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Senate

The Senate met at 1 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Father, ruler of all nature, as Hurricane Rita's flood waters recede, we pause to thank You for Your goodness and mercy. We praise You for lighter-than-expected damage, for spared lives, and for generous hearts.

We thank You for the evidence of national and international unselfishness the forces of nature have shown us and for the opportunity to grow in grace by helping others.

Bless our lawmakers today as they continue their task of building a better nation and world. Guide them with Your providence and make them examples of civility and integrity. Give them the wisdom to listen to the whisper of conscience and to choose the harder right.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we formally begin the consideration of John Roberts to be Chief Justice of the United States. In a moment, we will proceed to executive session to begin the debate on that nomination. In order to facilitate the debate on the Roberts nomination, we have set aside controlled time so that Members can better plan when they will be speaking to the body. I know many Members will want to come to the floor to speak on this important nomination. However, I hope Senators do not feel compelled to make lengthy statements. We will stay each night this week if the Senators desire to speak, but I would like to reach an agreement as to when that final vote will occur so that Members can plan accordingly. I will be discussing a time certain for that vote with the Democratic leader as we go forward with the debate.

Last week, I announced that we would have a vote today beginning approximately 5:30. Shortly, we expect to have that vote locked in by unanimous consent. We have about 24 nominations that are pending on the Executive Calendar. We will likely set one of those pending nominations for a vote. As always, we will alert Members when that vote is set.

Also, this week we need to address the continuing resolution as we end the fiscal year. We will continue working on the appropriations process following the vote on the Roberts nomination.

The appropriations bill for the Defense Department will be reported this week, and we expect to quickly turn to that bill.

Having said that, I look forward to a good debate and good discussion on John Roberts, followed by the vote on his confirmation.

EXECUTIVE SESSION

NOMINATION OF JOHN G. ROBERTS, JR. TO BE CHIEF JUSTICE OF THE UNITED STATES

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider Executive Calendar No. 317, which the clerk will report.

The legislative clerk read the nomination of John G. Roberts, Jr., of Maryland, to be Chief Justice of the United States.

Mr. FRIST. Mr. President, 19 years ago today, on September 26, 1986, William Rehnquist took the oath of office as the 16th Chief Justice of the United States.

Today, nearly two decades later, the Senate is faced with a unique opportunity to provide advice and consent on the nomination of John Roberts as our Nation's 17th Chief Justice.

As we debate Judge Roberts' nomination over the next few days, I ask that we think about the task the American people have entrusted to us.

Over the next few days, they will be watching and waiting. They will be scoring us on how well we perform our duty.

They will be looking to see if we proceed in an honorable and dignified manner—to see if we work together in a bipartisan way—and to see if we put principle above partisan politics.

The qualifications they expect us to look at for a Supreme Court Justice are unambiguous. They expect an individual who is qualified, an individual who will faithfully interpret the Constitution, an individual who will check politics and personal views at the door of the Court, an individual who will approach every case with a fair and open mind.

As Senators, our duties are clear. The question now becomes, and the question each of us must answer is, Is

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

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John Roberts fit to serve as Chief Justice of the United States? Does he possess each of the qualities that the American people expect and qualities that our highest Court deserves?

In answering these questions, I recommend that we take a hard look at what we have learned about John Roberts over these last several weeks.

From his resume, we know he graduated at the top of his class from both Harvard College and Harvard Law School. At Harvard, he was editor of one of the most well-respected law journals in America.

He has argued 39 cases before the Supreme Court, and he has earned bipartisan respect as one of the finest appellate advocates in the Nation.

He served two Presidents in prominent positions. The American Bar Association gave John Roberts the highest rating possible—''well-qualified''—on three occasions.

We know he has earned respect from both sides of the political divide.

During the committee hearing 2 weeks ago, my distinguished Democratic colleague, Senator BIDEN, said Judge Roberts was ''one of the best witnesses to come before [the] committee'' in his 30-some years.

Senator FEINSTEIN complimented Judge Roberts for getting through the hearing ''in a remarkable way.''

Senator SCHUMER called him ''one of the best litigators in America'' and praised his ''amazing knowledge of the law.''

Senator SCHUMER went on to say that Judge Roberts ''may very well possess the most powerful intellect of any person to come before the Senate for this position.''

I agree with all of my colleagues' observations. John Roberts' record speaks for itself. And I believe that in the committee testimony he has earnestly and effectively shown America the face of John Roberts.

We know he understands the importance of judicial restraint and judicial independence. We know Judge Roberts appreciates that the role of a judge is to interpret the law and not to legislate from the bench. He understands that a judge is a humble servant of the law but never above the law.

In the words that captured his core philosophy, and captured the minds of Americans, Judge Roberts said:

> [J]udges are servants of the law, not the other way around. Judges are like umpires. Umpires don't make the rules; they apply them. . . .

And we know that Judge Roberts will not allow his personal political views to interfere with his judicial decisions.

In the hearings, he stressed that he has no political agenda but, rather, a commitment to ''confront every case with an open mind,'' ''to fully and fairly analyze the legal arguments that are presented,'' and to ''decide every case based on the record, according to the rule of law, without fear or favor, to the best of [his] ability.''

John Roberts has been open and forthcoming in the committee hearings. He has answered questions thoroughly, without compromising the independence to which he is entitled. He has provided this body with more than ample information to evaluate his merit.

In total, Senators have had access to over 100,000 pages of documents from his service in the Federal Government. And Judge Roberts endured almost 20 hours of committee testimony, including over 700 questions.

We have learned a lot about Judge John Roberts in the course of the last few weeks. And in one's personal interactions with John Roberts, we have all learned a little more. I know I have.

Getting to know John Roberts, I will say that truly he has a brilliant legal mind. He is ''the brightest of the bright.''

Above all, as his record reflects on the D.C. Circuit, John Roberts embodies the word that should be synonymous with every judge. He is fair. He is thoughtful. He is capable. He is hard working. He is driven. And John Roberts is a man of integrity. He is honest. He is devoted to his family.

These are qualities we want in the men and women who serve our Nation on the High Court. They are the qualities that will move America forward. John Roberts has proven beyond a shadow of a doubt that he has the qualification and the temperament, the knowledge and the understanding to serve as America's next Chief Justice. And in the eyes of my colleagues on both sides of the aisle, I sense that agreement.

As we move to this final stage of advice and consent, I urge my colleagues to continue to work toward that deadline of October 3 so that John Roberts can be on the bench when the Supreme Court begins its new term, and the Court can then be at full strength.

I look forward to a thoughtful and respectful debate on John Roberts' nomination, and then a fair up-or-down vote on confirmation later this week.

I yield the floor.

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. REID. Mr. President, many times we dwell on the negative, and that is unfortunate.

The debate that will take place this week speaks well of the process to this point.

I just saw Senator LEAHY walk through the Chamber. The other Member I wanted to mention briefly is Senator SPECTER, who is here in the Chamber.

The Judiciary Committee has acted in an exemplary fashion this past couple of months, with all the preliminaries that go into selecting a Supreme Court Justice—the first time we have had a new Supreme Court Justice in 11 years.

Senator SPECTER and Senator LEAHY are to be commended for the good work they have done.

Three weeks ago, I called Senator SPECTER and told him I thought he was moving on very well, and I complimented him on the good job he was doing in moving this forward.

There are strong feelings on each side. There are people voting no and people voting yes, but it has all been very respectful.

The heavy lifting of this nomination took place within the committee when 18 members of that committee spent a tremendous amount of time reading reports, and then, of course, in recent days asking questions that they had worked on for days and days before asking the questions.

So I want the record to be spread here with the fact that this shows how a legislative body should work. It doesn't mean everyone has to agree on the outcome. It just means you have to work in a respectful way to get to that outcome. We will have an outcome this week.

I say through the Chair to my distinguished friend, the Republican leader, from all I have been able to determine on our side, we would be certainly able to vote sometime in the morning on Thursday, if that would be appropriate. We might be pushing the envelope a little bit to try to finish on Wednesday. But I think we could finish with ease on Thursday with the schedule that people have.

I say that to my friend. Again, I say to Senator SPECTER—him being present, and Senator LEAHY not being present but saying the same to him—it really makes me feel good to know that our committee system works as it should, and it certainly did in this instance.

SENATE PRIORITIES

Mr. President, in the days and weeks since Katrina, there is no doubt that the American people have done their part to help.

I watched an interview over the weekend with a representative of the Red Cross who said they would soon be at $1 billion in money having come to the Red Cross from people of good will in the United States.

I think the American people have done their part to help, but I think—and I say this with some hesitation but certainly with as much affirmation as I can—the Republican-controlled Congress has not done its share. It has been a month. We have seen Hurricane Katrina come and go. We have seen Hurricane Rita come and go. And here we are, having done next to nothing to get victims the urgent relief they need.

Instead of letting the Senate address Katrina disaster relief in a comprehensive way, Republicans have spent the last 4 weeks debating the Commerce-State-Justice appropriations bill and the agriculture appropriations bill. These are important pieces of legislation but not nearly as important as the disaster relief measures that would give these people help immediately. These appropriations bills do little to help the victims. They do not offer us the opportunity to do more.

These bills, when they come to the floor, are in a parliamentary fashion

where they cannot be amended except in very strict ways. People who want to offer amendments dealing with Katrina have to use some political gyrations to be able to get a vote, and that is a two-thirds number they have to come up with to have it passed, which is very difficult to do. So I would hope we could get to some of these bills quickly.

I have said this before, and I do not want to sound like a broken record, but yesterday we lost three more troops in Iraq. I got a call late last night from Colonel Herbert, who is with the Nevada National Guard, a person who has devoted his life to the military. He said: Senator, I lost two of my men yesterday in a helicopter that went down in Afghanistan. He felt very bad. One of the pilots and one of the crew chiefs, both from Nevada, were killed.

This morning I was at Bethesda Naval Medical Center. As I walked in, there was a man in a wheelchair, missing both legs, and obviously he had had some trauma to his head. The naval officer who was with me indicated he was one who had been in the hospital, then left, and now is back. But yet in the Senate we have not done a bill to take care of these people.

In spite of the fact we have almost 2,000 Americans who have been killed in Iraq—we are spending upwards of $2.5 billion a week in Iraq—and that we are causing the ranks of the veterans to increase dramatically, we do not have a bill to take care of them. We have a bill, but we are not allowed to bring it to the floor. The Defense authorization bill, which sets up the funding and the other matters to take care of the active personnel who wear the uniform of the United States, plus our Guard and Reserve, plus the many obligations we as a nation have to our veterans—we are not debating that bill to do that. We spent a couple days on it.

These bills average about 2 weeks before we finish them. We are not going to that bill because the Republican-controlled Senate will not let us. We are going to do something that is unusual. We just heard from the distinguished majority leader that after we finish the Roberts nomination, we are going to bypass the Defense authorization bill and go to the Defense appropriations bill which we have not authorized.

What we normally do is we authorize within certain limits and then we bring the appropriations bills to the floor of the Senate and appropriate moneys for what we have authorized. We have not authorized anything, but we are going to appropriate, anyway.

There are lots of amendments pending. My staff and Senator LEVIN's staff worked with counterparts on the Republican side Friday to say: We will get rid of all our amendments. We will have 10 or 12 amendments. That is all we want. We would have one that would relate to the gulf, to Katrina, and the other 10 or 11 would be related to the Defense authorization bill. There is still no approval on that.

So those people who care about what is going on in Iraq—and that is most everyone—and those who care about what is going on in Afghanistan—and that is most everyone—should understand the bill we are not going to take up gives our troops and veterans the assistance they need.

Senator WARNER and Senator LEVIN, who are the chairman and ranking member of that committee, have provided in the bill before the Senate $21 billion in new spending for the military, $50 billion extra for covering operations in Iraq, and a 3.1-percent pay raise and other benefits to people in the United States military, which we are not going to be able to debate or vote on. We are not going to be able to amend the bill. That is too bad. It is really too bad. I think it shows a lack of respect for the people in the military, as indicated by my trip to Bethesda today.

In addition to that, we made little progress on S. 1637, the Katrina Emergency Relief Act of 2005. This is a bill that we Democrats submitted. It is a relief plan to give health care, housing, education, and financial relief to those people who need it. It was introduced the week after the hurricane. We still have not been able to get an agreement from the majority—Senate Republicans—as to how to proceed on this bill. None of the items have made it here to the desk, but yet we hear people complaining that Katrina is going to cost too much money and they want to start making cuts in Government programs. I am happy to take a look at that. But the first place we should look is at the budget here in the Senate. In the Senate, we authorize and appropriate, we pass a budget, and then we execute that with something called reconciliation. The budget we are working on is immoral. And those are not my words; those are words that were written by the leaders—not some offshoot groups—the leaders, the chief executives of the major Protestant religions in the United States—Lutherans, Methodists, Episcopalians, and others. I read into the RECORD the night we had that measure on the floor a letter from them saying: The budget is immoral. Don't vote for it. It passed with a party-line vote. The Republicans passed this, what they referred to as an immoral document. Let's not execute that. These church leaders were visionary. They knew then it was immoral. Today it is even worse.

What are we being asked to do with the reconciliation? We are being asked to give $70 billion in added tax cuts to the rich—$70 billion. We are being asked to cut $10 billion from Medicaid. Medicaid, a medical program that goes to the poorest of the poor, we are being asked to cut $10 billion from that. That is in this budget we are being asked to execute. We are being asked to cut student loans, to cut food stamps. If we want a big offset, get rid of the $70 billion tax cut now.

Times have changed. Our priorities must change with them. America can do better. We can start doing better today with bipartisan health care relief for survivors of Katrina. We have all heard about how the State governments of Louisiana, Mississippi, and even Alabama are struggling to provide health care. But many States in the region and elsewhere that have accepted thousands of Katrina evacuees are facing a similar problem. There are 60,000 evacuees in Arkansas.

We know no matter how hard these States try, they lack the resources to do what is needed, and many survivors will be left behind—and have been left behind. Only the Federal Government has the resources to address the evacuees' health care and other needs.

Fortunately, Senator GRASSLEY, the chairman of the Finance Committee, and the ranking member, MAX BAUCUS, set aside partisan differences and recognized this fact, that help is needed—and needed now—and they have come together and crafted a compromise to ensure that Katrina's victims will be covered under Medicaid, wherever they are, with full Federal funding.

This package does not provide coverage regardless of income, as my bill would have, but it is a good compromise. Senators GRASSLEY and BAUCUS are to be commended. It will provide relief to many who need it. We need to pass this bill. We need to get the House to agree with this bipartisan approach so we can get the bill to the President's desk as soon as possible. We need to do this now. Proceeding with business as usual, while the administration relies on bureaucratic waivers on a State-by-State basis, will not, and has not, gotten the job done.

The White House approach will not provide care, for example, to a 55-year-old grandmother or father who has found a job but still needs health care. It will not ensure uniform coverage from State to State. It will not expedite the process for victims and States who have already waited too long. It will not ease the financial burden that destination States are being asked to shoulder, such as Arkansas. And it will not provide relief to the States hit by Hurricane Katrina. In fact, it may make their situations even worse.

The Finance Committee bill enjoys bipartisan support in the Senate, and support from our Governors, State Medicaid directors, and numerous patient and provider groups.

