill the seats that their party held hostage while leading the Senate during the prior administration.

When I scheduled the April 2001 hearing on the nomination of Judge Gibbons to the Sixth Circuit, it was the first hearing on a Sixth Circuit nomination in almost 5 years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one year to over 4 years. Despite the partisan treatment of President Clinton's nominees, I went forward. The conservative Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor John Marshall Rogers, just a few short months later in June. This conservative was likewise confirmed last year.

Thus, the Democratically-led Senate proceeded to hold hearings, give Committee consideration and confirm two of President Bush's conservative nominees to the Sixth Circuit last year. With the confirmations of Judge Julia Smith Gibbons of Tennessee and Professor John Marshall Rogers of Kentucky, Democrats confirmed the only two new judges to the Sixth Circuit in the previous 5 years.

Under the current Republican leadership, our Committee raced to hold Justice Cook's hearing at the same time as two other controversial circuit court nominees, including Jeffrey Sutton. This triple hearing resulted in a marathon sitting lasting almost 12 hours. Most of the questioning focused on Jeffrey Sutton and relatively little time was dedicated to Justice Cook. Many Democrats serving on the Judiciary Committee requested an additional hearing for Justice Cook and Mr. Roberts. That request was denied for Justice Cook. We invited Justice Cook and Mr. Roberts to meet with us. That request was denied. Then Republicans overrode our longstanding Committee rules in order to report those nominations without proper consideration before the Judiciary Committee.

This nomination is one of a long line of divisive and controversial nominations on which this Administration and the Republican majority in the Senate insist. They are taking full advantage of their power after having unfairly refused to consider President Clinton's well qualified, moderate nominees and now insisting that the administration's ideological court packing scheme be put into effect. The ideological takeover of the Sixth Circuit is all but complete with the confirmation of Judge Gibbons, Professor Rogers, Mr. Sutton and now Justice Cook.

Mr. HATCH. Mr. President, I rise today to express my support for the confirmation of Deborah Cook to the Sixth Circuit Court of Appeals.

Today's vote is important because we have an opportunity to confirm an excellent judge who exercises proper judicial restraint on the bench. Justice Cook is an honorable jurist. She has a distinguished record in private practice, she is a legal pioneer, and she is active in her community. Let me take a few moments to share how Justice Cook came to this point. The story deserves to be told.

A native of Pittsburgh, PA, my hometown as well, I might add—Deborah Cook had anything but a stable childhood. Not only did her family move quite often, but her family suffered economically. Her mother, Katherine Rudolph, struggled to support her children after Justice Cook's father abandoned the family. When Deborah was 16, her mother passed away.

Although she did not have much time with her, Justice Cook credits her mother with instilling in her a sense of justice and a sense of the importance of following the rules. Justice Cook carried these ideals to Akron, Ohio, where she and her siblings moved to join their uncle's large family. All together, the new family numbered 14.

In the next few years, Justice Cook received her bachelor of arts and juris doctor degrees from the University of Akron. While in law school, she clerked part time at Roderick, Myers & Linton, Akron's oldest law firm, and accepted an offer from the same firm in 1978, becoming the first woman attorney ever hired there. Five years later, Justice Cook again made history at the firm when she was named its first woman partner. Let me tell you, Justice Cook knows first hand the difficulties and challenges that professional women face in breaking the glass ceiling.

While in private practice Justice Cook maintained a busy civil litigation caseload, appearing in bankruptcy, state, and federal appellate and trial courts to litigate such matters as claims disputes, workers' compensation claims, insurance claims, employment discrimination cases, torts, and wrongful death lawsuits.

Justice Cook has the experience we look for in a Federal judge. In 1990, she left private practice and ran for a seat on the Ohio Ninth District Court of Appeals, which is based in Akron. The Ohio courts of appeals have appellate jurisdiction over the Ohio common pleas, municipal, and county courts, hearing and deciding cases in three-judge panels. Four years later, Justice Cook ran for the Ohio Supreme Court, a seven-member court, where she currently serves.

