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Senate

The Senate met at 9:30 a.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.

O Lord, You have made this day for Yourself and for us. It is Your day, and we share its meaning. Remind us that You use our minds, hands, and feet to do Your work in our world.

Help us to bring aid and comfort to those who have been battered by the forces of nature. May we see in their trials opportunities to serve You.

Give the Members of this body the wisdom to use this day for Your glory. May they use their talents to strengthen our Nation and world. Empower them to strive for integrity, faith, love, and peace.

Entwine our lives with Your purposes so that our land will be blessed by Your providence.

We pray in Your sovereign 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.

EXECUTIVE SESSION

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

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of 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.

The PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. will be equally divided between the two leaders or their designees.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, in a few minutes, we will begin the final remarks regarding the nomination of Judge John Roberts to serve as Chief Justice of the United States. Beginning at 10:30 this morning, the time until the vote has been allocated for closing comments by the chairman and ranking member of the Judiciary Committee. The vote on the confirmation of Judge Roberts will begin at 11:30.

I remind all Senators to be at their desks at the outset of this historic vote. Senators should come to the Chamber around 11:20 for the 11:30 vote.

Following the confirmation vote on Judge Roberts, the Senate will take up the Defense appropriations bill. Senators should expect additional votes on the Defense bill, as well as votes on Friday.

The vote we cast today is one of the most consequential of our careers. With the confirmation of John Roberts, the Supreme Court will embark upon a new era in its history—the Roberts era. For many years to come, long after many of us will have left public service, the Roberts Court will be deliberating on some of the most difficult and fundamental questions of U.S. law. As all Supreme Courts that have come before, their decisions will affect the lives of all Americans.

When the President announced his nomination of Judge Roberts in July, we pledged to conduct a full, thorough, and fair review of Judge Roberts' credentials and qualifications. We also pledged we would conduct those deliberations in a timely and expeditious manner so the Supreme Court could begin its term on October 3 at full strength. We have delivered on both promises.

I thank Chairman ARLEN SPECTER for his leadership and handling of the hearings process, and I also want to thank my colleagues for moving forward so the Supreme Court can do its important work for the American people.

I expect a strong bipartisan vote in support for Judge Roberts later this morning. As has been said by Members on both sides of the aisle, Judge Roberts is an exceptional candidate who possesses the keen intelligence, the exemplary character, and sterling credentials to serve as Chief Justice of the highest Court in the land. I look forward to confirming him to lead the Supreme Court of the United States.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, my friend and colleague, the Senator from New York, is here. He wants to speak briefly. I know the time is divided for the next hour. I ask unanimous consent that he follow my remarks.

The PRESIDENT pro tempore. The time is equally divided.

Mr. FRIST. Mr. President, for the information of my colleagues, Senator LOTT has been scheduled to speak. When he comes, we will be alternating back and forth.

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

The PRESIDENT pro tempore. Does the Senator seek recognition now?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will probably speak 8 or 9 minutes. My colleague wanted to speak for about 4 or 5 minutes. That would not interfere with the previous agreement. I ask unanimous consent that he be recognized following me.

The PRESIDENT pro tempore. That would take an amendment to the previously agreed-to order.

Without objection, it is so ordered.

Mr. KENNEDY. I thank the Chair.

Mr. President, the Supreme Court of the United States is the ultimate arbiter of our Constitution and, as such, it is the final protector of individual rights and liberties in this great Nation. So when we vote to confirm a justice for a lifetime appointment to the Supreme Court, we have an awesome responsibility to get it right. And when we vote to confirm the Chief Justice of the United States, we have an even greater responsibility, because the stakes are even higher.

The Chief Justice sets the tone for the Court and, through leadership, influences Court decisions in ways both subtle and direct. Indeed, during the course of his confirmation hearings, Judge Roberts expressly acknowledged the important role that a Chief Justice can play in persuading his fellow justices to come along to his way of thinking about a particular case. During my discussion with him of the Supreme Court's landmark decision in Brown v. Board of Education, I mentioned that the decision was a unanimous one. Judge Roberts responded:

Yes. That represented a lot of work by Chief Justice Earl Warren because my understanding of the history is that it initially was not. And he spent—it was re-argued. He spent a considerable amount of time talking to his colleagues and bringing around to the point where they ended up with unanimous court. . .

On another day, when I again mentioned Brown and the indispensable role played by Chief Justice Warren, Judge Roberts said:

Well, Senator, my point with respect to Chief Justice Warren was that he appreciated the impact that the decision in Brown would have. And he appreciated that the impact would be far more beneficial and favorable and far more effectively implemented with the unanimous court, the court speaking with one voice, than a splintered court.

The issue was significant enough that he spent the extra time in the reargument of the case to devote his energies to convincing the other justices—and, obviously, there's no arm-twisting or anything of that; it's the type of collegial discussion that judges and justices have to engage in—of the importance of what the court was doing and an appreciation of its impact on real people and real lives.

I have thought long and hard about the exchanges I had with Judge Roberts, and I have read and re-read the transcript and the record. And try as I might, I cannot find the evidence to conclude that John Roberts understands the real world impact of court decisions on civil rights and equal rights in this country. And I cannot find the evidence to conclude that a Chief Justice John Roberts would be the kind of inspirational leader who would use his powers of persuasion to bring all the Court along on America's continued march toward progress.

Therefore, I do not believe that John Roberts has met the burden of proof necessary to be confirmed by the Senate as Chief Justice of the United States. Sadly, there is ample evidence in John Roberts' record to indicate that he would turn the clock back on this country's great march of progress toward equal opportunity for all. The White House has refused to release documents and information from his years in the Reagan administration and in the first Bush administration that might indicate otherwise, but without those records we have no way of knowing.

Both in committee and on the floor, some have argued that those of us who oppose John Roberts' nomination are trying to force a nominee to adopt our ''partisan'' positions, to support our ''causes,'' to yield to our ''special interest'' agendas.

But progress toward a freer, fairer Nation where ''justice for all'' is a reality—not just a pledge in the Constitution—is not a personal ''cause'' or a ''special interest'' or a ''partisan'' philosophy or ideology or agenda.

For more than half a century, our Nation's progress toward a just society has been a shared goal of both Democrats and Republicans. Since Republican Senate Leader Everett Dirksen led his party in supporting the Civil Rights Act of 1964, equal rights for all has been a consensus cause, not a ''partisan cause.'' Since Congress adopted the Voting Rights Act of 1965 and began the process of spreading true democracy to all Americans, it has been a national goal, not a ''special interest'' goal. Fulfilling the Founders' ideals of equality and justice for all is not just a personal ideology, it is America's ideology. Surely, in the 21st century, anyone who leaves the slightest doubt as to whether he shares it fully, openly and enthusiastically should not be confirmed to any office, let alone the highest judicial office in the land.

Our doubts about John Roberts' commitment to continuing our national progress toward justice was, quite appropriately, a major issue in the committee hearings. The fundamental question was whether his record and his answers suggested that he would be an obstacle to that progress, by treating cases before the Supreme Court in a narrow legalistic way that resists and undermines the extraordinary gains of the past.