There is no reason to wait any longer. We were ready to clear the bill Thursday. It was cleared on our side. It was all ready to go. Not on that side. We said: Let's wait a couple hours. No. We couldn't do it on Thursday. ''Let's come in Friday to do it.'' ''No, we can't do it on Friday.'' ''Let's do it on Monday.'' ''Can't do it on Monday''—although we are going to ask sometime today unanimous consent that we take this bill up and pass it. Our side has and will agree. I would hope we can do that. It is so important. States are

being hurt. They cannot bear the burden of the disaster that befell us.

The PRESIDING OFFICER (Mr. SESSIONS). Under the previous order, the time from 1:30 p.m. to 2:30 p.m. will be under the control of the majority leader or his designee.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, this afternoon, the Senate begins the debate on the confirmation of Judge John G. Roberts, Jr., to be Chief Justice of the United States. It is not an overstatement to note this is a historic debate. At the age of 50, Judge Roberts, if confirmed, has the potential to serve as Chief Justice until the year 2040 or beyond.

Today, Justice John Paul Stevens, at the age of 85, continues to serve. If you project Judge Roberts ahead 35 years, it would be to the year 2040. Obviously, by that time it will be a very different world. There will be very different issues which will confront the Court with the advances in technology, with the advances in brain scanning, key questions as to how far the privilege against self-incrimination goes to scan someone's brain. Will it be like a blood test and fingerprints or will it be viewed as invasive and a violation of a right to privacy? Those are the kinds of issues which Judge Roberts will confront if confirmed as Chief Justice.

He also has the potential to project a new image on the Supreme Court. That Court has been buffeted by a whole series of 5-to-4 decisions. Candidly, some of them are inexplicable, where you have, this year, the Supreme Court of the United States saying that Texas could display the Ten Commandments outdoors, but Kentucky could not display the Ten Commandments indoors. There are some minor differences, but it is hard to understand how the Ten Commandments can be shown in Texas but not in Kentucky by a 5-to-4 vote.

Under the very important legislation of the Americans With Disabilities Act, the Supreme Court had two 5-to-4 decisions 3 years apart. One, in a case captioned Garrett v. University of Alabama, in 2001, the Supreme Court declared the title unconstitutional which dealt with discrimination against the disabled in employment.

Three years later, in Tennessee v. Lane, the Supreme Court upheld the constitutionality of another title of the Americans with Disabilities Act which dealt with access to public accommodations. We have seen a proliferation of opinions with multiple concurrences, making them very hard to understand. Earlier this year, the Judiciary Committee took up the issue of what was happening in Guantanamo, and a study was undertaken on three opinions handed down by the Supreme Court in June of last year. On one case, they couldn't get a majority, a plurality of four, so there was no holding. In the other two cases, there were concurrences and dissents. You have a pattern which exists where Justice A will write a concurring opinion, joined by Justice B, and Justice B will write a separate concurring opinion, joined by Justice A and Justice C.

This is an issue which was considered during the course of Judge Roberts' hearings. It is one where a new judge, a new Chief Justice at the age of 50, will have an opportunity to make some very systemic changes in the way the Court functions. When Judge Roberts was questioned about his ability to handle this matter—first during the informal meeting in my office and later in the hearings—he said he thought he could handle it because, in his many appearances before the Supreme Court, some 39 in number, it was a dialog among equals. I was impressed by his concept of a dialog among equals, that he considered himself as a lawyer arguing before the Court to be dealing with equals. I have had occasion three times to appear before the Supreme Court, and it didn't seem to me like a dialog among equals. But when you have been there 39 times and you know the Justices as well as he does—and the word is that the Justices very much applaud his nomination to be Chief Justice—he has the potential almost from a running start to bring a new day and a new era to the Supreme Court. That is a very attractive feature about his projection as Chief Justice.

We know the famous historical story about Earl Warren's becoming Chief Justice in 1953. The Court was then faced with Brown v. Board of Education, the desegregation case. There were many disputes in the Court at that time. They had to carry the case over. Chief Justice Warren was able to get a unanimous Court, which was important, so that contentious issue was one where nine Justices agreed and came down with an opinion which was obviously difficult to implement but had a great deal more stature because of its unanimity. So here is an extra bonus for the Court, an extra bonus for America, if confirmed as Chief Justice: the potential that Judge Roberts has to promote a new day and a new era for the Court administratively.

On his qualifications, Judge Roberts was rated ''well qualified'' by the American Bar Association. It is understandable, since he was a summa cum laude graduate of Harvard College, magna cum laude graduate of Harvard Law School; had a very distinguished career as assistant to Attorney General William French Smith, after serving as a clerk to a distinguished Second Circuit judge, Henry Friendly; then served as clerk to then Associate Justice William Rehnquist; then, following his work with Attorney General William French Smith, became associate White House counsel; practiced with the prestigious law firm of Hogan & Hartson—Hogan & Hartson was prestigious before Judge Roberts got there but a lot more so after he was there and, frankly, after he left—then his status as a premier appellate lawyer; then the Supreme Court with some 39 cases.

It was my view that Judge Roberts has a broad, expansive understanding of the application of the Constitution. He said:

> They
>
> —referring to the Framers—
>
> were crafting a document that they intended to apply in a meaningful way down through the ages.

While he would not quite accept my characterization of agreement with Justice John Marshall Harlan on the document being a living thing, he did say that the core principles of liberty and due process had broad meaning as applied to evolving societal conditions. He is not an originalist. He is not looking to original intent. But he sees the Constitution for the ages and adaptable to evolving societal conditions.

On the issue of how many questions he answered before the Judiciary Committee, I believe he answered more than most but, candidly, did not answer as many questions as I would like to have had him answer. I will detail that in the course of this brief presentation.

I have observed, in the 10 Supreme Court nominations where I have had the privilege to participate on the Judiciary Committee, that nominees answer about as many questions as they believe they have to in order to be confirmed. But it has become an evolving process. A view of some of the history of Supreme Court nominations is relevant to see what has happened, what is in the course of happening, and what the next nominee may face.

The Senate Judiciary Committee has conducted hearings on nominees only since 1916—that is, for the Supreme Court—with the nomination of Louis Brandeis by President Woodrow Wilson. Justice Brandeis did not appear. The first time a nominee appeared before the committee was in 1925. The nominee was Harlan Fiske Stone. An issue had arisen as to whether there was a political motivation in the controversial investigation into the conduct of Judge Burton Wheeler. Justice Stone asked to appear to respond to the allegations. He did so, and he was confirmed.

In 1939, President Roosevelt nominated Felix Frankfurter, who initially refused to appear personally, but after being attacked for his foreign birth, his religious beliefs, and his associations, Frankfurter decided to appear. He read from a prepared statement, refused to discuss his personal views on issues before the Supreme Court. His hearing lasted only an hour and a half in duration and did not set a precedent for future nominees.

In 1949, Sherman Minton, who had been a U.S. Senator, became the only Supreme Court nominee to refuse to testify before the Judiciary Committee. Minton wrote to the committee:

> I feel the personal participation by the nominee in the committee proceedings related to his nomination presents a serious question of propriety, particularly when I

might be required to express my views on highly controversial and litigious issues affecting the Court.

Notwithstanding Minton's refusal, the committee conducted its hearing in Minton's absence and confirmed him. It wasn't until 1955, with the nomination of Justice John Marshall Harlan, that nominees have appeared regularly before the Judiciary Committee. Only since 1981, following my own election in 1980, have the hearings taken on a little different approach as to what the nominees will answer. Justice O'Connor declined to answer many questions. The next nomination hearing was that for Chief Justice Rehnquist, who was a sitting Associate Justice. Initially Justice Rehnquist declined to appear, then was advised that if he wanted to be confirmed, he would have to appear. It was a contentious hearing. As the record shows, Chief Justice Rehnquist was confirmed by a vote of 65 to 33. He did answer a great many questions, although he did not answer a great many questions.

I asked him a bedrock question as to whether Congress had the authority to take away the jurisdiction of the Supreme Court of the United States on the first amendment. He declined to answer. Overnight a Senate staffer brought me an article which had been written by a young Arizona lawyer in 1958 by the name of William H. Rehnquist which appeared in the Harvard Law Record. The young Arizona lawyer, William H. Rehnquist, was very tough on the Senate Judiciary Committee for the way it conducted its hearings for Charles Whittaker. Charles Whittaker was from Kansas City. There are two Kansas Cities—one in Kansas and one in Missouri. Justice Whittaker lived in one and practiced law in the other. A big to-do was made about the fact that it would be an honor to two States if he was confirmed, where he worked and where he lived.

This young lawyer from Arizona, Bill Rehnquist, didn't think that amounted to a whole lot. He chastised the Senate Judiciary Committee for not asking about due process and other constitutional issues. So in the face of his declination to answer my questions on taking jurisdiction away from the Supreme Court on the first amendment, I asked him if he was that William H. Rehnquist from Arizona. He said, yes, that was true, he was.

I said: Did you write this article?

He said: Yes, I did. Then he added quickly: And I was wrong.

So that didn't end the issue because having the authority of this young lawyer from Arizona, pretty good reasoning, I pursued the questions. Finally, he answered the question on could the Congress take away the jurisdiction of the Court on the first amendment. He said, no, the Congress could not do that.

So naturally I then asked about the fourth amendment, search and seizure. Could the Congress take away the jurisdiction from the Supreme Court on search and seizure. He declined to answer that. I went to amendment five on privilege against self-incrimination. Again he declined. And then six, on right to counsel, and seven, and eight on cruel and unusual punishment. Then I asked him a follow-up question: Why would he answer on the first amendment but not on any of the others? As you may suspect, he refused to answer that question as well.

It was my judgment that Chief Justice Rehnquist passed muster. It was a battle. And then Justice Scalia came before the Senate following Chief Justice Rehnquist. Justice Scalia would not answer any questions. As I have said—and really too apocryphal—Justice Scalia wouldn't even give his serial number. He would only give his name and rank. Prisoners of war are compelled to answer questions, but only three—name, rank, and serial number. But as I have said, and I have said this to Justice Scalia in interpersonal banter, he wouldn't even give us his serial number. But it was perhaps an exhausted Senate following the confirmation of Chief Justice Rehnquist or perhaps it was Justice Scalia's superb academic and professional record, he would not even answer the question as to whether he would uphold Marbury v. Madison, a decision of the Supreme Court of the United States in 1803 where the Court undertook the authority to interpret the Constitution and to interpret the law and to be the final arbiter of the Constitution.

Then in 1987 the Judiciary Committee considered the nomination of Judge Bork from the District of Columbia Court of Appeals. Judge Bork had very extensive writings in law reviews and books, many speeches, had a very extensive paper trail, a controversial paper trail. Judge Bork had written that absent original intent there was no judicial legitimacy, and absent judicial legitimacy, there could not be judicial review. Understandably, the committee had many questions for Judge Bork, and in that context Judge Bork felt compelled to answer the questions.

In the interim between Justice Scalia and Judge Bork, Senator DeConcini and I—Senator DeConcini being another member of the Judiciary Committee—had prepared a resolution to be submitted to the Judiciary Committee which would delineate an appropriate line of questions for nominees in trying to set some standards and trying to set some parameters as to what we felt, what questions were appropriate and what questions had to be answered to warrant confirmation. After the proceedings as to Judge Bork, we felt it unnecessary to move ahead with that kind of a resolution.

The nomination of Justice Kennedy followed, and Justice Souter and the other Justices, Justice Thomas, who answered a great many questions, and then the nomination of Justice Ginsburg and the nomination of Justice Breyer. These nomination proceedings found the nominees answering some, not answering others, but essentially following the rule that they answered about as many questions as they felt they had to.

Judge Roberts answered more questions than most. He answered the question about the right of privacy in a very positive manner in response to questions which I asked, which Senator KOHL asked, and which others answered. He said there was a right of privacy. He said the decision of the Supreme Court of the United States in Griswold v. Connecticut was a correct decision and he extended the contraception issue beyond marriage to those who were single, saying that right of privacy existed, and upheld the propriety of the decision of the Supreme Court in the Eisenstadt case. Other nominees had refused to answer such questions.

I felt that Judge Roberts did not answer some questions which I thought should have been answered. For example, I asked him about the appropriate standard for testing constitutionality under the commerce clause. We found in United States v. Lopez in 1995 that the Supreme Court of the United States had cut back on congressional authority of the Congress which had been in existence for almost 60 years. Then in the case of the United States v. Morrison, the Court struck down portions of legislation designed to protect women against violence. They did so on the stated principle that they disagreed with the congressional ''method of reasoning.'' When I heard about that rationale, it seemed to me to be inappropriate. What was the Court's method of reasoning which was superior to the congressional method of reasoning? I find the matter of unique historical importance that the columns of the Senate are lined up exactly evenly with the columns of the Supreme Court.

Interestingly, in an early draft of the Constitution, the Senate was given the authority to appoint Supreme Court Justices. I have seen or visualized, conceptualized a certain parody with those columns lined up exactly the same. When I read the opinion of the Supreme Court 5 to 4 in the United States v. Morrison, striking down portions of the legislation to protect women against violence, I wondered what was there in the Supreme Court which led them to a method of reasoning superior to a congressional method of reasoning? What happens when you move across the short space of green between the Supreme Court columns and the Senate's columns?

As the dissent pointed out, the opinion of the Court must have presumed some unique form of judicial competency. If you have a unique form of ''judicial competency,'' you must have a form of congressional incompetency which is hardly fitting in an analysis of cases and facts and a determination of

constitutionality with the separation of powers between the Congress and the Court.

In the case of United States v. Morrison, the factual record exists ''showing reports on gender bias from the task force in 21 states and 8 separate reports'' issued by Congress in its committees over a long course of time. The dissent detailed all of the evidentiary basis and then concluded ''there was a mountain of evidence.''

When I wrote to Justice Roberts by letter dated August 8 and August 23, I had alerted him to this case and this question. At this point, I ask unanimous consent the full text of those letters be printed in the RECORD.

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

U.S. SENATE,
COMMITEE ON THE JUDICIARY,
Washington, DC, August 8, 2005.

Hon. JOHN G. ROBERTS, Jr.
E. Barrett Prettyman Courthouse,
Washington, DC.

DEAR JUDGE ROBERTS: I write to give you advance notice of some of the issues I will be asking at your confirmation hearing. In addition to identifying topics, I think it is helpful to outline the background for the questions to save time at the hearing.

In addition to the commentaries of scholars and others about the Supreme Court's judicial activism and the Court's usurping Congressional authority, members of Congress are irate about the Court's denigrating and, really, disrespectful statements about Congress' competence. In U.S. v. Morrison, the Court rejects Congressional findings because of ''our method of reasoning''. As the dissent notes, the Court's judgment is ''dependent upon a uniquely judicial competence'' which implicitly criticizes a lesser quality of Congressional competence.

In Morrison, the Court invalidated, by a 5-4 vote, legislation on gender-motivated crimes of violence involving three Virginia Polytechnical Institute football players who were accused of raping a fellow student.

Chief Justice Rehnquist's opinion, interpreting the Commerce Clause, held Congress cannot regulate ''non-economic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce.'' The Court acknowledged the ''contrast with the lack of Congressional findings that we faced in Lopez'' and the Act was ''supported by numerous findings regarding the serious impact of gender-motivated violence on victims and their families.''

Writing for four dissenters, Justice Souter referred to ''the mountain of data assembled by Congress here showing the effects of violence against women on interstate commerce.'' Citing longstanding precedents, the dissent said:

''The business of the courts is to review the Congressional assessment not for soundness but simply for the rationality of concluding that a jurisdictional basis exists in fact.''