Over the past 7 years, Justice Cook has earned a reputation for being a stickler for the law, a judge committed to law and order. She defines her own judicial role "as [one] limited by the letter of the law." She is a student of history and a committed constitutionalist. These are attributes desperately needed in the Federal courts. Simply put, as Justice Cook has said of herself, while she "might hold a per-

sonal view, or perhaps even hold a bias, that has to be put aside." She "work[s] within the parameters given a judge by democratically enacted statutes," avoiding the temptation to legislate from the bench. Justice Cook understands what makes an effective judge and she carries out that understanding.

The Ohio newspapers have recognized these qualities in Justice Cook. The Columbus Dispatch says Justice Cook "uniquely combines keen intellect, careful legal scholarship and consistency in her opinions. She is committed to rendering decisions validated by the [law], not popularity polls and special interests." The Cleveland Plain Dealer says Cook is "extremely well qualified" and a "thoughtful, mature jurist perhaps the brightest on the state's highest court." The Akron Beacon Journal says Cook "has been a voice of restraint in opposition to a court majority determined to chart an aggressive course, acting as problem-solvers (as ward pols) more than jurists."

I ask unanimous consent that copies of each of these editorials be printed in the RECORD.

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

[From the Columbus Dispatch (Ohio), Oct. 1, 2000]

SUPREME COURT—COOK, O'DONNELL CAN RESTORE CONFIDENCE

The seven justices who sit on the Ohio Supreme Court are among the most powerful people in the state. Acting in agreement, any four of them can overrule the will of millions of Ohio voters, all 132 members of the General Assembly and the governor.

The state constitution grants the court such awesome power so that the justices can strike down unconstitutional acts of the legislature that threaten the rights and liberties of Ohio's residents.

But if misused, this power also can threaten the rights and liberties of Ohioans. The rule of law is replaced by prejudice or whim.

This is why it is so important that the voters elect justices who regard themselves as servants, not masters, of the constitution. Justices who serve the constitution understand that their role is not to make policy or law, because this is a responsibility given by the constitution to the legislature, not to the courts.

Justices may strike down laws that violate the constitution, but they may not replace those laws with ones more to their own liking.

It also is vital that voters elect justices who understand that their job is to represent the law, not a political party, not an interest group. Their job is to resolve disputes impartially, in accordance with the constitution and Ohio statutes.

In recent years, ideology, not impartial application of the law, frequently appears to have guided court rulings. The familiar 4-3 majority has overturned legislative efforts to limit damage awards in lawsuits, rejected changes in the state workers' compensation system and declared the state's school-funding mechanism unconstitutional, simultaneously dictating the means by which the legislature is to solve the problem.

The perception is that this majority—Democratic Justices Alice Robie Resnick and Francis E. Sweeney and Republicans Paul E. Pfeifer and Andrew Douglas—holds itself above the constitution, entitled to make law.

While not exactly partisan, this majority's bent is definitely political. These four justices are united in judicial activism with a messianic and populist bent.

The perception that the court is controlled by an ideologically driven majority is seriously undermining faith in the integrity and fairness of the high court.

Justices should not be turned out of office lightly; certainly not for an occasional unpopular opinion and particularly not for one resulting from a good-faith effort to adhere to the constitution. But when justice becomes politicized and high court rulings twist the law to reach the majority's preferred outcome, a change is needed.

*For that reason, The Dispatch urges Ohioans to cast their Supreme Court ballots for incumbent Justice Deborah L. Cook and Judge Terrence O'Donnell of the Cuyahoga County Court of Appeals.

Cook, a Republican seeking a second term on the court, believes a judge's job is to apply the law without fear or favor, not to make policy or to favor a constituency. Cook does not believe the court should legislate, a point she has underlined in her dissents to the court's two rulings in the DeRolph school-funding lawsuit.

Of the seven justices, Cook uniquely combines keen intellect, careful legal scholarship and consistency in her opinions. She is committed to rendering decisions validated by the constitution, not popularity polls and special interests.