For all his brilliance and polish, he gave us insufficient evidence to demonstrate that the John Roberts of today is not the ideological activist he clearly was before. The strong evidence from his own hand and mind, the crucial 3-year gap in evidence because of the Administration's refusal to release his papers as Deputy Solicitor General, and his grudging and ambiguous answers at the hearing left too many fundamental doubts, and could put the entire Nation at risk for decades to come.

Some argue that John Roberts was just doing his job and carrying out the policies of the Reagan administration in the early 1980s. But his own writings refute that argument—these were clearly his own views, and were enthusiastically offered as his views. If he didn't agree with those policies as a lawyer in the Justice Department in 1981 and 1982, he would not have applied for the more political and more sensitive job in the White House Counsel's office when he left the Justice Department. He knowingly chose to be a voice for their policies, and often advocated even more extreme versions of those policies.

He certainly knew what was expected of him when he chose to become Deputy Solicitor General in 1989. That position was explicitly created to be the political monitor over all Department of Justice litigation. He was eager to advance the ideological views that his earlier memoranda show he personally supported. He obviously wasn't just ''following orders''—he was an eager recruit for those causes. That was the evidence he needed to overcome in the hearings, and his effort to do so is unconvincing.

I hope I am proven wrong about John Roberts. I have been proven wrong before on my confirmation votes. I regret my vote to confirm Justice Scalia even though he, too, like John Roberts, was a nice person and a very smart Harvard lawyer. I regret my vote against Justice Souter, although at the time, his record did not persuade me he was in tune with the Nation's goals and progress.

But as the example of Justice Scalia shows, and contrary to the assertions of my colleagues across the aisle, I have never hesitated to vote for a Republican President's nominee to the Supreme Court whose commitment to core national goals and values appeared clear at the time. In fact, I have voted for seven of them, more than the number of nominees of Democratic Presidents I have voted for.

Our Senate responsibility to provide advice and consent on the Supreme Court Justices and other nominations is one of our most important functions. The future and the quality of life in this Nation may literally depend on how we exercise it. If we are merely a rubberstamp for the President's nominees, if we put party over principle, then we have failed in this vital responsibility. Even more important, if we go along to get along with the White House, we will be undermining the trust the Founders placed in us, and we will diminish the great institution entrusted to our care. Every thoughtful and reasonable ''no'' vote is a vote for the balance of powers and for

the Constitution, so we must never hesitate to cast it when our independent consciences tell us to do so.

I yield the floor.

The PRESIDENT pro tempore. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I thank the Senator from Massachusetts for his leadership on these issues through the decades.

Mr. President, today John Roberts will be confirmed as the 17th Chief Justice of the United States, so it is a historic day. Not everyone in this Senate will vote for him, and our opinions differ on many things: How much we were consulted, how many documents we received, how fair John Roberts will be, how ideological he will be.

In the end, I decided that while there was a very good chance that Judge Roberts would be a very conservative but mainstream Justice without an ideological agenda, he was not convincing enough. And the down side, even a minority downside that he would be a Justice in the mold of Scalia and Thomas, was too great to risk, so I will vote no.

But no matter how we vote, today we all share a fervent hope that Justice Roberts becomes a great jurist and serves our Nation well. In the end, I cannot vote for Judge Roberts, but I hope he proves me wrong in my vote and that he takes the goodwill of this body and the American people with him onto the bench; that he rules fairly; that he looks out for the little guy if the law is on the little guy's side; that he will be the lawyer's lawyer, without an ideological agenda; that he sees justice done in the many areas of the law that he will profoundly affect over the next several decades.

However, as the curtain falls on this vote, the curtain is about to rise on the nomination of a replacement for Justice Sandra Day O'Connor. If ever there was a time that cried out for consensus, the time is now. If the President nominates a consensus nominee, he will be embraced, the President will be embraced, and the nominee will be embraced with open arms by people on this side of the aisle. Not only we on this side of the aisle, but the American people hope and pray in these difficult times for a consensus nominee. The ball is in your court, Mr. President.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Mississippi is recognized.

Mr. LOTT. Madam President, I am delighted this morning to rise to speak on the nomination of Judge John Roberts to become Chief Justice of the U.S. Supreme Court. Before I proceed on my discussion of Judge Roberts, I want to take a moment to commend the President of the United States for his brilliant selection of this outstanding human being, lawyer, judge, and public servant. I had thought there would be pressures to move in some other direction, that some other person might be selected for a variety of reasons—good reasons. But the most important thing was for him to select the best man or woman for the job, regardless of anything else. That is what the President did.

When I had an opportunity to comment to White House representatives when they asked my recommendations, I said, frankly, I didn't have a particular person I recommend. I have faith in this President and I believe he will make the right choice. But second, I urged that he pick the best person, regardless of sex, religion, race, religious background, region of the country, or philosophy. And then I had one or two that I thought, well, maybe you do not want to suggest these people.

I was, frankly, delightfully surprised when the President selected Judge Roberts. I am very pleased with this selection.

I also want to thank Senator SPECTER of Pennsylvania for conducting these confirmation hearings in such a fair, dignified, and respectful manner. We can only hope that the nature of these hearings will carry over to the next Supreme Court nomination. Every Senator had ample opportunity to make statements and ask what were supposed to be questions that quite often became just another speech, but I thought that the overall tenor and tone of the committee hearings was very good.

Maybe this nomination and the conduct of these hearings in the Judiciary Committee and the vote today in the Senate will be overwhelming and will bring to a final close a dark and ugly chapter in the history of Federal judicial nominations and confirmations. What we have done to men, women, and minorities over the past 4 years, until May of this year, was one of the nastiest things I have ever witnessed. Good people's remarks were misinterpreted. I will not even describe how strongly I feel about some of the things that were said and done.

We found a way to change the atmosphere, to move some of these nominees, and now to vote on this nomination. Thank goodness. This is a good opportunity. Let's continue these future hearings and these nomination considerations in this vein.

We are set to vote later this morning on the nomination of Judge Roberts to be the 17th Chief Justice of the U.S. Supreme Court, the youngest nominee in probably over 150 years. The vote will place Judge Roberts at the head of the judiciary branch, a job that comes with an immense amount of responsibility and a position for which Judge Roberts is eminently qualified.

Before I met Judge Roberts, I knew him by his reputation. I had some mutual friends who had worked with him at the Supreme Court, who had served with him in previous administrations, who had known him in a variety of roles, and to a man or woman they gave glowing reports on his quality and his credentials.

By Supreme Court standards he is still a young man, just 50 years old, but he has compiled an outstanding résumé, graduating sum cum laude from Harvard, taking only 3 years. He graduated magna cum laude from Harvard Law School and served as managing editor of the Harvard Law Review, with clerkships for Judge Henry Friendly and then Associate Justice William Rehnquist.

When I met with him I said, You have an outstanding résumé and we will overlook the Harvard thing—which always gets a laugh. And I am only jesting—in half.

Judge Roberts embarked upon a distinguished career in public service and served as Associate White House Counsel in the Reagan administration and the Principal Deputy Solicitor General in the George H.W. Bush administration. In all, Judge Roberts argued 39 cases before the U.S. Supreme Court, winning more than half. That is a pretty sterling record of appearances, let alone the victories. The American Bar Association gave him its highest rating, a unanimous ''well-qualified,'' both for the Supreme Court and DC Circuit nominations.