Noting the obvious advantage Congress has in its fact-finding procedures contrasted with the Court's limitations, the Souter dissent said:

''The fact of such a substantial effect is not an issue for the courts in the first instance . . . but for the Congress where institutional capacity for gathering evidence and taking testimony far exceeds ours.''

The Souter dissent further specified:

''The record includes reports on gender bias from task forces in 21 states and we have the benefit of specific factual finding in eight separate reports issued by Congress and its committees over the long course leading to its enactment.''

From the New Deal Court in 1937 to the abrupt reversals in Lopez and Morrison, Congressional authority under the Commerce clause had gone unchallenged based on Justice Harlan's rationale in the 1968 case Maryland v. Wirtz:

''But where we find the legislators . . . have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end.''

In the face of decades of precedents and a ''mountain of data,'' Chief Justice Rehnquist rejected Congress' findings because of our ''method of reasoning.''

To this Senator, who has labored through 25 years of intense legislative hearings and fact-finding plus prior public service and experience in the real world, my immediate reaction is to wonder how the Court can possibly assert its superiority in its ''method of reasoning'' over the reasoning of the Congress.

The Souter dissent attacks the majority's '''method of reasoning'' dictum questioning the Court's judgment is ''dependent upon a uniquely judicial competence.'' The dissent then points out:

''. . . these formalistic contrived confines of commerce power in large measure provoked the judicial crisis of 1937'' so that ''one might reasonably have doubted that Members of this Court would ever again toy with a return to the days before NLRB v. Jones & Laughlin Steel Corporation which brought the earlier and nearly disastrous experiment to an end.''

The Souter dissent further notes the categorical formalism ''. . . is useful in serving a conception of Federalism.'' A reinvigoration of Federalism is, of course, the hallmark agenda of the judicial activism of the Rehnquist Court.

Even with the Souter dissent referencing the crisis of 1937, I do not suggest any move as radical as President Roosevelt's attempt to pack the Court. I do see a great deal of popular and Congressional dissatisfaction with the judicial activism; and, at a minimum, the Senate's determination to confirm new justices who will respect Congress' constitutional role.

My questions are:

(1) Is there any real justification for the Court's denigrating Congress' ''method of reasoning'' in our constitutional structure of separation of power where the elected Congress has the authority to decide public policy on issues such as gender-based violence effecting interstate commerce?

(2) Is there any possible basis for the Court's characterization of ''uniquely judicial competence'' implicitly criticizing a lesser quality of Congressional competence?

(3) Do you agree with Justice Harlan's jurisprudence concerning legislation on the ''rational basis'' test as embraced by the dissent contrasted with the majority opinion?

(4) What is your thinking on the jurisprudence of U.S. v. Lopez and U.S. v. Morrison which overturned almost 60 years of Congress' power under the Commerce Clause?

Sincerely,

Arlen Specter.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, August 23, 2005.

Hon. JOHN G. ROBERTS, Jr.
U.S. Department of Justice,
Washington, DC.

DEAR JUDGE ROBERTS: Supplementing my letter on the Commerce Clause, this letter deals with Supreme Court decisions on the Americans with Disabilities Act (ADA) which I intend to ask you about at your confirmation hearing.

Like my first letter on the Commerce Clause, I am concerned about the Supreme Court's judicial activism which has usurped Congressional authority by creating, as Justice Scalia's dissent in *Tennessee v. Lane* states, a ''flabby test'' which is an ''invitation to judicial arbitrariness by policy driven decision-making''. The ''ill-advised'' result, as the Scalia dissent further notes, is for the Court to set itself up as ''taskmaster'' to determine that Congress has done its ''homework'' which demonstrates lack of respect for a co-equal branch of government.

Except for the swing vote of Justice O'Connor and the dramatic image of a paraplegic crawling up the steps to a courtroom, it is hard to discern a significant legal difference between *Alabama v. Garrett*, decided in 2001 involving ADA Title I discrimination in Employment, and *Tennessee v. Lane*, decided in 2004 involving ADA Title II discrimination in pubic accommodations.

In *Lane*, a 5–4 decision, with Justice O'Connor in the majority, the Court upheld the constitutionality of the Act in mandating access by a paraplegic who had to crawl up the steps to a second floor courtroom to answer criminal charges. In *Garrett*, a 5–4 majority, with Justice O'Connor in the majority, the Court declared the Act unconstitutional in seeking to hold the state liable for employment discrimination.

These decisions pose two major problems: (1) A lack of stability or predictability in the law because the two cases, decided three years apart, are virtually indistinguishable; and (2) The Court's judicial activism in functioning as a super-legislature.

Dissenting in *Lane*, Chief Justice Rehnquist complained that the majority referenced the same Congressional task force's ''unexamined, anecdotal'' evidence that the Court had already rejected in *Garrett*. Contrary to that assertion, the records in the two cases, which appear to be similar, seem to contain overwhelming evidence to support the Congressional findings.

Title II of ADA involved in *Lane* was supported by 13 Congressional hearings and a special task force that had gathered evidence from every state in the Union. Similarly, Title I of ADA involved in *Garrett* was based on task force field hearings in every state attended by more than 30,000 people including thousands who had experienced discrimination with roughly 300 examples of discrimination by state governments.

Notwithstanding those findings, the *Garrett* Court concluded:

''The legislative record of the ADA, however, simply fails to show that Congress did in fact identify a pattern of irrational state discrimination in employment against the disabled.''

Writing for four justices, Justice Breyer's dissent found ample evidence to support the legislation noting:

''Unlike courts, Congress can readily gather facts from across the Nation, assess the magnitude of a problem and more easily find an appropriate remedy.''

The dissent makes three more related points:

(1) ''Moreover, unlike judges, Members of Congress are elected.''

(2) ''. . . The Courts do not 'sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations' '' and

(3) ''To apply a rule designed to restrict Courts as if it restricted Congress' legislative power is to stand the underlying principle—a principle of judicial restraint—on its head.''

In imposing liability on the states in *Lane*, the Supreme Court justifies abrogating the

states' Eleventh Amendment immunity by enforcing fundamental rights under the Fourteenth Amendment. To do that, under the Court's reasoning, there must be ''a congruence and proportionality'' between the injury and the remedy imposed. That leaves the Court substantial latitude, as a matter of interpretation, to declare acts of Congress unconstitutional notwithstanding the enormous evidentiary support for Congress' public policy determinations.

Justice Scalia's dissent in *Lane* attacked the ''congruence and proportionality standard'' calling it a ''flabby test'' and an ''invitation to judicial arbitrariness and policy driven decision making.'' The dissent added:

''Worse still, it casts this Court in the role of Congress' taskmaster. Under it, the courts (and ultimately this Court) must regularly check Congress' homework to make sure that it has identified sufficient constitutional violations to make its remedy constitutional and proportional. As a general matter, we are ill advised to adopt or adhere to constitutional roles that bring us into conflict with a coequal branch of Government.''

Justice Scalia then carved out a new rationale for disagreeing with the ADA's remedy, unmentioned when he joined the majority three years earlier in *Garrett*, that the Fourteenth Amendment applies only to state racial discrimination and ''do not apply to this field of social policy far removed from the principal object of the Civil War amendments.''

My questions are:

(1) Aren't the ''congruence and proportionality standard'' and Chief Justice Rehnquist's ''method of reasoning'' dictum in *Morrison* examples of manufactured rationales used by the Supreme Court to exercise the role of super legislature and make public policy decisions which is the core Congressional role under the Constitution?

(2) Without invoking the ''flabby test'' and engaging in an ''invitation to judicial arbitrariness by policy driven decision making'' embodied in the ''congruence and proportionality standard,'' wouldn't a preferable test of constitutionality be the standard applied by Justice Harlan to the Commerce clause in *Maryland v. Wirtz*, and again invoked in *Gonzales v. Raisch*:

''But where we find the legislators . . . have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end''?

(3) Isn't there a lack of respect for Congress demonstrated by the Supreme Court as Justice Scalia points out that it is ''ill advised'' for the Court to set itself up as ''taskmaster'' to determine that Congress has done its ''homework'' and to strike down Acts of Congress as Chief Justice Rehnquist did in Morrison by impugning our ''method of reasoning''?

(4) Using the maxim that ''hard cases make bad laws'', should there be any place in the judicial decision-making process to make allowances for the unique and sympathetic factual situation in *Lane* where a paraplegic had to crawl up the courthouse steps?

Sincerely,

ARLEN SPECTER.

P.S. Following the release of my prior letter on the Commerce Clause, there were misrepresentations that my questions asked how you would have decided specific prior cases. That is not true. The questions were carefully crafted to elicit your thinking on your jurisprudence and judicial philosophy as opposed to how you would have decided specific cases.

Mr. SPECTER. At this juncture, it might be appropriate to note that Republicans have the floor until 2:30, and if one of my colleagues is to come over, I may speak a more abbreviated period of time, we will have time for another speaker to take the floor before Senator LEAHY is recognized under the unanimous consent request at 2:30.

I asked Judge Roberts the questions which I had set forth in the letter that I referred to, What is an appropriate jurisprudential standard on the commerce clause? Is it the one which has been followed for so many years, which is a substantial basis for the congressional decision, or is it some ''method of reasoning'' which is impossible to understand even in the context of a record from a task force in 21 States and 8 separate reports to the Congress?

Judge Roberts declined to answer the question. I pressed him and finally said we would have to agree to disagree. But it seems to me when you have a question about philosophy, about judicial approach, about what is the proper standard to apply on constitutionality of a congressional exercise of authority under the commerce clause, that is the kind of question which should be answered, not sufficient to vote ''no,'' but candidly the beginning of being a little bit tempting.

Then I asked him about the jurisprudence of the Supreme Court in the two cases I have already referred to under the Americans With Disabilities Act.

In Garrett v. Alabama, in the year 2001, the Supreme Court struck down a title of the Americans With Disabilities Act which dealt with discrimination in employment involving Ms. Barrett, who had breast cancer. And then, 3 years later with an identical record—the records are the same in all titles of the Americans With Disabilities Act—you had a striking case of a paraplegic, a case called Tennessee v. Lane, where the parapalegic had to crawl up the steps to a courtroom. The issue there was whether there was discrimination under the Americans With Disabilities Act on access. The Supreme Court of the United States, in a 5-to-4 decision, said that was constitutional.

It is inexplicable how, given two titles of the Americans With Disabilities Act with identical records, the Court could find one to be constitutional and the other to be unconstitutional. I asked Judge Roberts about that. Again, he declined to answer.

The Supreme Court in both Garrett and Lane adopted a brand new standard for testing constitutionality of congressional action under section V of the 14th amendment as contrasted with the right of the States for immunity from suit under the 11th amendment.

The Supreme Court of the United States picked up a doctrine which they had adopted in a case called City of Boerne v. Flores. In 1997, when the Supreme Court overturned the Religious Freedom Restoration Act of 1993, legislation which had been very carefully considered by the Congress of the United States, the Supreme Court said that act was unconstitutional because it did not satisfy a test of congruence and proportionality. When I read that standard, I wondered what it meant. Congruence and proportionality. Where did the Court get this standard? They plucked it right out of thin air. There was no basis for this kind of a standard.

Justice Scalia, in dissenting in the Lane case, said it was a ''flabby test'' which was put into effect in order to allow the Supreme Court to engage in policymaking decisions, in effect, judicial legislation.

The dissenting opinion by Justice Scalia in the Lane case took the Court to task for an ''ill-advised opinion'' where they acted as the taskmaster of the Congress to see that the Congress was doing its homework. Like the Supreme Court decision in Morrison attacking our method of reasoning, it seemed to me the Court had gone much too far in challenging the competency of the Congress in striking down congressional authority.

Again, I ask Judge Roberts, what about this test of congruence and proportionality? Does it have any basis in the law? Is there any rationality in what the Court did in these two cases under the Americans with Disabilities Act? Again, he declined to answer.

After talking to a number of my colleagues, the Senate Judiciary Committee will give very serious consideration to legislation which would give the Congress standing to defend the constitutionality of the statutes which it enacts. Standing is a very delicate subject and there are a great many cased where people seek to go to court to enforce the Endangered Species Act or to enforce a variety of laws. Congress has the authority to grant standing.

It seems to me that it might be a good occasion for Congress to exercise this authority to grant standing to Congress. Why should we rely upon the litigants to defend the constitutionality of these enactments which we pass very carefully and very laboriously, as we did the Religious Freedom Restoration Act of 1993 or the Americans with Disabilities Act? That is a move which might have material implications on reasserting the balance of power and the separation of power between Congress and the Court.

If we have standing, we can have our own counsel, we can proceed to brief the cases, we can proceed to have someone argue it on our behalf. We may be able to stop the flood of actions by the Supreme Court which have reversed acts of Congress, the actions by an activist Court engaged in judicial legislation and doing it under the guise of illusory standards such as congruence and proportionality, standards plucked out of thin air. They disagree with our method of reasoning when there is no basis for asserting superiority of reasoning by the Supreme Court over the Congress.

When we talk about this judicial activism, we are talking about a form of

activity which is abhorred by both the right and the left on the political spectrum. My distinguished colleague, Senator HATCH, who preceded me as chairman of the Judiciary Committee, and I have discussed the decision of the Supreme Court in striking down the Religious Freedom Restoration Act of 1993, and it is one which candidly defies logic. But the Court decided to undertake that restriction of congressional authority, and it did so in that case.

The issue of how many questions a nominee must answer will be before the Senate again on the next nomination to replace retiring Justice Sandra Day O'Connor. The refusal of nominees to answer questions where the case is likely to come before the Court is, in my opinion, well-founded.

Judge Roberts answered more questions than many. Justice Scalia, for example, as I said, would not even comment on Marbury v. Madison. Judge Roberts did not answer questions where, in his judgment, the case was likely to come before the Supreme Court. If the case is to come before the Supreme Court, as a matter of judicial independence, the nominee ought not to answer that question.

I said in advance of the hearings, and I said during the hearings, that any Senator had a right to ask any question which he or she chose, including how a case would be decided, and that the nominee had the right to answer or decline to answer as the nominee chose, and that it was my view that if a question did involve a question on a case likely to come before the Court, the nominee was within his rights to decline to answer.

The public does not understand the issue of judicial independence and the ramifications of answering a question on a case likely to come before the Court. The public in the opinion polls wanted to know what Judge Roberts thought about a woman's right to choose. The public wanted to know whether he would uphold Roe v. Wade or overrule Roe v. Wade.

It seems to me this is a classic case of the irresistible force meeting the immovable object. The immovable object is judicial independence—not to make a commitment in advance on a case likely to come before the Court—and the sort of irresistible object is the public interest in knowing.

During the course of the hearings on Judge Roberts, Senator after Senator was moving right into the area of wanting to know how Judge Roberts would decide a case. I pressed Judge Roberts on the issue of stare decisis and on the value he would place on precedent, on Planned Parenthood v. Casey, on some 38 cases where the Supreme Court of the United States had an opportunity to overrule Roe and declined to do so. I asked him about a doctrine which had been articulated in some quarters about Casey being a superprecedent and took a step on coining a new concept called the superduper precedent. It has not landed too well, but sometimes these new ideas take a while to gestate.

I believe the next nominee is going to face very close questioning. It is my thought, already expressed by a number of Senators—and Senators on both the right and the left—that Senators want to know more about the thinking of the new nominee than Judge Roberts was willing to give.