Cook's Democratic challenger, Judge Tim Black of the Hamilton County Municipal Court, doesn't hesitate to describe himself as a "progressive," which is another way of saying "judicial activist." Black has made it clear in recent statements that he favors the four-member activist majority.

Like Cook, Republican O'Donnell believes in applying the law without fear or favor. He does not make policy from the bench and says judges should be faithful to the law, not to causes. His integrity and well-defined judicial philosophy have made O'Donnell one of the most respected judges in Cuyahoga County.

His opponent, incumbent Democratic Justice Alice Robie Resnick claims to follow the same philosophy, but the record suggests otherwise. She is a dependable member of the four-justice activist majority. Her proposal for a legislative-Supreme Court summit to address the school-funding problem shows either that she doesn't understand her role as a judge or that she wants to rewrite the constitution to make the court a seven-member super-legislature. Neither explanation reflects favorably on her.

Resnick has shown an unseemly willingness to politicize her office. Her appearance at the opening of a school in Vinton County was a transparent attempt to win votes from those who approve of the Supreme Court's use of the DeRolph lawsuit to dictate school-funding policy to lawmakers.

Her appearance at that event along with William L. Phillis, mastermind for the plaintiffs in the continuing DeRolph case, was a glaring conflict of interest and a lapse that cannot be justified or excused.

Six years ago, The Dispatch endorsed Resnick for a second term, believing that she had demonstrated diligence and impartiality in her first term. That can no longer be said.

O'Donnell has pledged to restore integrity to the court. He deserves that chance.

[From the Plain Dealer Publishing Co., (Cleveland, Ohio), Dec. 29, 2002]

BREAK THE JUDICIAL LOGJAM

It has been more than 19 months since President George W. Bush nominated Ohio Supreme Court Justice Deborah Cook and

former state Solicitor Jeffrey Sutton to fill vacancies to the 6th Circuit U.S. Court of Appeals. But inexcusably, the Judiciary Committee of the U.S. Senate has yet to hold a single hearing on Cook or Sutton.

Despite pressure from Bush and other Republicans, Judiciary Committee Chairman Patrick Leahy, a Vermont Democrat, has bottled up more than 100 nominations to federal court openings. And amid the political stalling, the workloads of federal District Court and appellate judges continues to mount.

That should all change on Jan. 7, when the Senate reconvenes and reorganizes under Republican control. Expected to replace Leahy as Judiciary Committee chairman is Orrin Hatch, a Republican from Utah.

Hatch must move quickly to break the judicial logjam. And confirmation hearings for Cook and Sutton should be high on his list.

This isn't about doing any special favor for Ohio or the other states the 6th Circuit serves. It's about competence. Both Cook and Sutton are extremely well qualified. Cook is a thoughtful, mature jurist—perhaps the brightest on the state's highest court. Sutton is regarded as a brilliant litigator who has argued numerous cases before the U.S. Supreme Court.

It's well past time to hold hearings on these and other judicial appointments and put them before the Senate for a confirmation vote.

[From the Akron Beacon Journal, Jan. 6, 2003]

A COOK TOUR

Tour the Web sites of various liberal interest groups, from the National Organization for Women to the Alliance for Justice, and you will discover how easily nominees for the Federal courts can be caricatured. In recent months, Justice Deborah Cook of the Ohio Supreme Court has been a target.

Members of the Senate Judiciary Committee considering her nomination to the 6th U.S. Circuit Court of Appeals should work their way past the political slogans. They will find a judge conservative in the traditional sense. She follows the principle of judicial restraint, ruling as the law is, not as she would like the law to be. Justice Cook has waited 18 months for a hearing on her nomination. The day appears in sight, perhaps as early as Jan. 14. Cook was among the first judicial nominees of President Bush, one of 11 who gathered at the White House on a spring day to demonstrate the new administration's drive to fill vacancies on the Federal bench.

Put aside that those vacancies reflect the delaying tactics of Senate Republicans during the Clinton years. Cook and the others have encountered obstacles constructed by Democrats. The November elections altered the political landscape. Republicans rule the Senate and the White House. Nominations are set to move forward.