After visiting with Judge Roberts and watching how he has conducted himself during his nomination process, I continue to be extremely impressed. He is brilliant, eminently qualified, and fair man who clearly has a passion for the law. If confirmed, I believe he will serve the United States with honor and distinction for a long time.

Before Hurricane Katrina hit my home area and shifted the focus of us all, as we try to do all we can in a responsible way to help the people who have been so devastated by this natural disaster, I consistently heard concerns from Mississippians about the direction of our judicial system. My constituents realized that judicial activism is a serious problem that threatens their rights and ignores the constitutional obligations of the judiciary. With recent decisions such as Kelo v. City of New London that allows local governments to take private property and give it to someone else for private development, and the Pledge of Allegiance cases out of the Ninth Circuit, it should be clear to everyone what the dangers of judicial activism are and how it causes serious concerns.

I have a friend who serves in the Federal Judiciary, a very close friend. Recently, we were together in my home and after breakfast on Sunday morning we were talking about things in general. He said: I am concerned about the attitude toward the Federal judiciary. We actually have to worry about security in our courthouses. Why is this?

And I said: Your Honor, my friend, look at your decisions. You Federal judicial members are out of control. And until you get back in the box and stay as judges, not as legislators, and quit rendering these ridiculous decisions, there will be no respect.

However, I have learned, also, in so many ways in recent years, that one of the sayings of the Jaycees when I was

a young man in a young businessman's organization was that this is a government of laws, not of men. It is just not so. You can have the best laws in the world, you can have the best system in the world, which we do, but if you have the wrong men and women in place, it does not work.

So we have a little changing of the judiciary that is called for. And these recent decisions I refer to just magnify why this is needed. Judicial activism is a threat to all Americans, regardless of political alliances. The use of judicial activism to advance conservative or liberal political goals is simply wrong.

Judge Roberts' own testimony illustrates his understanding of the constitutional role of the judiciary and shows his understanding of the issue. He said:

> Judges are like umpires. Umpires don't make the rules, they apply them. . . . They make sure everybody plays by the rules, but it is a limited role.

While Judge Roberts acknowledged this analysis might be an oversimplification, but it shows a welcome respect for the constitutional role of the Judiciary.

When he was asked what type of judge he would like to be known as, Judge Roberts responded ''a modest judge,'' meaning he has an ''appreciation that the role of the judge is limited, that a judge is to decide the cases before them, they are not to legislate, they are not to execute the laws.''

Judge Roberts vowed to decide each case in a fair-minded, independent, and unbiased fashion and has stated repeatedly that personal ideology has no place in the decision making process of a judge.

Simply put, this is a rock solid judicial philosophy. This is what separates judges from legislators. We as legislators are free to use our personal ideology and make decisions, and boy do we. We are elected and accountable to our constituents for those decisions if we go too far, in their opinion, one way or the other.

Judge Roberts addressed the role of personal ideology in the judiciary during his hearings by saying:

> [Judges] are not individuals promoting their own particular views, but they are supposed to be doing their best to interpret the law, to interpret the Constitution, according to the rule of law, not their own preferences, not their own personal beliefs.

During his hearings, Judge Roberts was asked to answer several questions on issues that potentially could come before him if confirmed to the Supreme Court. He handled those questions exactly as he should have. It is a well-established standard that nominees should not answer questions that might bias them on future cases. I commend Judge Roberts for his handling of that sometimes difficult situation with steadfastness, with intelligent responses, and even sometimes with a sense of humor.

This nomination has served as a fantastic example of how the Ginsburg standard should be applied. Judicial nominees should have a fair and respectful hearing. They should not be expected to prejudge issues or cases. Judges must remain impartial and should not be asked to commit to rule a certain way in order to win confirmation votes. Judge Roberts, like Justice Ginsburg and all the other sitting judges, rightly refused to prejudge cases or issues likely to come before the Supreme Court.

During this process, Judge Roberts' record was scrutinized more closely than any other person in the history of judicial nominees. Senators had access to unprecedented 76,000 pages of documents from his time spent in public service and 327 cases decided by him on the DC Circuit. In addition, he was questioned for nearly 20 hours by the Judiciary Committee before receiving bipartisan support and a vote of 13 to 5. Through all of this intense scrutiny Judge Roberts and his record remain consistent and impressive.

Being placed under the microscope like this is not for the fainthearted. I admire how he handled this entire process with grace and poise.

Nobody should be surprised that when faced with a Supreme Court vacancy President Bush nominated a judicial conservative for that position. He said he would, I expected him to, and so he did. I expect him to do it again. In fact, you are talking about a consensus nominee. There won't be a consensus if he nominates somebody like Justice Ginsburg.

But I voted for her. I knew she was going to be way out of the mainstream, extremely liberal, but President Clinton won the election. He selected her. She was qualified by education, by experience, by demeanor. I voted for her. I did not expect her then to go on the Supreme Court and vote the way I would vote. She was a liberal. She is today. And probably—I have every reason to believe—a wonderful lady and a very thoughtful judge. She just comes to wrong conclusions, in my opinion.

The President was elected twice to the Presidency, telling anyone who would listen he would fill a vacancy in the Supreme Court with a judicial conservative. So why are we surprised? Why would you expect anything else? That is the way it is going to be; and that is the way it should be. He has followed through on that promise with John Roberts. He will likely do so again in the next nomination. And the next nominee, whoever it might be, deserves to be treated with the same fairness, respect, and dignity given to Judge Roberts.

There is clear and convincing evidence here that Judge Roberts is the right choice to be Chief Justice of the U.S. Supreme Court. I look forward to voting in favor of his confirmation.

I yield the floor.

Mr. AKAKA. Mr. President, I rise today in reluctant opposition to the confirmation of John Roberts as Chief Justice of the United States. While Judge Roberts is a talented lawyer and Constitutional scholar, I do not believe that these qualities alone are sufficient for leading the highest court in the land.

I approached this nomination as I do any nomination: with an open mind. I take my role of advice and consent on nominations seriously. That is why I joined a group of my colleagues in the Senate to respectfully ask the President to make available documents from Roberts' time in the Solicitor General's office. These documents could have provided valuable insight into how Roberts views important Constitutional questions, and I am disappointed that the White House did not fulfill this request. The White House owes not only the Senate, but also the American people, access to this information.

And so I am left to wonder about Judge Roberts' positions on critical questions regarding our Constitution and our way of life. I continue to hope that Judge Roberts shares my understanding that the Constitution provides robust protections guaranteeing the equality of all Americans. I hope that Judge Roberts' view of the Constitution is not as narrow as I have been led to believe.

However, neither the White House nor Judge Roberts has convinced me. On the contrary, they have given me reasons for alarm. Because the White House failed to respond to requests for Roberts' more recent work at the Solicitor General's office, the memoranda Judge Roberts wrote as a young lawyer in government service are all I have to go on. These memos raise serious concerns for me about Judge Roberts' commitment to protecting fundamental rights. Judge Roberts expressed views on civil rights, the Voting Rights Act, and the right to privacy convey a view of the Constitution that I simply do not agree with.