Judge Roberts was able to run between the raindrops in a hurricane because of his unique talent; his record was so extraordinary that he was able to fend off many questions. A number of Senators have stated a reason for a ''no'' vote is Judge Roberts' refusal to answer questions and their lack of sufficient knowledge as to where he stands.

It is a virtual certainty—in fact, you can strike ''virtual''—it is a certainty that the next nominee will have these questions and many more. Some would say that Judge Roberts would be replacing Chief Justice Rehnquist, so that when you have somebody perhaps on the same ideological line, although that is by no means certain from Judge Roberts' answers, the fact is you just do not know how Judge Roberts is going to rule on Roe v. Wade or other controversial issues. Again, I repeat, that is, in my opinion, as it should be as a matter of judicial independence. If there is any rule as to what happens, it is a rule of surprise as to what nominees do.

There is no doubt that the hearings in the Judiciary Committee have become more contentious because of concern about the highly controversial issues, and it is more than the issue of choice in Roe v. Wade, it is the issue of congressional authority versus the action of the Supreme Court in declaring laws unconstitutional. It is in the issue of religious freedom as embodied in the Religious Restoration Act where there is concern from both the right and from the left.

It was this kind of angst, this kind of unease which led me to the suggestion that the President defer a replacement for Justice O'Connor until the end of the June term, at a point where we would know a great deal more about Judge Roberts. But in the context where there are uncertainties as to two votes, it compounds the angst and anxiety as to what may occur.

I called Justice O'Connor, as I said in the meeting involving the President, Senator FRIST, Senator REID, Senator LEAHY, the Vice President, Chief of Staff Andy Card, and myself. I said I called Justice O'Connor and asked her if she would be willing to stay on—obviously quite a sacrifice—and she said she would if she was asked. But that is the President's call, and the President has indicated he is going to proceed in a timely manner where the expectation is the nomination will be made, my estimate would be, shortly if not immediately after a decision is made by the Senate on the Roberts nomination.

It is going to be a contentious hearing. The contentious quality was bubbling just below the surface during the hearing of Judge Roberts. There are a number of factors already stated, already articulated which would pose even more of a contentious issue.

I ask unanimous consent, although I don't know if I need to, to introduce a bill at this point, and it is right in line with the issues involved in the Roberts nomination. That is legislation that will call for televising the Supreme Court of the United States.

The PRESIDING OFFICER. Without objection, it is in order to introduce this measure. It will be received and appropriately referred.

Mr. SPECTER. I thank the Chair.

The nomination of Judge Roberts to be Chief Justice has created a great deal of interest, and I think the televised hearings have captured the imagination of the American people. I have long believed that the Court ought to be televised. There is a certain reluctance of the Court for television as a change in practice and as a change in procedure, but there is much to recommend it.

Televising the House of Representatives and the Senate has produced a great deal more public understanding on the important activities we undertake here and what we do.

The Supreme Court of the United States in 1980, in a case captioned Richmond Newspapers v. Virginia, set the rationale for televising the Court when the Supreme Court itself said:

> Instead of acquiring information about trials firsthand observation or by word of mouth from those who attend, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of acting as a service for the public. Media presence—
>
> The intended subject here—
>
> contributes to the understanding of the rule of law and the comprehension of the function of the entire criminal justice system.

That would be true for the entire justice system.

The Congress has the established authority to set the date when the Supreme Court starts its session. We have legislated that it should be the first Monday in October. We have the authority to establish the number of Justices—nine. We all recall the famous court-packing effort by President Roosevelt in about 1937. We could increase the number as we would choose. The Congress has the authority to establish a quorum, which is set at six for the Court to function. The Congress has the authority to establish a timetable for the disposition of habeas corpus cases, capital punishment. We establish the timetable for the Federal courts under the Speedy Trial Act. Of course, the final arbiter in all of these cases is the Supreme Court of the United States.

So if the Supreme Court should decide that legislation enacted by Congress to call for being televised was violative of the Constitution, they would have the final word. But in the context where the Supreme Court decides the cutting edge questions of our

day—the question of choice, the question of the right to die, the question of the Ten Commandments, the question of establishment of religion, the question of the free exercise clause, the question of the death penalty, the question of exonerating the innocent—it is very much in the public interest, in my view, to have the Supreme Court televised.

We all know the momentous decision of the Supreme Court in Bush v. Gore. On that occasion, when I walked across the green to attend the argument, the square block was overloaded with television trucks because of the enormous interest, but the television cameras could not go inside. At that time, Senator BIDEN and I wrote to the Chief Justice and asked that the Court be open for television. We received a letter of declination. As I recollect, the Court did have a transcript which was released right after the oral argument concluded.

I believe proceedings of the Court could be televised with due regard to the security and safety of the members of the Court. Under the proposed legislation, the Court would have the authority in a particular case to stop the television if it felt it necessary.

In conclusion, as we approach the confirmation of Judge Roberts to be Chief Justice, I urge my colleagues to take a close look at his record. The conventional wisdom is that the nomination is assured at this point. I believe that is true. Nevertheless, I think there is value in rolling up the score. We frequently cite the vote of 98 to 0 for Scalia; only three votes against Justice Ginsburg; 52 to 48 for Justice Thomas. I believe a strong vote for Judge Roberts would give him added stature. It is pretty hard to add stature to the Chief Justice of the U.S. Supreme Court, but I believe it would add a modicum of stature.

As the President ponders the nominee to replace Justice Sandra Day O'Connor, it is my hope that there will be balance maintained on the Court. With the uncertainties of the vote of Judge Roberts, the uncertainties of the vote of a new nominee, and the prospects of retirements in the immediate future, the composition of the Court could change, and the rule of law is structured on stability. The rule of law is structured on expectations being fulfilled, and reliance, and it is enhanced by not having sharp turns.

The nomination of Judge Roberts to replace Chief Justice Rehnquist may work out to be a substitution of people with about the same judicial approach. Although it is far from certain exactly how Judge Roberts will rule, there is no doubt that Justice O'Connor was a swing vote, tipping the scale. I believe that is a factor to be considered.

While I would like to see more women, a Hispanic, and more African Americans on the Court, I urge the President to name the very best person he can find. We could use a Brandeis or a Holmes on the Supreme Court. I am not saying we do not have one now, but if we do, we could use more.

President Bush disarmed his critics by nominating Judge Roberts with his extraordinary record, and I urge the President to nominate the very best person he can, regardless of gender, ethnicity, or any other factor.

I draw the attention of my colleagues to the full text of my remarks of Monday, September 19, 2005.

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

Mr. SESSIONS. Madam President, I appreciate the leadership of Senator SPECTER in this confirmation process. We stayed on track and on time better than at any time I can remember. We had a lot of people with a lot of strong views and ideas they wanted to express and they were given plenty of time to do that. We had 30-minute rounds of questioning and then 20-minute rounds. Some got more who asked for it. Judge Roberts was appropriately forthcoming under certain circumstances and appropriately failing to be drawn into discussions of cases that may come before him.

I think things went well. A lot of people doubted whether we would be in position to have a vote this week, but the Senator from Pennsylvania was tireless. He stayed as long as it took. He listened to all of it, chaired the hearings, and kept us going straight, and made sure on occasion the witness had a chance to answer. Sometimes he was given more questions and interruptions than he was given a chance to answer. The Senator did a great job and I want to thank him for that.

I also join the Senator in saying that one never knows what a judge will be confronted with 10, 12, 15, 20 years from now. We might as well get the best person we can get who can deal with those questions that are unanticipated now and who can construct a philosophy of the judiciary that will be healthy and faithful to the Constitution, to the people who have ratified that Constitution, who have elected the representatives, to be respectful of all of that, and who understands the proper role of a judge.

I think Judge Roberts meets every one of those qualities. I think he is an extraordinary individual. Everyone who has been watching the hearings has been very impressed. I think he represents the American ideal of what a judge should be. The President deserves great credit for nominating the best.

I asked Professor Fried of Harvard, who is a former Solicitor General of the United States and had himself argued cases before the Supreme Court—he is now at Harvard teaching philosophy of law—how would he rank Judge Roberts as an advocate before the Supreme Court, and he said the best, as so have certain legal magazines that rate the best lawyers in the country.

I think the people like him. I think his idea that judges should show modesty and be faithful to the Constitution, his expression that the greatest threat to the Court could be judicial activism, where the people feel the judges are not faithful to the Constitution and are imposing their political views on the people that are not required by the Constitution, that this is a threat to the rule of law because at some point in the future the Court may have to call on the American people to do things they do not want to do, they may not be popular, to be faithful to the Constitution. To erode and give away that good respect the American people have for the courts and the law would be a mistake.

I want to express how strongly I feel that our nominee is an extraordinary individual. I saw on C–SPAN today John Roberts' former coach and teacher, and he said he was the finest student we had in our school and the finest student the school has ever produced. He did not hesitate to say that. He coached him in wrestling. He played football. He was top academically in the class and cared about those kinds of things. He worked hard and he was honest. He said, I remember when he came up at graduation and they gave the award for the finest student in English, it was John G. Roberts; they gave the one for French, and it was John Roberts; in Latin, it was John Roberts; mathematics, it was John Roberts. He said nobody, none of the students, had the slightest doubt that he deserved those honors and he earned them, because of both his work and his intelligence.

John Roberts went to Harvard to do his undergraduate degree, finished Harvard in 3 years, not 4, and was magna cum laude on his graduation from Harvard in 3 years. Then he went to law school at Harvard, likewise did exceedingly well, and was selected for Law Review, which is a great honor for a student in law school to be selected for the Law Review. I suppose some of us might grumble, but most people would probably admit that the Harvard Law Review is the finest, most prestigious Law Review in the country. His fellow members of the Law Review elected him to be managing editor of the Law Review, which again is an affirmation of their respect for him and his abilities.

After law school, he clerked for Judge Friendly, one of the great circuit judges in America. This is the court of appeals that is just below the Supreme Court. I note that outstanding law graduates apply for these courts of appeal clerkships. There are not that many of them. They are very coveted and only the best students are selected.

Judge Friendly, one of the great circuit judges in the last 50 years in the United States, would have been very competitive. Many students would have liked to have clerked for him. He chose John Roberts.

After that, I am sure Judge Friendly recommended him—or however it occurred, he was recommended to Chief Justice Rehnquist. I believe Justice

Rehnquist was not chief at that time but a justice on the Supreme Court. He clerked for the Supreme Court, the very Court on which he will now sit. Trust me, it is an honor for a lawyer to be chosen to clerk for the U.S. Supreme Court, because they want the very best young lawyers who can help them decide the most complex cases. So I think that is something we should remember.

Then he is in private practice. He goes to the Department of Justice. He is called over as part of Fred Fielding's efforts to bring the brightest to the White House. He found him and snatched him away to the White House. He was White House counsel under President Reagan, helped President Reagan carry out his agenda, an agenda that 48 States affirmed when he was reelected by one of the largest votes in history.

Some have tried to say, oh, he worked in the Reagan White House. He was conservative and out of the mainstream. President Reagan carried 48 States. He was not out of the mainstream. We have some leftists in this country who are out of the mainstream, but I do not think because he worked in the Reagan White House anybody could suggest he is not a mainstream lawyer.

He later becomes principal Deputy Solicitor General in the Department of Justice. The Solicitor General represents the United States of America before the Supreme Court. That is the job many lawyers call the greatest lawyer job in the world, to be able to represent the United States of America before the Supreme Court. That is a great honor. He was the principal deputy. He argued cases there and in private practice. He has argued a total of 39 cases before the Supreme Court. I am sure there is no lawyer in America his age who has argued 39 cases before the Supreme Court. We have maybe a few lawyers in the Senate. I know JON KYL has argued two cases before the Supreme Court. I doubt there are any of us who have; maybe others who have done it. It will not be me. But 39 means he is a professional practitioner before the Supreme Court, a student of the Supreme Court, so good that when anyone else is preparing to make an argument for the Court, they want to have a moot court practice before John Roberts because he knows how the Court thinks, what the issues are, how the cases are handled.

I asked him to explain what a Chief Justice on the Court does and how the Supreme Court works. He explained in great detail about how cases are tried in the trial courts, the U.S. district courts, how every word is written down. They have juries. They have lawyers who argue the case before the juries. The judge makes rulings on the law and the evidence. After the case is over, a transcript is prepared. If someone wishes to appeal, they do so, and they point out what in that record is in error and argue that the case should be reversed or some other remedy. They go first to the court of appeals, such as where Judge Friendly served. We have 11 circuit courts of appeal and the DC Circuit in the United States. They review the record. The lawyers argue why this transcript proved a judge committed error or error occurred. They argue why the case should be affirmed or not affirmed. They submit briefs on that, citing the record and the detailed facts, and why they believe their views should be affirmed. It goes up that way. They have oral arguments. Then the court of appeals judges meet, discuss it, and they render a written opinion. Then if someone is not happy with that, they can appeal to the U.S. Supreme Court.

All of this is already prepared before it gets to the judge. They have oral arguments, and then they have briefs. Then friends of the court submit briefs and everybody can submit briefs.

The PRESIDING OFFICER. The time reserved for the majority has expired.

Mr. SESSIONS. Madam President, I ask to have 1 minute to wrap up.

Mr. LEAHY. No objection.

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

Mr. SESSIONS. They meet with their fellow judges, they read the law and the transcripts, and they make a decision after all of that.

I asked him, isn't that why, Judge Roberts, you ought not to blithely, here in this Senate committee room, start expressing opinions on cases when they have not had all the study in advance to clarify the issues?

He answered that yes.

Madam President, I see the distinguished ranking member of our committee, Senator LEAHY. I will note he has worked hard to make sure that every opportunity has been presented on his side. He had every question answered. He got extra time for people who wanted extra time. But after hearing it all, I think he made the right decision in his choice to vote for Judge Roberts. He was an effective advocate for his views of his members and at the same time I think he made an independent decision that I respect. I enjoyed working with him and I think we did a pretty good job with these hearings—although my daughter told me not long ago, she said: Daddy, it was pretty clear who the brightest bulb in that room was, and it was not the Senators.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the time from 2:30 until 3:30 p.m. will be under the control of the Democratic leader or his designee.

The Senator from Vermont.

Mr. LEAHY. Madam President, we are beginning our debate today on the Roberts nomination. We know the vote will not come today, but I urge Members for him and against him to come and speak. I say that because there are very few decisions we face here in the Senate that are as consequential or as enduring as the one we face today. Few in our Nation's history have served as Chief Justice of the United States. It is a unique and significant position. Once one assumes it, he or she holds it for life. To put that in perspective, we have had 43 Presidents. We have only had 16 Chief Justices of the United States.

I explained last week why I was supporting John Roberts's nomination to be Chief Justice. It was neither an easy decision nor was it a hurried decision. But it was a decision that my conscience led me toward.

I thank Senators REID, KENNEDY, KERRY, BINGAMAN, BOXER, PRYOR, OBAMA, NELSON of Nebraska, and others for their thoughtful remarks these past few days. I commend to the Senate each of the statements on both sides made in the Judiciary Committee meeting on Thursday.

I must say, as the Democratic leader of that committee, I believe the Democratic Senators distinguished themselves by the thoughtful manner in which they proceeded. The hearing record upon which the Senate can draw in making this decision is as full as it is largely through their diligence. Now each Senator has to carefully weigh this question and decide it for himself or herself.

Regardless of how Senators decide to vote on this nomination, the Democratic members of the Judiciary Committee can all be proud that we have done our job, we have fulfilled our constitutional responsibility to fully, fairly, and openly review this nomination on its merits. For that I thank them all.