That doesn't mean critics shouldn't howl when the president opts for a nominee with excessive baggage, say, one more comfortable in a debating society than on the Federal bench. Bill Clinton took the cue, avoiding ideologues and sending many impressive nominees to Capitol Hill. President Bush should keep in mind his slight margin of victory and the narrow Republican majority in the Senate.

Cook critics point to her membership in the Federalist Society, a group of conservative lawyers and academics that includes many who advocate countering liberal activists with their own brand of activism. Critics also note the many times Cook has dissented on the Ohio Supreme Court, contending she is out of the mainstream.

Those who watch the Ohio high court know Cook is no ideologue. She has been a voice of restraint in opposition to a court majority determined to chart an aggressive course, acting as problem-solvers (as ward pols) more than jurists. Cook has been accused of advocating the elimination of protections for employee whistleblowers. In truth, she objected to the majority acting as a super-legislature, practicing public policy in the form of judicial rulings.

In another instance, Cook disagreed with the majority because she rightly thought it necessary to have expert medical testimony to establish whether a cancer qualified as a disability under the law. When the majority ruled that managers and supervisors could be sued individually for acts of sexual harassment and discrimination, she noted the glaring departure from the defining federal law.

Are these "pro-business" rulings on her part? That would be the caricature. More accurately, they are precise readings of the law. Indeed, in eight years on the Ohio Supreme Court and four on the state appeals court, Cook has consistently produced reasoned and careful analysis.

The argument might be made that we are simply cheering for an Akron resident. We've differed with Justice Cook too many times on school funding and other matters. President Bush won the election. Republicans control the Senate. They have a wide range of candidates for the Federal bench. In Deborah Cook, they have a judge most deserving of confirmation, one dedicated to judicial restraint.

Mr. HATCH. Justice Cook also knows how to serve her community. She is a founder and trustee of CollegeScholars, a mentored college scholarship program in Akron, and she personally mentors students for several hours each week. She and her husband fund the program's activities in an effort to help inner-city children reach college. Their generosity is really remarkable in that they will personally pay the college tuition of students who complete the program.

But service to her community is not limited to the CollegeScholars program. Justice Cook is a United Way volunteer; she has given her time to Safe Landing Shelter, a home for troubled youth; she has served as a Commissioner for the Dispute Resolution Commission, helping address truancy problems for disadvantaged children; and she devoted several years to the Akron Area Volunteer Center as a Center trustee and president. Justice Cook has received the Delta Gamma National Shield Award for Leadership and Volunteerism, and the Akron Women's Network Woman of the Year award.

One of the many reasons that this vote on Justice Cook's nomination is important is because it represents a step in the right direction in terms of addressing the problems in the Sixth Circuit. The Sixth Circuit is severely understaffed and needs judges to enable its work to go forward, and the addition of Justice Cook, along with President Bush's other Sixth Circuit nominee from Ohio, Jeffrey Sutton, will make this happen. At this moment, the 16-seat Sixth Circuit is operating with only 10 judges. All six of the vacancies on the Sixth Circuit are considered judicial emergencies.

The Sixth Circuit has been forced to rely on district court judges to keep pace with its caseload. This practice, in turn, affects the efficiency of the district courts. I understand that the Sixth Circuit currently hears some arguments via telephone to conserve resources. Each three-judge panel on the Sixth Circuit not only must hear more cases each year, but it also must spend less time on each case in order to maintain some control over the docket. Some cases may not be heard despite their merit. In the meantime, the administration of justice suffers.

According to the Administrative Office of the United States Courts, the Sixth Circuit ranks last out of the 12 circuit courts in the time it takes to complete its cases. On average, the Sixth Circuit in 2002 took 16 months to reach a final disposition on a case. With the national average for appellate courts at only 10.7 months, this means the Sixth Circuit takes about 50 percent longer than the average to process a case.

Since 1996, the Sixth Circuit has seen a 46 percent increase in the number of decisions per active judge. The national average has increased only 14 percent in that same time frame. Last year each Sixth Circuit judge handled more than 600 cases.