I recognize that these memos were written a long time ago, which is why I reserved judgement until Judge Roberts had the opportunity to clarify his position on these issues at the hearings. I listened carefully for Judge Roberts to dispel concerns about these memoranda, hoping that Judge Roberts would clarify the values that would guide his deliberations as Chief Justice. While Judge Roberts would occasionally distance himself from his old memos, stating that he was simply an employee doing what his boss had asked of him, he never fully explained where he stands on these important issues now.

Consequently, I am left with the memos to piece together Judge Roberts' judicial philosophy. These memos concerned me not only for the ideas they conveyed, but also the language that Judge Roberts chose to express his ideas. To me, phrases such as ''illegal amigo,'' ''Indian giveaway,'' and ''supposed right to privacy'' convey an unacceptable lack of respect for the people whose rights and freedoms Judge

Roberts would be entrusted to protect. It disappointed me that, when asked whether he regretted his flippant tone, Judge Roberts not only deflected responsibility but also failed to articulate any semblance of regret for these hostile words.

For these reasons, I cannot vote for this nominee. This was not an easy decision for me. I have great respect for my many friends—both inside and outside this body—who have come to a different conclusion. I hope the President will use his next nomination to appoint a justice whom all Senators can agree upon, and if doubts arise the White House will choose to resolve rather than exacerbate them.

Mr. BOND. Mr. President, among the great responsibilities and privileges of being a Member of the U.S. Senate is assessing the qualifications and voting on the confirmation of members of the U.S. Supreme Court. Reflecting upon this vote, one gets a sense of the weight of the responsibility—we will be voting on a replacement for only the 17th Chief Justice in the history of our great country.

But this vote is not unique because of its infrequency but because of its place in our system of government. The Supreme Court is the final voice in the land on the meaning of the words of the Constitution as they apply to the extent of the rights guaranteed to individuals by the document. It is the final word on the demarcation of power between the legislative and executive branch of government and it is the voice on defining the power reserved for the Federal Government and the governments of the individual States.

As a member of the legislative branch of our national government who was in a former life a State Governor, I am acutely aware of the importance of these lines and the consequences when they are breached. As a Member of the Senate, I do not welcome decisions overturning legislative acts that I support but I frequently work with my colleagues to reject efforts to meddle in state affairs. As a Governor attempting to guide my State, I had to labor through the burdens placed in my way by an intrusive Federal Government.

The judicial branch of our government, most notably the Supreme Court, has been designated by the Constitution as the branch to maintain these divisions of power and law making.

So it is a great privilege and responsibility to have a role in confirming people who will occupy a place on the court. In this case, confirming the person that will lead that court.

After observing Judge Roberts during 3 days of hearing before the Committee on the Judiciary, I am convinced the power that comes with the vote of a Supreme Court Justice will be in wise and capable hands. First, throughout this strenuous session, Judge Roberts' intelligence, patience and temperament were on full display and were nothing short of extraordinary.

But it was that which he had to say that satisfies me and secures my vote for his confirmation.

He made a convincing case through his words and his demeanor that he will approach his responsibility with modesty and humility, which means approaching cases with an open mind and carefully studying the words of Congress or the precedents of the Court on constitutional questions. As Judge Roberts said and I agree, ''a certain humility should characterize the judicial role. Judges . . . are servants of the law, not the other way around.''

Also, as Judge Roberts repeatedly reminded his inquisitors, he is not a politician. In that statement, I am comforted. I commend him on his willingness to remind my colleagues that he was not before Congress to compromise or give hints on how he might vote on a hypothetical case in exchange for confirmation votes. Rather, he confirmed repeatedly that the constitution and the rule of law will be his guide.

Judge Roberts made the case that he recognizes that the authority on the division of power between the branches of government and the authority on the division of power in our federalist system of government are contained in the Constitution.

It is a positive thing that we are going to confirm a decent person for the Court, but that should not be our guiding principle. Our vote should not rest on whether a future judge will approach cases as a father or a son, on the side of the weak or the strong or with the intent to expand rights or protections. That subjects judicial decision making to subjective standards, compromises impartiality and removes the blinders from justice. Some have argued that this is to dodge a question. Rather, it is an indication that one recognizes that the obligation of the judge is to follow the Constitution rather than his own interests.

At one point during the proceedings, the Judge was prodded to comment on a case in which he participated to decide the extent of benefits available under a health plan. To limit or expand the benefits provided under a statute is the job of a legislature, not a judge. Judge Roberts agrees with this important principal. As he stated. ''As far as a Judge is concerned, they have to decide questions 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.''

If the support of a majority of a State or national legislature can be won, a statute can be changed and this concern addressed. I suspect that many of my colleagues, particularly those who will vote against this nomination, have come to rely on the judiciary to advance changes that have no support in legislatures. Hence, their frustration with Judge Roberts. He has clearly defined views of the role of the judiciary and the role of the legislature and they do not appear to be blurred. He has not shown a willingness to approach case guided by a point of view or a subjective standard—that is what is to motivate legislators as they debate on the campaign trail and the floors of congress and statehouses across the country.

But as Judge Roberts again put it so well, ''If the people who framed our Constitution were jealous of their freedom and liberty, they would not have sat around and said, 'Let's take all the hard issues and give them over to the judges.' That would have been the farthest thing from their mind.''

As did the Founders, I do not believe State and national legislative bodies are incapable of settling tough and contious issues. I do not believe it is benevolent or admirable for judges to remove questions from the public realm because they are divisive. Roberts has shown the modesty and respect for the role of the court and an legislature to refrain from that path.

Judge Roberts has also made it clear that he finds no place for reflection on the public attitudes and legal documents of foreign lands in the consideration of constitutional questions. They do not offer any guidance as to the words of our constitution.

During his testimony, Judge Roberts displayed a respect for Constitution and the rule of law as the principles that should guide him when ruling on a case. His view of the role of the judiciary is very consistent with that of my own.

Finally, I believe President Bush has executed his duties in a responsible manner that will serve our Nation well. He interviewed many distinguished and qualified attorneys an judges in the country to serve on our Nation's highest court. After responsible consultation with members of the Senate and careful and thoughtful deliberation, President Bush returned to the Senate the name of John Roberts. As we have learned, his qualifications to lead the Supreme Court and Federal judiciary are as unquestioned as they are impressive.

President Bush was reelected with over 62 million votes, the highest received by a presidential candidate. He is the first candidate in 16 years to win a majority of the popular vote, something not achieved by his predecessor, who incidentally won easy confirmation of both of his appointments to the high court.

President Bush resoundingly won the right to nominate someone who he views as fit to serve on the Supreme Court and he won the right to have that nominee considered fairly and impartially. The President also asked for the thoughts and advice of Members of this body as to the pending nomination. When it came time to exercise his responsibility as President, he did so by nominating someone with an impeccable record and extraordinary qualifications. In the execution of his duties, President Bush exceeded any standard to which he should be held.

Nonetheless, I suspect that this nomination and the subsequent nomination will not be treated in the manner that President Clinton's nominees were treated, when they received 96 votes. But it should as should the next nominee.

Judge Roberts is an outstanding nomination. He will get my support and he deserves the overwhelming support of this body.