I note that it is true that Democratic Senators are not all voting in lockstep. Each Senator individually gave this nomination serious consideration. They each honored their constitutional duty and their obligation to the American people in reviewing this nomination.

Democratic Senators kept open minds throughout this process, unlike some partisan cheerleaders who rallied to endorse the White House decision long before the first day of hearings opened. I urged my colleagues on this side of the aisle to wait until we had the hearings before they made a decision either for or against the nominee. I thought that was the most responsible thing for any Senator to do.

I have served in the Senate for more than 30 years, much of that time on the Judiciary Committee. This is the 11th Supreme Court Justice nomination on which I cast my vote. I am one vote out of 100, but I recognize that those 100 of us privileged to serve in the Senate are entrusted with protecting the rights of 280 million of our fellow citizens. Just think for a moment, the Chief Justice is there to protect the rights of all 280 million Americans. Only 101 Americans can have a say in who is going to be Chief Justice: The President, of course, with the nomination, and then the 100 Members of the

U.S. Senate who have to stand in the shoes of 280 million Americans.

There is no entitlement to confirmation for lifetime appointments on any court or any nomination by any President, Democratic or Republican. Americans deserve a Supreme Court that acts in its finest tradition as a source of justice. The Supreme Court must be an institution where the Bill of Rights and human dignity are honored, preserved, and protected.

As I considered this nomination, I reflected on the hearings and my meetings with Judge Roberts. While I believe Judge Roberts should and could have been more forthcoming, I was encouraged by some of his answers to my questions both at the hearings and during our nearly 3 hours of face-to-face meetings.

I took Judge Roberts at his word when he gave the committee assurances that he would respect congressional authority. His steadfast reliance on the Supreme Court's recent Raich decision as significant precedent, contravening further implications from Lopez and Morrison, was intended to reassure us that he would not join in what has been a continuing assault on congressional authority. I heard him and I rely on him to be true to the impression he created. To do otherwise would greatly undermine Congress's ability to serve the interest of Americans, to protect the environment, to ensure equal justice, and to provide health care and other basic resources that are so vitally important to some of our neediest citizens. I think he knows that now.

I was also struck by Judge Roberts's admiration for Justice Robert Jackson and for Justice Jackson's protection of fundamental rights, including the right of unpopular speech under the first amendment. We all know we don't have to fight to protect popular speech. It protects itself. We have to fight to protect unpopular speech under the first amendment. Justice Jackson's protection of unpopular speech, and his willingness to serve as a check on Presidential authority, are among the finest actions by any Justice in our history.

I expect Judge Roberts to act in the tradition of Justice Jackson and serve as an independent check on the President. When he joins the Supreme Court, he can no longer simply defer to Presidential authority. We know we are in a period in which the executive has had a complicit—and I believe compliant—Republican Congress that has not served as an effective check or balance. Without the Court to fulfill its own constitutional role as check and balance, excess will continue; the balance will be further tilted.

Justice Roberts said he went to law school because of his love of the law and the rule of law. I was struck by that comment. I was struck by it because it was the same thing that motivated me when I entered Georgetown Law School here in this city. The purpose of the law is to serve justice. A Justice on our highest Court needs to know in his core, in his entire being, that the words engraved in the Vermont marble on the Supreme Court building are not just ''Under Law'' but ''Equal Justice Under Law,'' and that under our great national charter it is not just the rule of law that a Justice must serve but the cause of justice. The rule is there so we can serve the cause of justice.

As Chief Justice, John Roberts will be responsible for the way in which the judicial branch administers justice for all Americans. I was encouraged that he said he would provide a fifth vote in staying an execution when four other Justices voted to review a capital case. Effective judicial review is all the more important in an era in which so many innocent citizens have been sent to death row.

I respect those who come to different conclusions about this nomination. Actually, when I listened to those who came to different conclusions, I readily acknowledge the unknowable at this moment. Perhaps they are right and I am wrong. Only time will tell. But in my judgment, in my experience, especially in my conscience, I find it better to vote ''yes'' than ''no.'' My Vermont roots, which are deep and cherished in my family, have always told me to go with my conscience and that is what I have done in this decision.

Judge Roberts is a man of integrity. For me, a vote to confirm requires faith that the words he spoke to us had meaning. I take him at his word that he does not have an ideological agenda and that he will be his own man as Chief Justice. I take him at his word that he will steer the Court to serve as an appropriate check of potential abuses of Presidential power. I hope and trust he will.

This nomination process we complete this week provides some important lessons for the President as he renews his efforts to select a successor to Justice O'Connor. Last week Chairman SPECTER—I might add, parenthetically, a chairman who ran a superb hearing in the best tradition of the Senate, making sure that both Republicans and Democrats were heard and that questions were asked—and I, along with the Republican and Democratic leaders of the Senate, met with President Bush. I urged him to follow through with meaningful consultation this time, to share with us his intentions, and to seek our advice before he chooses; to use both parts of the advice and consent clause of the Constitution.

I remain concerned by the administration's lack of cooperation with the Senate on Judge Roberts's nomination. We did start off well with some early efforts at consultation. I praised the President for that. But then those early efforts didn't result in meaningful discussions.

The President's naming of Judge Roberts, first to replace Justice O'Connor and then swapping that for the vacancy left by Justice Rehnquist, came as a surprise both to Republicans and Democrats, not as a result of meaningful consultation. I believe there could and should have been consultation with the Senate on the nomination of someone to serve as the 17th Chief Justice of the United States, and I am sorry there was not. Many other Senators, including many Republican Senators, have offered similar advice.

Chairman SPECTER has appropriately counseled that the next nominee should be someone who promotes stability on the Court, much like Justice O'Connor. Senator GRAHAM urged the President to listen to Democrats and what we have to say as he considers his next nominee. What we are saying could easily be summed up by quoting the President's campaign promise. We are asking him, in this case especially, to be a uniter, not a divider, for the sake of the country—not for the sake of the 100 Senators but for the sake of the country.

I thought the White House did not help the Roberts nomination by withholding information that has traditionally been shared with the Senate. The Administration treated Senators' requests for information with very little respect for the constitutional role the Senate is expected to fulfill in this process. Actually, the Administration stonewalled entirely the very narrowly tailored request for a very small number of important work papers from John Roberts's time as the principal political deputy to Kenneth Starr at the Solicitor General's Office. This decision did not help the nominee. I suspect he could very easily have answered questions about those papers. But the choice was taken out of his hands, and the choice was made at the White House.

That should not be allowed to establish a new standard because it would override the precedent from Chief Justice Rehnquist's hearings and others. Previous Presidents have had the appropriate respect for the constitutional process and worked with the Senate to provide such materials.

I urge the Administration to go back to precedent, to work with us and cooperate on future nominations.

Finally, some Republican Senators did not help the confirmation process by urging the nominee not to provide fuller answers during the course of the hearings.

I say that because, again, I remind all Senators, it would be the same thing whether it was a Democratic President who made nominations. No matter who makes the nomination, Democratic President or Republican President, we are the only 100 people in this country out of 280 million Americans who get to vote on the nomination and we should not start off by asking a nominee or telling the nominee not to answer any questions.

I can't imagine too many of our constituents would like that. I know thousands of questions were mailed in by Americans from all over who would

have liked to ask questions, and they could not be asked.

These hearings which we hold in the Senate are the best and only opportunity for the American people to hear from the nominee on important issues that affect all of us. The hearings we hold are the best and only opportunity to hear directly from the nominee about his or her judicial philosophy.

The President asked for a dignified process and an up-or-down vote. That is what we accomplished in the Judiciary Committee. With the Senate vote this week, we will complete our action and grant the Senate's consent. The hearings were dignified and they were fair. Chairman SPECTER has every reason to be proud of what the committee accomplished under his leadership.

And I must say, I was personally very humbled by what the Democratic leader, Senator REID, said about the senior Senator from Vermont this afternoon on the Senate floor. I appreciate hearing that from my dear friend, Senator REID.

With the benefit of lessons learned from this nomination, the President is facing a new opportunity to unite this country around a nominee to succeed Justice O'Connor.

I hope the President and those around him are listening this afternoon.

Now more than ever—with Americans fighting and dying in Iraq every day, with hundreds of thousands of our fellow Americans being displaced by disasters here at home—now more than ever is the time to unite rather than divide this Nation. The Supreme Court belongs to each and every American, not to any political party or any faction. For our country's sake, for the sake of all Americans, no matter what their politics might be, I urge the President to make a choice that unites us and doesn't divide us.

I will have more to say as the week goes on.

I see the distinguished Senator from Maryland in the Chamber. I yield to her such time as she may need.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Thank you, very much.

Madam President, I rise today to address one of the most significant and far-reaching decisions a Senator makes—the vote on the confirmation of a Supreme Court Justice.

This vote will have an immense impact on current and future generations, because we are voting on a person who will lead the Court for the next 20 years.

I compliment Chairman SPECTER and Ranking Member LEAHY for the way the whole process within the Senate was conducted.

I think we owe to the President, as well as to the nominee, a dignified process that focuses on intellectual rigor, substantive discussion, and plain good manners. I believe overall that process was indeed dignified and open.

This vote is crucial. A Senator is only called upon to make two decisions in our career that are either irrevocable or irretrievable. One is the decision to go to war. Once we vote to go to war, to put our troops in harm's way, we cannot say a day later, Oops, we changed our minds or, 6 months later, cut off the money. Once they go, they go, and we have to stick with them.

The other is the confirmation of members of the Supreme Court. Those are lifetime appointments, and they can only be removed for an impeachable offense, to be tried here in the Senate.

So this decision is among the top two that we are called upon to make.

We make budget decisions, and we can change it later. We make a legislative decision—most of our legislation is for 3 years' authorization we can always change it. But not this decision.

The people of Maryland have entrusted me with the right to make this decision, and I take it seriously. I really pondered this and what I thought about this nomination. Two of my main questions were: No. 1, what will it mean for the fundamental constitutional liberties that has meant so much to so many? And two, what will a Chief Justice Roberts mean to our future?

After a thorough and careful review of his record and his testimony, I must state now that I will oppose the confirmation of Judge Roberts to be the Chief Justice.

I do so because I have too many doubts about the direction a Roberts Court will take us—persistent, nagging doubts about his positions on nondiscrimination, and the right of privacy in personal decisions, and in public policy.

On nondiscrimination, I just couldn't get to what his views were. Is it thorough? Is it broad? Is it narrow? On the issue of privacy, his views sounded eerily like those of Clarence Thomas's that were given to reassure us, only to find that they are not what we heard.

On the issue of discrimination, I am looking at very specific issues such as the Voting Rights Act, Americans with Disability Act, title IX, which has meant so much to combat gender discrimination in education.

And, of course, on the right of privacy. What will this mean for personal decisions related to a woman's reproductive choice, or public policy in terms of where we are going to safeguard our records and safeguard ourselves.

When I decided how I would vote on the nominee, I looked at three threshold criteria: One, is the nominee competent? Second, is the nominee a man of integrity?

I believe every Senator knows, having both met Judge Roberts and from also reviewing his background, he is competent. He is endorsed by the American Bar Association. I also truly believe he is a man of personal integrity.

But what about the nominee protecting core constitutional values and guarantees that are central to our system of government? I really do not know the answer to this question.

Based on his writings and his testimony, as I said, I am left with these persistent doubts about whether he will safeguard civil rights, the right to privacy, and equal protection under the law.

I have approached this nomination very seriously. I have approached it with an open mind and an open door.

I have personally met with Judge Roberts. I found him to be very intelligent, to be very affable. Although he is personally appealing, personal demeanor is not synonymous with personal philosophy. Personal demeanor is not synonymous with judicial philosophy. It is not his demeanor that we are voting on. We are voting on what will his judicial philosophy mean to the Court, and particularly with his being its Chief Justice.

When I looked at the hearings, they occurred as I was moving my Commerce-State-Justice bill. I put in a couple of shifts, which I know the Presiding Officer does as well—one shift being here in the Senate with my colleague, Senator SHELBY, getting an appropriations bill through, and then I would go home and do a second shift and watch the Roberts hearings on C–SPAN so that I could hear his words personally about those answers.

Then, after listening to the hearings, I reviewed the testimony. I reviewed his writings and I also reviewed the testimony of others.

I was disappointed that we didn't have access to documents from 16 cases that he prepared while he worked for Solicitor General's office in the previous Bush administration, which would have given us insight, even though similar documents were given when Justice Rehnquist was nominated.

I tried to get insight into his legal reasoning and judicial philosophy.

Is he smart? Yes. Is he experienced? Yes. As a young man, was he flip and a bit cheeky? The answer is yes. But put me in that column, too. I understand that. We all mature. But as we mature, we sometimes distance ourselves from those remarks. Yet Judge Roberts did not distance himself from those remarks.

I was puzzled by it. I did not quite understand it. I read and pursued it further.

In the hearings, he had the opportunity to let us know whether he would ensure personal rights, but he didn't clear up the uncertainty. He didn't back away from his record and his writings. He wouldn't tell us if he shared the views of his clients. Again, he left too many doubts about whether he will safeguard the rights that Marylanders and all Americans rely on each day.

He did say that he would follow the rule of law. I believe that. But you

know, coming to a decision in the Supreme Court, unlike the lower court, is not necessarily only following the law. It is not a mechanical decision. It is not like punching in a legal question, you go to the 15 precedents and out comes the printout. This is interpretation of the law at the highest level. And the Supreme Court has the authority to create precedent, not only follow precedent.

So I couldn't get to where Judge Roberts was going. Take an example such as civil rights. One of the most important civil rights is the right to vote—cherished, fought for both through social movements and our wars. Yet Judge Roberts left me with serious doubts.

One of the most compelling testimonies during the hearing was that of Congressman John Lewis. He was a hero of the civil rights movement. He marched side by side and hands on with Dr. Martin Luther King Jr. When John Lewis speaks, we listen. He raised questions about whether Judge Roberts would support the basic guarantee of the Voting Rights Act, the law that ensures every citizen may vote and that there should be no barriers, no publicly sanctioned barriers to participation in the voting process. Yet as a young lawyer in the Reagan administration, Roberts held a very restrictive view.

John Lewis spoke about section 2 of the Voting Rights Act, which is an important section because it seeks to remedy not only intentional discrimination and barriers to participation but also the effects of discrimination on under represented groups.

Judge Roberts held a very restrictive view, as I said. He argued that only intentional discrimination violated the law.

If that argument prevailed, it would have made it impossible to change discriminatory voting practices that stood in the way of African Americans voting and holding elective office.

Let us take the poll tax, for example, a repugnant and despicable practice that has now been outlawed. The poll tax was a barrier that prevented African Americans from voting. But what could we do? Look at one person at a time? No. Section 2 bars it, because it was a discriminatory practice that affected a whole group of people.

During the hearings, Judge Roberts could have clarified or changed his views.

Yet he said nothing to distance himself from that very narrow legalistic viewpoint that would have maintained barriers to participation, and we have no idea what principles he might apply to a case that would come before the Court like, for example, on the so-called voter verified paper trail. We do not know today where he stands on such important voting rights issues.

Now to disability rights. He left doubts about whether he would provide disabled Americans with guarantees under the law for equal opportunity, particularly to education. Again, going back to being that lawyer in the Reagan administration, he wrote a memo attacking a Federal court decision that would have provided a deaf child with learning tools. He thought this was too burdensome on the local school system, local government and, therefore, the State. He believed that States should not be required to provide these same equal opportunities to handicapped children and that the burden it placed on the states had to be evaluated. He called the lower court's decision an activist one.