Mr. President, Justice Cook has demonstrated her capacity to excel on the Federal court bench. She possesses the qualifications, the capacity, and the temperament a judge needs to serve on the Sixth Circuit. She deserves confirmation.

Mrs. FEINSTEIN. Mr. President, I rise in support of the nomination of Ohio State Supreme Court Justice Deborah Cook for the Sixth Circuit Court of Appeals. I intend to vote yes on her nomination because I believe that she has a proper understanding of the role of the judiciary.

Unlike some other nominees who have come before the Senate, Justice Cook's opinions demonstrate a recognition that a judge's proper role is to interpret statutes in a way that reflects the legislature's intent. She does not try to legislate from the bench or inject her views into her interpretations of a statute.

I believe that, based on her past record, she will be an appellate judge who will read statutes faithfully and carefully and decide cases on her best understanding of what the law says as opposed to ruling based on her personal views.

Let me give a couple of examples of Justice Cook's views on judicial restraint from her opinions. In a dissent from an Ohio Supreme Court decision overturning the State's system of funding public education, Cook noted:

In short, the determination of what constitutes minimum levels of educational opportunity to be provided to Ohio's children is committed by the Ohio Constitution to legitimate policy makers—not the courts, whose proper role is interpretation and application of law.

Similarly, Cook defended the role of the legislature in a dissent from an

Ohio Supreme Court ruling that found a new "employment intentional tort" statute to be unconstitutional.

The majority opinion views the issue presented by this case as a question of "what is right?", but I believe the true question is "who decides what is right?" The General Assembly passed this legislation as part of its policy-making function, a function inherent in the legislative power. With this decision, however the majority usurps the legislative power.

Senator DEWINE, a strong supporter of Justice Cook, has called her an "old-fashioned" conservative, and I think that is a very accurate description.

I certainly don't agree with all of Justice Cook's opinions, and take seriously the concerns raised by those who feel she tends to side with big corporations and employers in lawsuits. I also am concerned about some of her opinions arguing for the overturning of jury verdicts.

In weighing the totality of these issues, however, I believe that Justice Cook will properly exercise the judicial office. Most importantly, I believe she will not be an activist judge who will try to legislate from the bench.

Mr. BUNNING. Mr. President, I rise to express my support for Deborah Cook and urge my colleagues to support her confirmation. The Sixth Circuit, which includes my State of Kentucky, is experiencing a true judicial emergency. Five of the sixteen seats on that court are vacant, leading to justice delayed—and thus justice denied—for the citizens of Kentucky, Ohio, Tennessee, and Michigan. Fortunately, last week we confirmed Jeffrey Sutton to the Sixth Circuit, and today we will confirm Deborah Cook.

Deborah Cook was among President Bush's original circuit court nominees first submitted to the Senate on May 9, 2001. Nearly 2 years will have passed from the time her nomination was first submitted until she will be able to assume her seat on the bench. It has been a long wait, but Deborah Cook's confirmation is good news for her and for the people living in the Sixth Circuit.

Deborah Cook is an example of the fine judicial nominees President Bush has submitted to the Senate. She is currently a Justice on the Ohio Supreme Court, where she has served since she was first elected in 1994. Prior to that, Justice Cook served as a Court of Appeals judge in Ohio. She also practiced law for 15 years in Akron, OH, and was her firm's first female associate and partner.

I am proud that President Bush nominated Deborah Cook, and I am proud to vote for her. She has ample experience as an appellate court judge and is well qualified to sit on the Sixth Circuit. Deborah Cook will do a fine job for all people living in the Sixth Circuit. I am glad she will soon be confirmed, and I urge my colleagues to support her as well.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, in just a few moments the U.S. Senate will be

voting on this nomination. What are the essential facts? Here are the essential facts:

Justice Deborah Cook authored the Rice case. This case held that workers could get punitive damages from employment discrimination cases.