Mr. ENSIGN. Mr. President, I rise to speak in support of John Roberts' nomination for Chief Justice of the Supreme Court. The debate that the Senate will have this week is truly historic. In our Nation's history there have only been 16 previous Chief Justices. The opportunity to vote on a nomination for Chief Justice is a once-in-a-lifetime opportunity and should be undertaken with recognition of its importance. The importance of this vote simply cannot be overstated.

I believe that our Nation is best served when we confirm individuals who appreciate that the role of a judge is not to make laws but to uphold the Constitution. We need judges who understand that their oath requires them to follow the Constitution and to apply the law in a modest fashion. Judges do not serve in the legislative branch. They should not make the law. As Senators, that is our job.

Under our Constitution, judges are appointed to interpret the law. They should apply the law without prejudice. Judges must be open to the legal arguments presented by each of the parties before them. They must fully and fairly analyze the facts and faithfully apply the law.

I have carefully considered John Roberts' record and his qualifications. I believe that his record reflects a proper understanding of the role of judges. I met with him and discussed face-to-face his views on the role of Supreme Court Justices. Judge Roberts possesses the highest intellect and integrity. He has also demonstrated that he is fair-minded. He possesses the necessary experience, as an attorney for the government, in private practice and as a judge, to serve on the high court. By any objective measure, John Roberts is qualified to sit on the bench, and he deserves to be confirmed.

Judge Roberts, in his testimony before the Judiciary Committee and in his writings throughout his career, has presented himself as a man with a clear view of the role of a Supreme Court Justice: to interpret the law and to uphold the Constitution. His answers to specific questions have been necessarily and appropriately limited so we must trust, as we have with past nominees to the Court, that Judge Roberts is presenting himself and his views honestly. I believe he has, and for the sake of our country, I hope so.

Today, throughout the judicial branch, judicial activism is impeding and restricting freedoms the American people should expect to enjoy as envisioned by our Nation's founders. Recent and significant rulings have established standards created not by elected Members of Congress but by activist judges. These rulings have infringed on Americans' rights to exercise their religious beliefs; to recite the Pledge of Allegiance; and to own property without fear that the Government might seize that property for economic gain.

Now more than ever we need justices who will stand against this type of judicial activism, adhere to the proper role of upholding the Constitution, and leave the task of creating laws to the Congress. John Roberts is representing himself as someone who believes in a return to what our founders intended and we hope his portrayal of his views is honest and true.

Historically, the Senate has confirmed a nominee when the nominee is found to be well qualified. John Roberts certainly meets this criterion. Historically, the Senate has based confirmation on a nominee's record, writings, and prior decisions. There is ample documentation on which my colleagues can make a decision with respect to John Roberts' nomination. And the documentation supports confirmation.

John Roberts deserves to be confirmed, and America deserves a Chief Justice like John Roberts.

I yield the floor.

Mr. FEINGOLD. Mr. President, I will vote in favor of the nomination of Judge John Roberts to be the Chief Justice of the United States. This has not been an easy decision, but I believe it is the correct one. Judge Roberts' impeccable legal credentials, his reputation and record as a fair-minded person, and his commitment to modesty and respect for precedent have persuaded me that he will not bring an ideological agenda to the position of Chief Justice of the United States and that he should be confirmed.

I have often noted that the scrutiny that I will apply to a President's nominee to the Supreme Court is the highest of any nomination and that the scrutiny to be applied to the position of Chief Justice must be the very highest. I have voted for executive branch appointments, and even for court of appeals nominees, whom I would not necessarily vote to put on the Supreme Court.

Furthermore, because the Supreme Court, alone among our courts, has the power to revisit and reverse its precedents, I believe that anyone who sits on that Court must not have a pre-set agenda to reverse precedents with which he or she disagrees and must recognize and appreciate the awesome power and responsibility of the Court to do justice when other branches of Government infringe on or ignore the freedoms and rights of all citizens.

Judge Roberts came to his hearing with a record that few can top. His long record of excellence as a lawyer practicing before the Supreme Court, and his reputation as a lawyer's lawyer who has no ideological agenda, carry substantial weight. I wanted to see, however, how that record and reputation would stand up against a searching inquiry into his past statements and current views. As a member of the Judiciary Committee, I was proud to play a role in that inquiry. I believe the hearing was fair and thorough and I congratulate the chairman and ranking member, and all of the members of the committee, for the seriousness with which they undertook this task.

One important question I had was about Judge Roberts' views on the role of precedent and stare decisis in our legal system. A lot of the concern about this nomination stems from the fact that many important precedents seem to be hanging by a thread. In both our private meeting and in his hearing, Judge Roberts demonstrated a great respect for precedent and for the importance of stability and settled expectations. His themes of modesty and humility showed appropriate respect for the work of the Justices who have come before him. He convinced me that he will take these issues very seriously, with respect to both the constitutional right to privacy and many other issues of settled law.

As I am sure every Member of the Senate noticed and expected, Judge Roberts did not expressly say how he would rule if asked to overturn Roe v. Wade. But if Judge Roberts abides by what he said about how he would approach the question of stare decisis, I think he should vote to uphold Roe. He certainly left some wiggle room, and he said he would approach the possibility of overturning a case differently if the underlying precedents themselves came into question. But it will be difficult to overrule Roe or other important precedents while remaining true to his testimony about stability and settled law, including his statement that he agrees with the outcome in Griswold v. Connecticut. I know the American people will be watching him very closely on that question, and I personally will consider it a reversal of huge proportions, and a grave disappointment, if he ultimately does attempt to go down that road.

I was also impressed that Judge Roberts does not seem inclined to try to rein in Congress's power under the commerce clause. He repeatedly called attention to the Court's recent decision in Gonzales v. Raich as indicating that the Court is not headed inexorably in the direction it turned in the Lopez and Morrison cases limiting Congress's power. His approving references to Raich suggests to me that he will take a more moderate stance on these issues than his mentor, Chief Justice Rehnquist. His attitude seems to be if Congress does its job right, he will not stand in the way as a judge. That is, of course, cold comfort if the Court creates new hoops for Congress to jump through and applies them retroactively. I hope that Judge Roberts will recognize that Congress can pay attention to what the Court says is

needed to justify legislation only if the Court gives clear advance notice of those requirements.

Judge Roberts also seemed to reject a return to the Lochner era, when a majority of the Court invoked the due process and contracts clauses of the Constitution to strike down child labor and other laws it disagreed with, and the courts openly acted as a superlegislature, rejecting congressional enactments based on their own political and economic judgments. Judge Roberts disparaged the Lochner decision, saying, ''[y]ou can read that opinion today and it's quite clear that they're not interpreting the law, they're making the law.'' That is a marked contrast to many in the so-called ''Constitution in Exile'' movement, including recently confirmed DC Circuit Judge Janice Rogers Brown.

Judge Roberts' determination to be a humble and modest judge should lead him to reject efforts to undermine Congress's power to address social and economic problems through national legislation. I view that as a significant commitment he has made to the Congress and to the country.

Another important issue involves not so much respect for settled precedent, but rather questions that will arise in the future with respect to the application of the Bill of Rights in a time of war. The Supreme Court has already dealt with a series of cases arising from the Bush administration's conduct of the fight against terrorism, and will undoubtedly face many more during the next Chief Justice's term. Indeed, how the new Justices address these issues may well define them and the Court in history.