What would this mean for disabled children? What would this mean for his interpretation of the Americans with Disabilities Act? This raises doubts for me as to if he would apply a cost-benefit analysis to other areas of discrimination. Certainly when we look at disability and the equal opportunity or an opportunity for education, we have to look at the benefit, not at the cost.

And now title IX. That has changed the face of American scholarships and of American sports. Title IX, for those who might not be familiar with it, prevents gender discrimination in education. It says that schools that receive Federal funds can't treat men and women differently. That means there has to be parity—not sameness but parity—in the number of sports programs, access to classes, and opportunities for scholarships. That meant there had to be girl's soccer teams at college just like there were boy's football teams; that there had to be girl's lacrosse just like there was boy's lacrosse.

Let's take a look at what that has meant. It was phenomenal. All of a sudden, girls were getting scholarships for basketball, for playing lacrosse, and for playing soccer. Aren't we proud of what we have done? We can only look at the Olympics and see our so-called ''all star'' basketball team lost to Puerto Rico, but our girl's team brought home the gold. People such as soccer player Mia Hamm passed the torch to the next generation, which will go on and win the gold and give us such honor. That is what title IX meant. It meant if you wanted to go to school and sports was your thing, you would not be restricted because you were a girl.

In his writings, Judge Roberts argued that the only part of the school receiving direct Federal aid but not the whole school would not have abided by title IX protection. That would have meant schools could discriminate in their athletics or scholarships even when another part of the school got federal funds. In his testimony, he did nothing to back away from this view.

What would the Roberts Court mean to millions of girls who now have access to scholarships? What would this mean to thousands of girls who right now this afternoon are heading for practice in middle school, working at it in high school, and ready to go? In my own home State, we are known for producing Olympic gymnastics stars, primarily out of Montgomery County, stars such as Dominique Dawes. Right now at that gym in Montgomery County are young girls working to either be able to go on to the Olympics, or if they do not make the Olympic team, on to make the college team. We should never close the door to that kind of heart and soul and hard work because of gender. Where would the Roberts Court be on that? Would he close that door? I am not so sure. That is why I come back to these nagging doubts.

Finally, in the area of the constitutional, protected right to privacy, I appreciate Judge Roberts speaking on the right to privacy. He certainly said more on it than some other nominees have. Yet what he said does not tell us what he thinks about how far the right of privacy extends. He said he supported Griswold. Griswold upheld the right of married couples to buy contraception. Connecticut banned the sale of contraception to married couples. So under the right of privacy, the Supreme Court said that if you are married, you have the freedom to buy family-planning mechanisms.

In many of his answers, he sounded as if he was assuring members that the right of privacy is settled law, stating that ''I believe in precedent,'' et cetera. But many of these answers sounded like Clarence Thomas, eerily like Clarence Thomas. Thomas said there is a constitutional right to privacy. He did not say how he would apply it to the most personal choices or what it would mean to public policy. Since Clarence Thomas has gone to the Supreme Court, we know he does not quite follow what we thought he was assuring us he would. In fact, I don't know if Judge Thomas really supports the right of privacy in the Constitution.

Roberts followed the same script. He refused to clarify his previous dismissal of Roe v. Wade, nor would he elaborate on what the right to privacy includes. What would that mean to the future of reproductive rights? What would that mean to privacy rights in general?

This is important because I am voting not only about today, I am voting about tomorrow. If Mr. ROBERTS is confirmed at age 50, he will be on the Court for the next 20 or more years. And we wish him good health. But just think how profoundly society has changed with the internet and information technology. Where we were 20 years ago. Where was the Internet 20 years ago? We did not have laptops; laptops were big boxes. What about 30 years ago? What was the computer? They were big machines in big warehouses.

Twenty years ago, we would not have thought about privacy rights in this context. But now, because of the Internet and computerization, we think about all the issues related to our right of privacy. Think how they can plunge in with your financial records, your medical records, the so-called data-

mining where they know everything about you and find out all your moves. Who do you want to have access to that? Who do you want to protect your basic rights?

What will technology mean 20 years from now? What will that technology mean in terms of right of privacy? How do we need to protect our privacy?

Today have a national debate on privacy, the right for security of our country versus our own personal privacy. The right of search. The right, literally, of intrusion in our records. The PATRIOT Act would give us some sets of rules; the ACLU would frown on others. It is likely many of these decisions will go to the Supreme Court. Where will those decisions be made? They have to be made to serve the national interest but also to serve the principles of the Constitution. I am not dictating what the decision should be, but I can dictate who I want on the Supreme Court to listen to that delicate balance between preserving the security needs of our country with one's ability to be left alone from the intrusions of government.

How would Judge Roberts apply the right of privacy in a world where all our most personal health and financial records can be easily stored and shared?

So here we are now at this decision point. As I have looked at this, I have too many doubts about what Judge Roberts will mean for the Supreme Court—caused by what he said and what he didn't say. I believe the American people were entitled to know what he thinks. The American people are entitled to know if judge Roberts will be a protector of their most basic and fundamental rights. I would have been more comfortable if in any way he would have said how he was different from that young, cheeky lawyer trying to write up attention-getting briefs. Something that would have moved him to say: Oh, that was my client, not me. I never wanted him to say how he would rule on cases in the future or any pending before the Court. But I would have liked to have known who is this man for whom I am voting. What he believes is what he is and it will shape the Supreme Court for the next 20 years.

Several times, I came right up to the threshold. As I said, there are many magnetic aspects about the Roberts nomination, but at the end of the day and after careful review, I have too many doubts about his commitment to nondiscrimination, the right of privacy, and equal protection under the law. So when my name is called for this nomination, I will vote no.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business for a few minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Under the previous order, the time from 3:30 to 4:30 will be under the control of the majority.

The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I rise today to speak to the nomination of Judge John G. Roberts, Jr. to be the next Chief Justice of the United States of America. After a careful and considered review of his testimony before the Senate Judiciary Committee, his overall record, and a personal meeting with Judge Roberts in July, I have concluded that Judge John Roberts should be confirmed as the 17th Chief Justice of the United States.

I first want to express my deepest gratitude to my good friend and colleague, Senator SPECTER, who—as Chair of the Senate Judiciary Committee—was extraordinary in leading the nomination process to fill the first Supreme Court vacancy in 11 years, the longest such interval since the administration of President James Monroe 181 years ago. Together with Ranking Member LEAHY, Senator SPECTER ensured a thorough, rigorous, and civil examination of the individual who now comes before the full Senate for a confirmation vote.

I have not arrived at my decision lightly. It has been said that, of all the entities in government, the Supreme Court is the most closely identified with the Constitution and that no other branch or agency has as great an opportunity to speak directly to the rational and moral side of American character, to bring the power and moral authority of government to bear directly upon the citizenry.

The Supreme Court passes final, legal judgment on many of the most profound social issues of our time. The Court is uniquely designed to accept only those cases that present a substantial and compelling question of Federal law, cases for which the Court's ultimate resolution will not be applied merely to a single, isolated dispute but, rather, will guide legislatures, executives, and all other courts in their broader development and interpretation of law and policy.

In the end, ours is a government of both liberty and order, State and Federal authority, and checks and balances. The remarkable challenge of calibrating these fundamental balance points is entrusted, ultimately, to the nine justices of the Supreme Court of the United States.

To help meet the extraordinary challenges of this role, any nominee for the Court must have a powerful intellect, a principled understanding of the Court's role, and a sound commitment to judicial method.

Moreover, the nominee for Chief Justice must also, among other leadership skills, engender collegiality and respect among all of the justices in order to facilitate the consensus of majority, command the respect of lower Federal courts, and faster cooperation with the States' highest courts. And the nominee must have a keen understanding of, and a disciplined respect for, the great and tremendous body of law that precedes them to warrant our consent.

These are the threshold qualifications against which a person chosen by the President of the United States to serve as just the 17th Chief Justice of the United States must be measured. And all the more so when our Nation would undoubtedly bear the mark of the nominee for decades to come.

Indeed, given the age of this particular nominee, it is not unreasonable to conclude that John Roberts may indeed serve longer than Chief Justice Marshall, who—with his 34 year tenure—still stands as our longest serving Chief Justice. If confirmed, Judge Roberts could well directly impact the Nation for a half century and for decades beyond. He would conceivably be entrusted with the ''care of the constitution'' for the next 40 years.

It is against the backdrop of this reality that we also evaluate the record of Judge Roberts. And from a professional standpoint, it is clear that Judge John Roberts is one of the most highly-qualified individuals ever to be nominated for the Supreme Court, given his experience clerking for both the Second Circuit Court of Appeals and the Supreme Court, and serving as counsel to a President, Attorney General and Solicitor General and given he is one of the most respected lawyers in the Nation who has argued 39 cases before the Supreme Court and currently serves on the second highest court in the land with unanimous consent of this Chamber just a few years ago. So I applaud the President for selecting an individual who indisputably possesses the professional credentials to serve as Chief Justice.

Concurrently, however, I believe there are four additional threshold qualifications that are critical to assess and evaluate the nominee. They are judicial temperament, integrity, methodology, and philosophy, and by their nature, are more challenging to measure. That is why I have arrived at my conclusions based on a thorough analysis of the complete and accumulated record accompanying Judge Roberts's nomination.

With regard to the matter of judicial temperament, the members of the Judiciary Committee rightly and vigorously questioned the nominee on the tone and content of memoranda he authored as counsel to the Reagan administration in the 1980s.

Because these memos presented opinions on such critical issues as civil rights, the right to privacy, and gender equity—including a 1984 memorandum regarding a letter I initiated as a member of the U.S. House of Representatives requesting the Administration not to intervene in a Federal court decision on the matter of women receiving lower pay because they often work in different jobs than men—I would have welcomed a more direct and forceful refutation of these documents.

At the same time, Judge Roberts did testify that, ''Of course gender discrimination is a serious problem. It's a particular concern of mine . . . and always has been. I grew up with three sisters, all of whom work outside the home. I married a lawyer who works outside the home. I have a young daughter who I hope will have all of the opportunities available to her without regard to any gender discrimination . . .''

Further, when probed about memoranda on vital civil rights issues, Judge Roberts's stated to the committee that he believes Congress has the power to guarantee civil rights for all Americans.

As an example, when he was asked, ''Do you believe that the Court had the power to address segregation of public schools on the basis of the Equal Protection Clause of the Constitution?'', Roberts responded, ''yes''. And when questioned by Senator KENNEDY, John Roberts agreed with the approach taken by Justice O'Connor in upholding an affirmative action program within a university's admissions policy.

With regard to the right to privacy, in responding to concerns that he characterized this fundamental right as a ''so-called right to privacy'' in one Reagan administration memorandum, Judge Roberts testified that he does believe the Constitution guarantees such a right, that he was representing the administration's views in his memorandum, and he elaborated that this right emanates from at least five different sources—the first, third, fourth, fifth, and fourteenth amendments—with the due process clause of the 5th and 14th amendments applying substantively as well as procedurally with respect to the right to privacy.

To quote Judge Roberts: ''There's a right to privacy to be found in the liberty clause of the 14th Amendment. I think there is a right to privacy protected as part of the liberty guarantee in the due process clause. It's protected substantively.'' And specifically, he testified that he ''agree[d] with the Griswold Court's conclusion that marital privacy extends to contraception'' and agreed with the later Eisenstadt decision that confirmed this right for unmarried couples as well.

And finally in regard to the qualification embodied by judicial temperament, Judge Roberts offered the committee that some of the memoranda in question owed their content to a more youthful discretion some 25 years ago and that others merely reflected the views of his clients.

In the end, whatever one takes from the universe of exchanges before the committee, I have concluded that the combination of this testimony with the judge's current reputation among lawyers and peers for discretion, modesty, and humility is the more accurate and contemporaneous measure of the man whose name stands before us today.

And that conclusion is buttressed by an examination of another of the threshold qualifications—judicial methodology—which directly reflects a judge's commitment to the essential tenets of fairness and judicial integrity.

In making this assessment, it is most instructive to consider the emphasis Judge Roberts has placed on judicial process in adjudicating cases. Rather than a ''top down'' approach wherein a decision is made and then the opinion is written to support that position, Judge Roberts has espoused a ''bottom up'' approach to decision-making—meaning that he will work through the specific facts and law of each case, and then arrive at a conclusion based on that analysis.

As regards judicial integrity, I believe we can all agree it is absolutely essential that a judge be fair and open minded. Our citizens simply must have confidence that a judge who hears their legal claims does not do so with a closed mind.

A judge must be truly committed to providing a full and fair day in court, and to arriving at decisions based on the facts and applicable law, not on any personal agenda or ulterior motive. For it is when the latter occurs that the public justifiably loses faith in the independence and fairness of our courts.

I conclude that no such faith should be lost here with Judge Roberts. He is, by all accounts, a man of sound character whose integrity is widely respected by Democratic and Republican lawyers alike.

To illustrate the essence of his judicial integrity, I recall during the course of our meeting in July that he indicated it was not uncommon for him to author an entire legal opinion before reaching the conclusion that the reasoning was wrong leading him to a different decision.

He also spoke at length about his year as a law clerk to the late Judge Henry Friendly of the Second Circuit, one of the most respected legal minds of our time, and a mentor and legal role model for Judge Roberts.

He recounted how Judge Friendly was assigned the duty of writing an opinion for the three judge panel that heard a certain case. But once Judge Friendly began trying to write what was supposed to be the majority opinion, he realized that the reasoning behind the ruling simply was not sound.

So after a number of failed attempts, Judge Friendly finally circulated a folder to each of this colleagues containing two opinions, with this note attached,—''The first opinion fulfills my obligation for writing the majority opinion. The second is my dissent in the case.'' Judge Friendly's ''dissent'' was so persuasive that it ultimately became the majority opinion.

Again, this is reflected in Judge Robert's approach that is demonstrated in his methodical writings and decisions.

While serving on the DC Circuit Court of Appeals between 2003 and 2005, John Roberts wrote opinions in 49 of 169 cases. And his final rulings in those 49 cases bear the very balance of his analysis. For example, he has ruled both for and against the government, both for and against corporations, and both for and against labor unions.

Moreover, he has shown a capacity for consensus, writing separately in only 7 of the 169 cases before the Circuit Court. This record of collegiality would bode well for the current Supreme Court which can benefit from more consensus opinions.

And of the 49 opinions Judge Roberts authored, only seven were appealed to the Supreme Court and all seven were denied. Again, all of these facts stand in testament to the meticulous methodology and the ''bottom up'' approach followed by Judge John Roberts.

I recognize that some believe that the fourth and final threshold qualification I referenced—the matter of judicial philosophy—should be a factor for Presidents, but it should not be one the Senate considers in its confirmation process. I respectfully disagree.

In my view, the Senate must also consider the nominee's sense of the limits and horizons of the great promises of our Constitution, and of the nominee's specific view of the proper role of the Supreme Court in deciding whether to take such cases and, if so, the method used to rule upon them.

The inquiry into Judge Roberts' judicial philosophy assumed particular significance for all of us who value the Court's landmark rulings. Decisions protecting the rights of privacy, of civil rights, and of women seeking equal protection in the workplace—just to name a few—comprise an important and settled body of the Court's case law.

Entire generations of Americans have come to live their lives in reliance upon the Court's rulings in these key areas, and overruling these precedents would simply roll back decades of societal advancement and impose substantial disruption and harm.