Second fact: It has been charged that Justice Cook is a big dissenter. It has been charged that she cannot reach consensus. Let us look at the cases from the Ohio Supreme Court which have gone to the U.S. Supreme Court. There have been five of those cases. In each case, the U.S. Supreme Court has agreed with Justice Cook. But, more importantly, in four of those cases, Justice Cook was a dissenter from the Ohio Supreme Court. In those four cases, the U.S. Supreme Court said we disagree with the Ohio Supreme Court, but we agree with the dissenter. We agree with Justice Cook. In fact, most of those cases weren't even close. By an overwhelming majority, in most of those cases the U.S. Supreme Court said the Ohio Supreme Court was wrong, but Justice Cook was right.

So much for the argument that there is something wrong with Justice Cook when she dissents.

Justice Cook has been on the Ohio Supreme Court for 8 years. She was on the court of appeals for 4 years. She has a great deal of experience. She is a person who is a well-rounded individual and who has great compassion.

We have heard on this floor from Senator VOINOVICH and myself about how she has established scholarships for children and how she cares about education. And we have heard from the newspapers in Ohio. That is important because the newspapers in the State of Ohio pay attention. They pay attention to the Ohio Supreme Court. All of the five, six, or seven principal newspapers in Ohio endorsed her for reelection. They have endorsed her for this confirmation. I think what they have said is particularly important.

The Cincinnati Post wrote on January 8:

Cook is serving her second term on the Ohio Supreme Court where she has been a pillar of stability and good sense.

The Cleveland Plain Dealer wrote:

Cook is a thoughtful, mature jurist—perhaps the brightest on the State's highest court.

The Akron Beacon wrote:

Those who watch the Ohio High Court know Cook is no idealogue. She has been a voice of restraint in opposition to a court majority determined to chart an aggressive course acting as problem solvers more than jurists. In Deborah Cook they have a judge most deserving of confirmation, one dedicated to judicial restraint.

The Columbus Dispatch wrote:

Cook's record is one of continuing achievement. Since 1996 she has served on the Ohio Supreme Court where she has distinguished herself as a careful jurist with profound respect for judicial restraint and the separation of powers between the three branches of government.

I ask my colleagues to confirm Justice Cook. Senator VOINOVICH and I

asked the President to nominate her. We have known her for many years. She will serve well and ably on the Sixth Circuit Court of Appeals.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I yield the remaining time.

Mr. DEWINE. I yield the remaining time.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Deborah L. Cook, of Ohio, to be United States Circuit Judge for the Sixth Circuit? The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from Washington (Ms. CANTWELL), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Georgia (Mr. MILLER), and the Senator from Washington (Mrs. MURRAY), are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "no."

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

The result was announced—yeas 66, nays 25, as follows:

[Rollcall Vote No. 139 Ex.]

YEAS—66

Alexander	Crapo	Lincoln
Allard	DeWine	Lott
Allen	Dole	Lugar
Bayh	Domenici	McCain
Bennett	Dorgan	McConnell
Biden	Durbin	Nelson (NE)
Bingaman	Ensign	Nickles
Bond	Enzi	Pryor
Breaux	Feingold	Roberts
Brownback	Feinstein	Rockefeller
Bunning	Fitzgerald	Santorum
Burns	Frist	Schumer
Campbell	Graham (SC)	Sessions
Carper	Grassley	Shelby
Chafee	Gregg	Smith
Chambliss	Hagel	Snowe
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Talent
Conrad	Kohl	Thomas
Cornyn	Kyl	Voinovich
Craig	Landrieu	Warner

NAYS—25

Akaka	Edwards	Levin
Baucus	Harkin	Nelson (FL)
Boxer	Hollings	Reed
Byrd	Inouye	Reid
Clinton	Jeffords	Sarbanes
Corzine	Johnson	Stabenow
Daschle	Kennedy	Wyden
Dayton	Lautenberg	
Dodd	Leahy	

NOT VOTING—9

Cantwell	Lieberman	Murkowski
Graham (FL)	Mikulski	Murray
Kerry	Miller	Specter

The nomination was confirmed.