For me, Judge Roberts' discussion of the Foreign Intelligence Surveillance Court, which has been such an issue in the Patriot Act debate, was a defining moment in the hearing. His answers showed a gut-level understanding of the potential dangers of a court that operates entirely in secret, with no adversary process. His instincts as a lawyer, one who trusts our judicial system and its protections to yield the correct result under the rule of law, seemed to take over, and he seemed genuinely disturbed by the idea of a court without the usual protections of an open, adversary process. Here is what he said about the FISA Court to Senator DEWINE:

> I'll be very candid. When I first learned about the FISA Court, I was surprised. It's not what we usually think of when we think of a court. We think of a place where we can go, we can watch the lawyers argue and it's subject to the glare of publicity and the judges explain their decision to the public and they can examine them. That's what we think of as a court.
>
> This is a very different and unusual institution. That was my first reaction. I appreciate the reasons that it operates the way it does, but it does seem to me that the departures from the normal judicial model that are involved there put a premium on the individuals involved.

Judge Roberts' comments, and that he went out of his way to express surprise at the fact that this secret court even exists, suggests to me that he would address issues related to FISA, such as government secrecy and challenges to civil liberties, with an appropriately skeptical mindset.

I was troubled when Judge Roberts refused to give a fuller answer about his view of the Supreme Court's decision in the Hamdi case, and I have concerns about his decision as an appeals court judge in the Hamdan case regarding military commissions. But Judge Roberts did tell me that he believes: ''The Bill of Rights doesn't change during times of war. The Bill of Rights doesn't change in times of crisis.'' I was pleased to hear him recognize this fundamental principle.

I do not want to minimize the concerns that have been expressed by those who oppose the nomination. I share some of them. Many of my misgivings about this nomination stem from Judge Roberts' refusal to answer many of our reasonable questions. Not only that, he refused to acknowledge that many of the positions he took as a member of the Reagan administration team were misguided or in some cases even flat-out wrong.

I do not understand why the one person who cannot express an opinion on virtually anything the Supreme Court has done is the person whom the American public most needs to hear from. No one on the committee asked him for a commitment on a given case or set of issues. We certainly recognize that it is possible his views might change once he is on the Court and hears the arguments and discusses the issues with his colleagues. All of those caveats would have been perfectly appropriate. But why shouldn't the committee and the public have some idea of where he stands, or at least what his instincts are, on recent controversial decisions?

Although in some areas he was more forthcoming than others, Judge Roberts did not answer questions that he could and should have—unfortunately with the full support of committee members who want to smooth his confirmation—and I think that is disrespectful of the Senate's constitutional role. In addition, the administration's refusal to respond to a reasonable, limited request for documents from the time Judge Roberts served in the Solicitor General's office did a real disservice to the country and to the nominee. My voting in favor of Judge Roberts does not endorse this refusal. In fact, if not for Judge Roberts' singular qualifications, I may have felt compelled to oppose his nomination on these grounds alone. Future nominees who refuse to answer reasonable questions or whose documents the administration—any administration—refuses to provide should not count on my approval.

Also troubling was Judge Roberts' approach to the memos he wrote as a young Reagan administration lawyer. His writings from his early service in government were those of a very smart man who was at times a little too sure of himself and too dismissive of other viewpoints. I wanted to see if the Judge Roberts of 2005 had grown from the John Roberts of 1985, whose strong views often suggested a rigid ideological agenda. I wanted to see the possibility of a seasoned, wise, and just John Roberts on the Supreme Court, not just a more polished, shrewder version of his younger self.

Unfortunately, he refused to disavow any of those memos, many of which laid out disturbing opinions on a variety of issues, from voting rights, to habeas corpus, to affirmative action. He refused to acknowledge that some of his tone and word choice in that era demonstrated a lack of sensitivity to minorities and women, and to the challenges they face. Instead, he took refuge in the argument that he was simply doing his job, so we are not now supposed to infer anything about his beliefs or motivations based on the memos he wrote in the 1980s.

I found these arguments unpersuasive, particularly since several of these memos indicate that those were, in fact, his own personal views. And I do not understand why he felt he had to defend these 20-year-old memos. Maybe it was pride. Maybe it was a political strategy dictated by a White House that so rarely admits error. But take voting rights—it should have been easy for Judge Roberts to say that in retrospect he was wrong about the dangers of the effects test, and that the 1982 amendments to the Voting Rights Act that he opposed have been good for the country. Instead, he said he wasn't an expert on the Voting Rights Act and insisted on the correctness of his position. That troubles me.

The John Roberts of 2005 did not have to embrace the John Roberts of 1985, but in some cases he did, all too readily. On the other hand, I am not sure that the John Roberts of 1985 would have told Senator FEINSTEIN with respect to affirmative action that: ''A measured effort that can withstand strict scrutiny is . . . a very positive approach.'' His answers to questions on affirmative action, seemed to me, on balance, to be an encouraging sign that he will not undo the Court's current approach.

Finally, I was unhappy with Judge Roberts' failure to recuse himself in the Hamdan v. Rumsfeld case, once he realized he was being seriously considered for a Supreme Court nomination. It is also hard to believe, as Judge Roberts testified, that he does not remember precisely when the possibility of an ethics violation first came to his attention. Judge Roberts sat on a court of appeals panel that heard the appeal of a district court ruling that, if upheld, would have been a huge setback for the administration's position on military commissions and the detainees at Guantanamo Bay. And he heard oral argument just 6 days after interviewing for a Supreme Court appointment with the Attorney General of the

United States, who also was a major participant in the underlying legal judgment of the administration that was challenged in the case. I am troubled that Judge Roberts apparently didn't recognize at the time that there was an ethical issue.

I give great weight to ethical considerations in judicial nominations. For example, when Judge Charles Pickering solicited letters of recommendation for his court of appeals nomination from lawyers practicing before him in the district court, I found that very significant, especially in combination with his actions in a cross burning case where improper ex parte contacts were alleged. But while the issue raised about Judge Roberts is serious, I do not see such a pattern with Judge Roberts, who has a long record and reputation for ethical behavior. Nor is there evidence of the egregious, almost aggressive unethical behavior that was present in the nomination of Judge Pickering.

I hope that Judge Roberts now understands the concerns that I and a number of respected legal ethicists have about his participation in the Hamdan case. It is not too late for him to recuse himself and allow a new panel to hear the case.

At the end of the day, I had to ask myself: What kind of Justice does this man aspire to be? An ideologue? A lawyer's lawyer? A great Supreme Court Justice like Justice Jackson, who moved comfortably from the top legal positions in the Department of Justice to a judicial position in which he was more than willing to challenge executive power? A Chief Justice who will go down in history as the leader of a sharp ideological turn to the right, or a consensus builder who is committed to the Court and its role as guarantor of basic freedoms?