Therefore, central to the question of a nominee's judicial philosophy is his views on one of the cornerstones of jurisprudence, and that is, judicial precedent. Because it was once said—by a

Professor Walter Murphy—the Court is bound by the ''wisdom of the past, not the free choice of the present.''

On this vital matter, John Roberts has firmly stated to me his belief that precedent plays a crucial role in the judicial process, and the fact, a precedent has been directly challenged and upheld deserves respect from the Court.

In the course of our July meeting, John Roberts expressed to me that judges must keep in mind that they are not the first ones to address most legal issues that arise, and that stability in the law is key to maintaining the legitimacy of the courts. When I solicited his thoughts with respect to, Chief Justice Rehnquist's decision in the Dickerson case to uphold the Miranda decision even as the Chief Justice Rehnquist opposed Miranda itself, John Roberts concurred with the Chief Justice's principled deference to the doctrine of precedent.

As Judge Roberts later indicated to the judiciary committee:

> I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness . . . It is not enough that you may think the prior decision was wrongly decided.

Furthermore, Judge Roberts is on record stating that nothing in his personal beliefs, including his religion, would prevent him from faithfully applying the laws of our land. As well, he indicated that nothing in his personal views would prevent him from applying Supreme Court precedent as governed by the doctrine of stare decisis.

Thus, he acknowledged the crucial interest by the doctrine of stare decisis to promote stability and predictability, and therefore respect for the law. This commitment to stare decisis takes on, of course, a special significance for this issue of privacy that I and so many Americans accept and embrace as a basic and established right. So, essentially, with regard to a landmark case such as Roe v. Wade, Judge Roberts has outlined the process he would apply in reviewing such a challenge.

Specifically, Judge Roberts explained, that, in essence, Roe is buffered by the Casey decision, which affirmed the essential holding of Roe and therefore serves as the more immediate precedent of the Court.

And he responded to Senator SPECTER that Roe is ''settled as a precedent of the court, entitled to respect under principles of stare decisis. And those principles, applied in the Casey case, explain when cases should be revisited and when they should not. And it is settled as a precedent of the court, yes.''

Mr. President, given the totality of the record before us, I have concluded from his testimony regarding both his judicial methodology and his judicial philosophy that Judge Roberts is not predisposed to overturning the settled precedent represented by Roe. Obviously, none of us can know with certainty how Judge Roberts would vote on any particular case. But we can assess his methodology and analysis in approaching cases, based on his responses to questions posed by the committee throughout this confirmation process.

Finally, in meeting with Judge Roberts, I also expressed my view that Justice Sandra Day O'Connor's approach on the Court epitomizes a critical nexus between the decisions of the United States Supreme Court and the ''real world'' impact of those decisions on the lives of the American people. As Justice Frankfurter once wrote, the most fundamental questions that arise from the Constitution are decided ''not from reading the Constitution but from reading life.''

That sense of perspective will be critical in fulfilling the enormous responsibility Judge Roberts will have serving as Chief Justice. And Judge Roberts has indicated in compelling terms that his approach is to stand back and consider the larger implications of any future ruling and I would encourage him to continue with that model on the Court.

It is not an exaggeration to suggest that Judge John Roberts has the potential to become one of the preeminent Chief Justices in modern times.

Of course, no Member of this body can forecast with 100 percent accuracy the shape of the Supreme Court under John Roberts. Nonetheless, in evaluating the universe of the threshold qualifications I have outlined, the entirety of the legal and judicial record regarding Judge Roberts points to a fair minded judge with deep respect for the rule of law, the independence of the courts, and the judicial method . . . a judge committed to stability in the law, and to the established judicial principles for reviewing and upholding precedent.

There is little doubt that Judge John Roberts will have the opportunity to author a legacy for America that will reverberate for the ages. After intensive examination, it is my conclusion that the totality of the record before us, has earned him the privilege of writing that legacy as the next Chief Justice of the United States. Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, the Constitution gives us a solemn duty when it comes to the confirmation of an individual to sit on the U.S. Supreme Court. While the President is to nominate that individual, it is our duty in the Senate to decide whether to provide our consent.

When it comes to whether Judge John Roberts should be the 17th Chief Justice of the United States, I have little trouble providing mine. Judge Roberts is one of the most accomplished legal minds of his generation. He has argued 39 separate cases before the U.S. Supreme Court, and he served with great distinction for 2 years on the Court of Appeals for the District of Columbia. He is certainly an eloquent spokesman for the rule of law, and he has received a ''unanimously well qualified'' rating from the American Bar Association, a rating that specifically addresses his openmindedness and freedom from bias and commitment to equal justice under the law.

I will vote to confirm Judge Roberts. I encourage my colleagues to do the same.

I think it might be helpful for us to consider this afternoon what we have learned about Judge Roberts over the past several months.

First, we have learned something about his judicial philosophy. Judges should not make policy. They don't pass laws or implement regulations. Instead, in the words of Justice Byron White, judges simply decide cases, nothing more. Judge Roberts embodies this philosophy.

During our hearing in the Judiciary Committee, he told us:

> The role of the judge is limited. A judge is to decide the cases before them. They are not to legislate. They are not to execute the laws.

Time and again he repeated his belief that judges should play a limited and modest role. During the confirmation hearings, he said this to Senator HATCH, Senator GRASSLEY, Senator GRAHAM, Senator CORNYN, and Senator KOHL. He told Senator KYL:

> Judges and Justices do not have a side in these disputes. Rather, they need to be on the side of the Constitution.

Judge Roberts explained his philosophy clearly and, yes, in plain English without using fancy words or resorting to long dissertations. By the end of last week, there was little doubt where Judge Roberts stood.

He believes that judges play a limited and modest role and, to use his own words, ''judges and Justices are servants of the law, not the other way around.''

Second, over the past several months, we have learned that the American people share our view that Judge Roberts will be fair, openminded, and modest as Chief Justice. We need to look no further than the editorial pages of America's papers to know that Judge Roberts has broad support.

The Los Angeles Times put it bluntly:

> It will be a damning indictment of petty partisanship in Washington if an overwhelming majority of the Senate does not vote to confirm John G. Roberts, Jr., to be the next Chief Justice of the United States. As last week's confirmation hearings made clear, Roberts is an exceptionally well-qualified nominee, well within the mainstream of American legal thought, who deserves broad bipartisan support. If a majority of Democrats in the Senate vote against Roberts, they will reveal themselves as nothing more than self-defeating obstructionists.

The Washington Post has offered a similar sentiment:

> John G. Roberts, Jr., should be confirmed as Chief Justice of the United States. He is overwhelmingly well qualified, possesses an

unusually keen legal mind and practices collegiality of the type an effective Chief Justice must have. He shows every sign of commitment to restraint and impartiality. Nominees of comparable quality have, after rigorous hearings, been confirmed nearly unanimously. We hope Judge Roberts will similarly be approved by a large bipartisan vote.

Papers from my home State of Ohio have also given Judge Roberts their approval. The Akron Beacon Journal, a paper that endorsed Al Gore in 2000, and then John Kerry in 2004, called Roberts ''supremely qualified.'' They went on to write:

Judge Roberts is eminently qualified. He has a sharp mind, a sound temperament, and a keen understanding of the collegiality required to run an effective Supreme Court.

According to the Cleveland Plain Dealer:

In selecting a leader for the U.S. courts, intellect and probity are far more important than predictable political philosophy. In the instance of John Roberts, it is difficult to find, even among his most committed opponents, anyone who will deny his intellectual superiority. His ethics are unimpeached. He is, by all measures, a fair mind. There is no reason to doubt that he will make an outstanding Chief Justice.

The Dayton Daily News described Judge Roberts in straightforward terms:

Ya gotta like the guy. Judge John Roberts' 3-day appearance before the Senate was impressive. Facing a Judiciary Committee full of people who obviously consider themselves expert on constitutional issues, he displayed mastery. He was familiar with just about any case the Senators could name. He discussed not only their main thrusts, but their nuances. His decency was as unmistakable as his brilliance and diligence. He bears no ill will toward any group that Democrats in the Senate are concerned about—minorities, women, working people, handicapped people, the poor.

These sentiments in these papers are certainly echoed by many of my constituents. For instance, Eric Brandt from Pataskala, OH, wrote in strong support of Judge Roberts:

The citizens of this State and country deserve a fairminded jurist who does not use the power of the bench to usurp the elected voice of the people.

Robert Hensley from College Corner, OH, made a similar point:

I believe it is imperative we have judges who rule according to our Constitution and not their own beliefs and ideas. I believe John Roberts is such a man.

And Al Law from Perrysburg, OH, had this to say:

We need prudent jurists who understand the proper role of the court, and [Judge Roberts] is such a man.

Clearly, these citizens saw what we saw during the hearings last week. Judge John Roberts is a modest, decent, and fair man who actually fully understands the limited role that judges should play in our constitutional system of government.

Finally, over the past few months, we have heard from those individuals who really know John Roberts the best. His colleagues in the bar, Democrats and Republicans alike, have overwhelmingly supported Judge Roberts' elevation to the Supreme Court.

As I mentioned earlier, the American Bar Association has given Judge Roberts a rating of ''unanimously well qualified,'' its highest possible rating. As Steve Tober, the chairman of the ABA Standing Committee on the Federal Judiciary, explained, Judge Roberts has ''the admiration and respect of his colleagues on and off the bench. And, he is, as we have found, the very definition of collegial.''

We have also heard from Judge Roberts' friends and coworkers and learned that they respect and admire him. Maureen Mahoney, former Deputy Solicitor General of the United States, said Judge Roberts ''is probably the finest lawyer of his generation.'' She described the assistance he provided her in her own career, and testified from her personal experience that he had an enduring commitment to providing equal opportunity to women in the workplace.

Another example, Professor Kathryn Webb, a lifelong Democrat who said that she does not support President Bush, nonetheless said that Judge Roberts has her ''full and enthusiastic support.''

Bruce Botelho, the mayor of Juneau, AK, a self-proclaimed liberal Democrat, offered his full support. The mayor worked closely with Judge Roberts on several cases and described him as ''the most remarkable and inspiring lawyer I have ever met.''

Finally, Catherine Stetson, a partner at Hogan & Hartson and a longtime colleague of Judge Roberts, offered her praise as well. She told us how Judge Roberts helped her transition back into the workplace after the birth of her first child. According to Stetson, Judge Roberts supported her in both of her roles as lawyer and as mother, ''and he did it quietly and without fanfare.'' She explained how Judge Roberts was instrumental in helping her become a partner at Hogan & Hartson, despite the unfounded concerns of others that her obligations as a new mother might interfere somehow with her ability to do the job.

All of these individuals have something in common. What they have in common is they know Judge Roberts personally. They have seen him handle cases. They have seen him deal with clients. They know him as an individual. They know him as a human being. They have worked with him. Each one of them supports his nomination to be the next Chief Justice of the U.S. Supreme Court.

It is true that we have heard comments and some testimony from well-intended individuals who oppose Judge Roberts, but I must say these individuals do not know Judge Roberts the way Maureen Mahoney does, they did not work with him the way Mayor Botelho has, and they have not dealt with Judge Roberts on a day-to-day basis the way Catherine Stetson has.

To be sure, over the past several months we have learned a great deal about who John Roberts is. We know about his extraordinary professional accomplishments. We have seen the overwhelming bipartisan support that he has earned from his colleagues in the legal profession. We have heard from John Roberts himself in a very eloquent defense of the rule of law. For all of these reasons, I will vote to confirm Judge John Roberts as the 17th Chief Justice of the U.S. Supreme Court, and I certainly urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from Utah.

Mr. HATCH. Mr. President, last week the Judiciary Committee gave its solid, bipartisan recommendation that the Senate confirm John G. Roberts, Jr., to be Chief Justice of the U.S. Supreme Court. The Senate should follow that recommendation with a substantial bipartisan vote supporting this exceptional nominee. As the Los Angeles Times put it when endorsing Judge Roberts, anything short of an overwhelming vote would be an indictment of petty partisanship.

I think Judge Roberts is the most analyzed and evaluated Supreme Court nominee in history. The American Bar Association, whose rating my Democratic colleagues once hailed as the gold standard for evaluating judicial nominees, completed two exhaustive reviews. Each time the ABA unanimously gave Judge Roberts its highest well-qualified rating.

The ABA, by the way, includes in its criterion of judicial temperament such important qualities as compassion, openmindedness, freedom from bias, and commitment to equal justice under law.

Judge Roberts spent almost 20 hours before the Judiciary Committee while Senators asked him 673 questions. Senators then asked him 243 more questions in writing. Judge Roberts provided nearly 3,000 pages to the Judiciary Committee, including his published articles, congressional testimony, transcripts from interviews, speeches, and panel discussions and material related to the dozens of cases that he argued before the U.S. Supreme Court.

The Judiciary Committee obtained more than 14,000 pages of material in the public domain, including the opinions Judge Roberts authored and joined while on the U.S. Court of Appeals and legal briefs from his years at the law firm of Hogan & Hartson and as Deputy Solicitor General in the first Bush administration.

As if all of that were not enough, the Judiciary Committee obtained a staggering 82,943 pages of additional material from the National Archives and both the Reagan and Bush Libraries regarding Judge Roberts' service in those administrations. Total that up, and we have more than 100,000 pages of material on a 50-year-old nominee. That amounts to about 2,000 pages for every year of his life.

By orders of magnitude, this is more information than any Senators have had about any previous Supreme Court nominee.

The real debate over this nomination is about the standard we should apply to this mountain of information. The standard a Senator applies reflects a particular job description, what a Senator believes judges should do in our system of government. For some Senators, it is a political job description. They see judges as playing a political role, delivering results favoring certain political interests, setting or changing policy, creating new rights, defending social progress, and blazing a trail toward justice and equality.

Not surprisingly, Senators who believe in this kind of political job description ask political questions and apply political standards during the hiring process.

During the hearing, for example, the distinguished assistant minority leader, a member of the Judiciary Committee, told Judge Roberts he needed to know the nominee's personal values. Personal values are a condition for judicial service only if judges make their decisions based on their personal values. This is a political standard.

The Senator from Massachusetts, Mr. KENNEDY, a former Judiciary Committee chairman, has repeatedly said that the central question is, in his words, Whose side will Judge Roberts be on when different kinds of cases come before him?

Demanding that judges take sides before cases even begin is, again, a political standard.

Last week on the Senate floor, the Senator from Massachusetts, Mr. KERRY, said he could not support Judge Roberts because, as he put it:

> I can't say with confidence that I know on a sufficient number of critical constitutional issues how he would rule.

Basing support for a judicial nominee on a checklist of results, without regard for the facts or the law in each case, is a political standard.

The Senator from California, Mrs. BOXER, last week announced her opposition to Judge Roberts and described her standard by asking: Who will be the winners if we confirm Judge Roberts?

This question, of course, completely contradicts the age-old teaching of parents in California, my home State of Utah, and everywhere else that it does not matter if one wins or loses but how they play the game.

Focusing on the political correctness of a judge's results rather than the judicial correctness of his reasoning is a political standard.

Other Senators, and I place myself squarely in this camp, use a judicial standard. We see judges as playing a judicial rather than a political role.

During his hearing, Judge Roberts properly compared judges to umpires who apply rules they did not make and cannot change to a contest before them.

Can anyone imagine conditioning an umpire's employment on knowing before he officiates his first game which teams on the roster will win or lose?

Similarly, judges must not take sides before a case begins.