I have talked to a number of people who know John Roberts or to people who know people who know John Roberts. Those I have heard from directly or indirectly have seen him develop since 1985 into one of the foremost Supreme Court advocates in the Nation, whose skills and judgment are respected by lawyers from across the ideological spectrum. They don't see him as a champion of one cause, as a narrow ideologue who wants to impose his views on the country. They see him as openminded, respectful, thoughtful, devoted to the law, and truly one of the great legal minds of his time. That carries a great deal of weight with me. And it helps to overcome my frustration with Judge Roberts for not distancing himself from what he wrote in his Reagan-era memos and with the White House for refusing to release relevant documents to the committee.

History has shown that control of the White House, and with it the power to shape the courts, never stays for too long with one party. When my party retakes the White House, there may very well be a Democratic John Roberts nominated to the Court, a man or woman with outstanding qualifications, highly respected by virtually everyone in the legal community, and perhaps with a paper trail of political experience or service on the progressive side of the ideological spectrum. When that day comes, and it will, that will be the test for the Senate. And, in the end, it is one of the central reasons I will vote to confirm Judge John Roberts to be perhaps the last Chief Justice of the United States in my lifetime. This is not a matter of deference to the President's choice. It is instead a recognition that the Supreme Court should be open to the very brightest of legal minds on either side of the political spectrum.

The position of Chief Justice demands the very highest scrutiny from the Senate, and the qualifications and abilities of the nominee for this position must shine through. Judge Roberts has the legal skills, the intellect, and the character to be a good Chief Justice, and I hope he fulfills that promise. I wish him well. May his service be a credit not only to the rule of law, but also to the principles of equality and freedom and justice that make this country so great.

Mr. CORZINE. Mr. President, I believe that the U.S. Constitution is about protecting the rights of Americans, not about restricting those rights. And that is why I will vote against Judge John Roberts' nomination to be Chief Justice of the United States.

Judge Roberts and I appear to hold different views of the role that the Federal Government should play in our country. I believe that Government is here to preserve rights, to protect and support our citizens, and to offer opportunity to those less fortunate. Based on the limited record before us, I am not convinced that John Roberts shares these views.

Though he is clearly intelligent, articulate, and accomplished, I am deeply concerned that Judge Roberts' narrow and cramped view of the Constitution will lead inevitably to the restriction of our most scared rights and protections. I fear that Judge Roberts will interpret the Constitution so narrowly that he will reach results that are inconsistent with decades of well-established Supreme Court precedent.

From civil liberties to the ability of courts to protect minorities, from voting rights to school desegregation, from privacy to environmental protections, Judge Roberts has consistently adopted positions intended to limit the role of Government in a way that would harm all Americans.

I simply cannot vote to confirm a nominee who may vote to roll back decades of progress and protections for our most fundamental rights. Our most basic rights hang in the balance and I am not prepared to gamble with these rights.

Before the hearings on Judge Roberts began, I stated that we needed to learn his positions on all of the important issues that face Americans today, including the right to privacy, a woman's right to choose, civil rights, the rights of consumers, federalism, the scope of executive power, and the Government's ability to help those who need it most. I asserted that it was essential to learn Judge Roberts' position on first amendment protections and the authority of Congress to enact laws protecting the environment.

I also requested that the White House and Judge Roberts release documents relating to 16 cases in which he was involved from 1989 to 1993 as the Principal Deputy Solicitor General in the Justice Department. I wanted to review these documents to learn all we needed to know about a man selected for a lifetime appointment to the highest Court in the Nation.

I sought this information and asked for these documents because I strongly believe that Senators have both a right and a duty to evaluate thoroughly Supreme Court nominees. We have a right to request that the nominee answer relevant questions about legal philosophy and we have a corresponding duty to look carefully into all aspects of the nominee's record, including his or her prior statements, memoranda, and judicial opinions. When faced with a nominee who has an extremely sparse record, as Judge Roberts does, the level of scrutiny required in evaluating answers and reviewing documents must necessarily be higher.

Unfortunately, during 3 days of testimony before the Senate Judiciary Committee, Judge Roberts raised more questions than he answered. And we have never been given the opportunity to review the documents requested from the Solicitor General's Office. This lack of information, when coupled with Judge Roberts' early writings in which he advanced an exceedingly restrictive view of the civil rights laws as a lawyer in the administrations of Presidents Ronald Reagan and George H.W. Bush, raises serious concerns.

During his testimony, Judge Roberts failed to answer the most basic questions about his constitutional and legal philosophy—in total, he refused to answer almost 100 questions during the hearings. Judge Roberts also refused to distance himself from the vast majority of his prior, controversial writings. In failing to state his position on many critical issues, Judge Roberts left us with little to go on beyond his prior writings and limited judicial record.

I have been struck, in listening to the statements of many of my colleagues who have struggled with how to vote on this nomination, by the simple fact that we are all guessing—guessing if Judge Roberts will uphold the right to privacy, guessing if he will restrict the right of a woman to choose, guessing if he will uphold Federal laws regulating the environment, guessing if he will greatly expand Executive power, and guessing if he will support the gains we have made in the area of civil rights during the past 40

years. I cannot in good conscience cast a vote for the position of Chief Justice of the Supreme Court based on conjecture.

My concerns about Judge Roberts' legal philosophy run deepest in the areas of privacy, civil rights, and federalism.

One of our most important liberties is the right of individuals to privacy, which includes a woman's right to choose. During his hearings, Judge Roberts acknowledged that the due process clause of the Constitution encompasses the right to privacy. He also stated that he believed that the right to privacy encompasses the right of married couples to access contraception as established by the Court in *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). However, beyond these broad, generalized statements supporting the constitutional underpinnings of the right to privacy and the holding in Griswold, Judge Roberts failed to explain his views on the right to privacy.

When pressed with questions on the landmark 1973 decision, *Roe* v. *Wade*, 410 U.S. 113, which extended the right to privacy recognized in Griswold to encompass a woman's right to choose, Judge Roberts either refused to answer the questions or responded with generalizations about precedent. Judge Roberts made it clear that his analysis on this issue starts with the holding in the 1992 Supreme Court case, *Planned Parenthood of Connecticut* v. *Casey*, 505 U.S. 833, which held that the right to choose may be restricted so long as State statutes do not have the purpose or effect of imposing an ''undue burden'' on a woman's right. In using this as his starting point, Judge Roberts leaves open the strong possibility that he may vote, perhaps as early as the upcoming Supreme Court term, to further restrict a woman's right to choose.

I cannot overlook the similarity between Judge Roberts' responses to questions about a woman's right to choose and the answers given by Justice Clarence Thomas during his confirmation hearings. Like Judge Roberts, Justice Thomas acknowledged a right to privacy in the Constitution. Justice Thomas also expressed support for the decision in Griswold. However, once he was confirmed to the Supreme Court, Justice Thomas argued vehemently against the existence of a general right to privacy and even called for the reversal of Roe v. Wade, describing the decision as ''grievously wrong.''

We simply cannot allow this to happen again. And we should not have to. We should not be in a position today where we have to guess if Judge Roberts will attempt to overrule Roe v. Wade or to further restrict the constitutional right of all women to choose.

In addition to my concerns about the right to privacy, I have serious concerns about Judge Roberts' views on civil rights. His record is extremely limited, but what little evidence we have reveals Judge Roberts' repeated attempts to roll back legal protections afforded to minorities and to those less fortunate.