Senators who believe in a judicial job description ask judicial questions and apply judicial standards during the hiring process, and during the hearing process as well, I might add.

I want to know, for example, whether Judge Roberts believes he can make law at all, not the particular law he would make. I want to know whether parties will win before him because the law favors their side, not because he does.

Like America's Founders, I believe it makes all the difference for our liberty whether judges occupy a judicial or a political role in our system of government.

In the Federalist No. 78, Alexander Hamilton wrote, quoting the political philosopher, Montesquieu, that there is no liberty at all if judicial power is not separated from legislative and executive power.

The separation of powers is literally the lynchpin of liberty. That principle had a 200-year-old pedigree when America's Founders listed as a reason for seeking independence that King George had made judges dependent upon his political will.

We must insist on appointing judges who meet a judicial rather than a political standard.

I will list some of the evidence that Judge Roberts meets this judicial standard.

Judge Roberts told the Judiciary Committee that a judge is obligated to respect precedent, and he described in some detail the principles guiding how judges utilize those prior decisions.

If my friends on the other side oppose this nomination, do they believe that judges should not respect precedent? Do they reject the traditional principles of stare decisis that Judge Roberts outlined? If so, my friends should try to make that case to the American people. If not, if they agree with Judge Roberts that judges should respect precedent, then they should vote to confirm this nomination.

Judge Roberts repeatedly insisted that judges must be impartial. Here is how he put it:

> I think people on both sides need to know that if they go to the Supreme Court that they're going to be on a level playing field, the judge is going to interpret the law, that the judge is going to apply the Constitution and not take sides in their dispute.

That was said by Judge John G. Roberts, Jr., on September 13, 2005.

If my friends on the other side oppose this nomination, are they saying that judges should instead be partial, that judges should actually take sides, that people coming before the Court do not deserve the confidence that judges will be fair? If that is what they believe, I invite them to try to make that case to the American people. If not, if they agree with Judge Roberts that judges should be impartial, then they should confirm his nomination.

Judge Roberts said that judges must be open to the views of their judicial colleagues. This is a mark of modesty and humility he consistently said should characterize judges. If my friends on the other side of this nomination oppose this nomination, are they arguing that judges should not consider anyone else's views but narrowly insist that they are always right? If so, then once again they should make their case to the American people. If not, if they agree with Judge Roberts that modest judges remain open to consider what others have to say, then they should vote for his nomination.

Judge Roberts told us that judges are not politicians. If my friends on the other side oppose this nomination, do they really believe that judges, and not elected legislators, should make the law and determine public policy? Do my friends really believe that there is no difference between what the Justices do across the street in the Supreme Court and what we do in this Chamber? If so, I wish them luck trying to make that case to the American people. If not, if they agree with America's Founders and with Judge Roberts that judges are not politicians, they should vote to confirm this nomination.

Judge Roberts says judges are the servants of the law. If my friends on the other side oppose this nomination, do they believe judges are instead the masters of the law? Do they believe the Constitution is whatever the Supreme Court says it is? If so, then I invite them to make that case to the American people. If not, if they agree with America's Founders that the Constitution governs the judicial as well as the legislative branch, if they agree with Judge Roberts that judges are as subject to the rule of law as the parties before them, then my friends should vote to confirm this nomination.

Judge Roberts pledged that, as he has done on the appeals court bench, he will approach every case with an open mind and consider each case on its own merits.

If my friends on the other side oppose this nomination, do they believe instead judges should have a closed mind on issues that come before them, that judges should prejudge issues in cases even before they know the facts?

If so, then I urge my friends to try and convince the American people.

If not, if they agree with Judge Roberts that judges should safeguard their impartiality and keep an open mind, then they should vote to confirm this nomination.

Judge Roberts said:

> The role of the judge is limited, that judges are to decide the cases before them, they're not to legislate.

If my friends on the other side oppose this nomination, do they believe instead judges have an unlimited role,

that judges should decide cases not properly before them, and that judges should do the legislating?

If so, I urge them to try to make that case before the American people.

If not, if they share Judge Roberts' view about the proper limited judicial role, then they should vote to confirm this nomination.

Judge Roberts said judges must decide cases—and I am quoting him again—judges must decide cases:

according to the rule of law, not their own social preferences, not their policy views, not their personal preferences, but according to the rule of law.

Again, that was on September 13, 2005.

If my friends on the other side oppose this nomination, do they believe judges should decide cases based on their personal preferences or policy views rather than the rule of law?

If so, again, they should make this case to the American people.

If not, if they agree with Judge Roberts that the rule of law trumps a judge's personal views, then they should vote to confirm this nomination.

Judge Roberts said when Congress enacts a statute, we do not expect judges to substitute their judgment for ours but to implement our view of what we are accomplishing. If my friends on the other side oppose this nomination, are they instead saying judges should substitute their judgment for ours?

If so, again, they should make that case to the American people.

If not, if they agree with Judge Roberts that Congress's intent should prevail regarding Congress's own statutes, then they should vote to confirm this nomination.

Judge Roberts said:

I don't think the Court should be the task master of Congress. I think the Constitution is the Court's task master and it's Congress' task master as well.

That was said on September 14 of this year.

If my friends on the other side oppose this nomination, do they mean the Supreme Court should in fact be the taskmaster of Congress, and even of the Constitution itself?

If so, then I wish them well, trying to convince the American people by making that case to the American people.

If not, if they agree with Judge Roberts that the Constitution is the taskmaster of both Congress and the Supreme Court, then they should vote to confirm this nomination.

Judge Roberts told us the Bill of Rights does not change during times of war or crisis. If my friends on the other side oppose this nomination, are they arguing for setting aside the Bill of Rights in times of war or crisis?

If so, then they should make their case to the American people.

If not, if they agree with Judge Roberts that neither the Bill of Rights nor a judge's obligation to uphold the rule of law is suspended in a time of war or crisis, then they should vote to uphold this nomination.

I want to quote Judge Roberts again because his particular words are very important. He said:

If the Constitution says that the little guy should win, the little guy is going to win in court before me. But if the Constitution says that the big guy should win, well, then, the big guy is going to win, because my obligation is to the Constitution.

He said that on September 15 of this year.

If my friends on the other side oppose this nomination, are they arguing that whoever the little guy might be must win, regardless of what the facts and regardless of what the law requires? Are they saying judges should disregard their oaths to do justice without respect to persons?

If so, I will be watching with great expectation as they try to make that case to the American people.

If not, if they agree with Judge Roberts that the law, not the judge, determines who wins, if they agree with Judge Roberts that the judge's obligation is to the Constitution and not to a particular side, then they should confirm this nomination.

These examples show the type of judge John Roberts is on the appeals court, the kind of Justice John Roberts will be on the Supreme Court. Judge Roberts knows the difference between politics and law. He knows as a judge he must settle legal disputes by interpreting and applying law and leave the politics to the politicians.

We have all the information we need about this exceptional nominee. If we apply a judicial rather than a political standard, the Senate will confirm him as the Nation's 17th Justice overwhelmingly and without delay.

Judge Roberts is one of the finest nominees ever to come before the Congress of the United States, and in particular the Senate confirming body. Not only was he an excellent student, graduating from Harvard in only 3 years as an undergraduate, but he became the top graduate in law school and the editor in chief of the Harvard Law Review, a position everybody in this Chamber has to respect and admire.

He also served as a clerk for Judge Friendly, one of the greatest circuit court judges this country has ever seen. He served as a clerk for Chief Justice Rehnquist.

I was impressed at the Rehnquist funeral to see some 95 former clerks paying respect to their Justice Rehnquist, some of whom were my fellow Utahns.

He then worked in the White House counsel's office as a young man and served with distinction there. He then went on to become Deputy Solicitor General of the United States and did a terrific job while there. He rose to become one of the top partners in one of the top law firms in this country and argued 39 cases before the U.S. Supreme Court. Hardly anybody can make that claim today.

I have asked various Justices on the Supreme Court who they consider to be the best appellate lawyer to appear before them, and invariably the name John Roberts comes up from the Justices themselves.

I was intrigued that Justice Stevens is overjoyed that John Roberts is going to join them on the Court because he has such respect for John Roberts.

I have to say in 20 hours of testimony, how could anybody vote against him? I have to say also it concerns me that there will be some who will. I suggest if they would vote against Judge Roberts for the Supreme Court, then I doubt sincerely there is any nominee this President could put forth they would vote for, and that is a sorry case and I think a sad indictment.

I urge everybody in this body to vote for this outstanding nominee for Chief Justice of the United States. In doing so, I don't think anybody who does is going to be sorry afterward. Yes, I believe him to be conservative. Yes, I believe he is not going to be an activist on the bench. Yes, I believe he will honor and sustain the law—and I know one thing: he is going to approach the law as intelligently as any person who has ever been nominated to the Supreme Court. I think people who watched those hearings have to come to the same conclusion. If they do, then I hope our colleagues who have announced they are going to vote against him will change their mind, do what is right, and vote for him.

Remember, when now Justices Ginsburg and Breyer came before this body, I was the leader on the Judiciary Committee. I have to say, we Republicans all knew both of those now Justices were social liberals, that they disagreed with many of the things we believed and we disagreed with many of the things they believed. But they were both qualified and they were put forth by the then President of the United States, President William Jefferson Clinton. And Presidents deserve respect on these nominations.

Justice Ginsburg was confirmed on a vote of 96 to 3, and I believe Justice Breyer was confirmed on a vote of 87 to 9, which means virtually every Republican voted for both of them. We did not take the political way. I have to say I don't think others should take it here in this case with this person who everybody acknowledges is exceptionally well qualified, including the American Bar Association.

I recommend everybody vote for Judge Roberts, and in the end you are going to be able to go to sleep at night knowing you did the right thing.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JOHNSON. Mr. President, I come to the Chamber today to discuss the nomination of Judge John G. Roberts to be Chief Justice of the United States.

Last week, the Senate Judiciary Committee approved the nomination of Judge Roberts to be the next Chief Justice of the United States by a 13-to-5 margin. This came after weeks of exhaustive research by the Judiciary Committee and a thorough set of hearings.

While I wish the White House would have been more cooperative during the process by releasing a more comprehensive set of documents relating to Judge Roberts' work in the executive branch, I do believe the committee hearings were conducted in a fair and dignified manner, and I do have some understanding of where Judge Roberts' judicial views fall within the political spectrum.

After careful review of Judge Roberts' testimony and the information prepared by the Judiciary Committee, I have come to the conclusion that Judge Roberts should be confirmed by the Senate to be Chief Justice of the U.S. Supreme Court. It is my intention to vote in favor of his confirmation when his nomination comes for a full vote before the Senate later this week.

There are few decisions of greater consequence that I will ever be asked to make than whether to approve an individual for a lifetime appointment as Chief Justice of our Nation's highest Court. While there is no absolute certainty how Judge Roberts will conduct himself as Chief Justice when he is confirmed, it is my belief that he appears to be a thoughtful and respected jurist who possesses integrity and great legal skills. I see no reason to believe that the nominee is an ideologue or otherwise outside the broad mainstream of contemporary conservative legal thinking. In addition, it is important to note that with the confirmation of Judge Roberts to replace Chief Justice Rehnquist, the balance of the Court will be maintained.

It is the prerogative of the President to nominate whomever he sees fit to lifetime appointments to the Federal judiciary, so it should come as no surprise that President Bush has nominated a conservative jurist such as Judge Roberts for the Supreme Court. While I have voted against President Bush's nominees to the lower Federal courts on a modest number of instances, I have voted roughly 200 times to confirm judicial nominees who I believed were conservative Republicans of great legal skill and who deserved bipartisan respect. With the nomination of Judge Roberts, I am once again prepared to support a qualified, conservative judicial nominee. However, with this vote I also send a message to President Bush that I hope his nominee to fill the vacancy of retiring Associate Justice Sandra Day O'Connor will as well be a person of great legal skill and who has the ability to garner strong bipartisan support.

In my home State of South Dakota, we have seen difficult and polarizing political battles over the past few years. I believe South Dakotans as well as all Americans desire a bipartisan centrist approach to government. Our Nation is governed best when it is governed from the broad bipartisan mainstream but not by the extremes of the political far left or far right. I encourage President Bush to nominate someone for Justice O'Connor's seat who will further unite the citizens of our great Nation rather than drive a political wedge between them. The proper legal foundation for America is found in the broad mainstream of contemporary jurisprudence. It is my hope that Judge Roberts will unite Americans and serve the Supreme Court in a fair and prudent and centrist manner.

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

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR NO. 1

Mr. BENNETT. Mr. President, on behalf of the leader, I ask unanimous consent that at 5:30 today the Senate proceed to executive session to consider the following treaty on today's Executive Calendar: No. 1. I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, that any committee conditions, declarations, or reservations be agreed to as applicable, that any statements be printed in the RECORD, and that at 5:30 today the Senate vote on the resolution of ratification; further that when the resolution of ratification is voted upon, the motion to reconsider be laid upon the table, and the President be notified of the Senate's action.

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

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

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

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

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

PROTOCOL OF AMENDMENT TO THE INTERNATIONAL CONVENTION ON SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES—TREATY DOCUMENT 108–6

The PRESIDING OFFICER. Under the previous order, the clerk will report the treaty.

The legislative clerk read as follows:

Resolution of advice and consent to ratification to accompany Treaty Document 108–6, Protocol of Amendment to the International Convention on Simplification and Harmonization of Customs Procedures.

Mr. BURNS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the ratification of the treaty?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Louisiana (Mr. VITTER), the Senator from Florida (Mr. MARTINEZ), the Senator from Texas (Mr. CORNYN), the Senator from Kansas (Mr. BROWNBACK), the Senator from North Carolina (Mr. BURR), the Senator from Nebraska (Mr. HAGEL), and the Senator from Texas (Mrs. HUTCHISON).

Further, if present and voting, the Senator from Louisiana (Mr. VITTER), the Senator from Florida (Mr. MARTINEZ), and the Senator from Texas (Mr. CORNYN) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Iowa (Mr. HARKIN), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Florida (Mr. NELSON), and the Senator from Michigan (Ms. STABENOW) are necessarily absent.

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

The yeas and nays resulted—yeas 87, nays 0, as follows:

[Rollcall Vote No. 244 Ex.]

YEAS—87

Akaka	Dole	McCain
Alexander	Domenici	McConnell
Allard	Dorgan	Mikulski
Allen	Durbin	Murkowski
Baucus	Ensign	Murray
Bayh	Enzi	Nelson (NE)
Bennett	Feingold	Obama
Bingaman	Feinstein	Pryor
Bond	Frist	Reed
Boxer	Graham	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Byrd	Hatch	Salazar
Cantwell	Inhofe	Santorum
Carper	Inouye	Sarbanes
Chafee	Isakson	Schumer
Chambliss	Jeffords	Sessions
Clinton	Johnson	Shelby
Coburn	Kennedy	Smith
Cochran	Kerry	Snowe
Coleman	Kohl	Specter
Collins	Kyl	Stevens
Conrad	Lautenberg	Sununu
Craig	Leahy	Talent
Crapo	Levin	Thomas
Dayton	Lieberman	Thune
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dodd	Lugar	Wyden

NOT VOTING—13

Biden	Hagel	Nelson (FL)
Brownback	Harkin	Stabenow
Burr	Hutchison	Vitter
Cornyn	Landrieu	
Corzine	Martinez	

The PRESIDING OFFICER (Mr. THUNE). On this vote, the yeas are 87,