In the area of affirmative action, Roberts urged the Reagan and the first Bush administrations to oppose affirmative action programs. Roberts sought to overturn established precedent supporting affirmative action programs and, in 1981, he fought to abolish race- and gender-conscious remedies for discrimination. This position was contrary to the Supreme Court's ruling in *United Steelworkers of America* v. *Weber*, 443 U.S. 193 (1979), which upheld affirmative action in employment. During his confirmation hearings, Judge Roberts refused to state his present position on this issue.

Judge Roberts also has a detailed record of opposing a broad interpretation of the Voting Rights Act, which is considered one of the most powerful and effective civil rights laws ever enacted. While working in the Justice Department during the Reagan administration, Judge Roberts urged the administration to oppose a bill that allowed discrimination under section 2 of the act to be proven through a showing of the discriminatory effects, and not just the discriminatory intent, of State voting restrictions. Congress enacted the bill over the administration's objections. Judge Roberts' approach, had it been adopted, would have made it tremendously difficult to overturn discriminatory voting laws. Again, during his confirmation hearings, Judge Roberts refused to state his present position on this issue.

Judge Roberts' record in the area of access to education is also troubling. In prior writings, Judge Roberts expressed opposition to the Supreme Court decision in *Plyler* v. *Doe*, 457 U.S. 202 (1982), wherein the Court ruled that the Constitution mandates that all children, including the children of undocumented immigrants, have the same access to education. Again, during his confirmation hearings, Judge Roberts refused to state his present position on this issue.

Additionally, memoranda written by Judge Roberts during his tenure at the Department of Justice raise concerns about his eagerness to deny the Supreme Court the power to decide questions of constitutional interpretation and subsequent remedies. In one writing, Judge Roberts argued that Congress had the power to strip courts of the power to desegregate schools through busing in the wake of *Brown* v. *Board of Education*, 347 U.S. 483 (1954). During his hearings, Judge Roberts neither stated his present view on this issue nor distanced himself from his prior writings.

Had Judge Roberts' views prevailed on these civil rights issues or on other similar issues during his tenure in the Reagan and George H.W. Bush administrations, we would today live in a far different world. It would be a world with fewer protections for minorities, women, and people with disabilities.

I am also concerned about Judge Roberts' views on the power of the Federal Government to pass legislation under the commerce clause of the Constitution. Although Judge Roberts' record is sparse, his dissent from a full court opinion denying a rehearing en banc in *Rancho Viejo, LLC* v. *Norton*, 334 F.3d 1158 (2003), causes concern. Judge Roberts was one of only two judges on the entire U.S. Court of Appeals for the DC Circuit to challenge the decision of the panel to uphold the constitutionality of the Endangered Species Act. Although Judge Roberts allowed in a footnote that there could be alternative grounds on which the full DC Circuit might uphold the constitutionality of the Act, his opinion demonstrates a narrow view of Congress's power to legislate under the commerce clause.

I am concerned that, based upon this critical view of Federal power, Judge Roberts may vote to limit Congress's authority to enact laws that help all American citizens. In the wake of Hurricanes Katrina and Rita, the role of the Federal Government in protecting all Americans, and particularly those less fortunate, has never been clearer. Congress must have the power to assist those in need, and to help citizens during times of natural and manmade disasters.

I am mindful of Judge Roberts' frequent statements that he would approach the law with modesty and restraint. However, we have never learned the reference point for this modesty and restraint. The starting point in this inquiry is as important as the ending point, for either can dictate the result. It is difficult to tell from Judge Roberts' testimony and writings whether, in exercising restraint, Judge Roberts would be deferring to the original intent of the Founders, Supreme Court precedent, the contemporary understanding of the Constitution, or something else entirely. Without this information, we are unable to meaningfully understand Judge Roberts' judicial philosophy.

If he begins at the point where Justices Scalia and Thomas do, Judge Roberts would view judicial restraint and modesty as adherence to a static, narrow, antiquated, and inaccurate originalist view of the Constitution that fails to acknowledge the realities of modern America. This form of ''modesty'' and ''restraint'', followed by Justices Scalia and Thomas, quite openly seeks to overrule the accomplishments of much of our Supreme Court jurisprudence during the past 200 years. Justices Scalia and Thomas believe that they exercise judicial restraint when they attempt to overturn Supreme Court precedent such as Roe v. Wade on the ground that it is inconsistent with their own originalist understanding of the Constitution. Although they may call this modesty and restraint, this view of the Constitution is

neither modest nor restrained; rather, it is a form of judicial activism as aggressive as any the Court has ever seen.

I have carefully weighed my concerns in light of my constitutional duty as a U.S. Senator. And I have concluded that, fundamentally, I cannot vote yes without being confident that Judge Roberts will not vote to roll back the protections and rights our Nation fought so hard to attain.

I am deeply mindful that we must never become so cynical or political that we fail to do what is best for the citizens of our Nation. And that means that we must place the value of an independent judiciary above the partisan politics of the day. That also means that we must not be afraid to stand up to the President and vote against a nominee who puts us in a position of guessing about his constitutional and legal philosophy.

We must never forget that our Supreme Court depends, first and foremost, on the Justices who hear arguments and issue rulings each and every day. As all Americans know, the Supreme Court is the highest Court in the United States. This is the Court that issues final rulings on many of the most important issues of our time, ones that touch the lives of all Americans. Therefore, it is essential that we know the views of each and every person whom we approve for a lifetime appointment to the Supreme Court.

There is no question that Judge John Roberts will get an up-or-down vote in the full Senate. However, that does not mean that he will get my vote. I will only vote to confirm Justices who will uphold established precedent and understand that the Constitution is about protecting rights, not about restricting them.

The stakes are simply too high to guess about the future of our fundamental rights and protections.

Mr. SHELBY. Mr. President, I rise today to support the nomination of Judge John Roberts to be Chief Justice of the U.S. Supreme Court.

Judge Roberts is a man of integrity whose reputation is irrefutable. He has been widely praised for his affable and humble personality as well as his integrity and intellect. Judge Roberts is already greatly respected by his colleagues and current Supreme Court Justices who know him as a leading advocate before that Court.

I believe that Judge Roberts is eminently qualified for this position. He earned both his bachelor's degree and his law degree from Harvard University. In fact, after earning his bachelor's degree summa cum laude, he managed to earn his law degree magna cum laude while serving as the editor of the Harvard Law Review. Following graduation, Judge Roberts earned a clerkship on the Supreme Court for the late Chief Justice William Rehnquist.

Since that time, Judge Roberts has had a long and distinguished career of service to this country, including serving as an attorney in the Office of the Solicitor General. Most recently, he served as a judge on the DC Circuit Court of Appeals, widely considered the second most powerful court in the Nation. During his service on the court, he has been consistent and fair.

Judge Roberts has also been a private practice attorney representing the full range of clients before the Supreme Court. He has argued before the Supreme Court 39 times, an impressive record even if you do not consider the fact that his client prevailed in 25 of those cases. In fact, Judge Roberts is widely considered by his colleagues to be one of the most accomplished attorneys to argue before the Supreme Court.

For some time I have been concerned that our judiciary was being overwhelmed by activist judges who attempt to legislate from the bench. They appear to make decisions based upon political philosophy and twist the words of our Forefathers and of Congress to serve their ideological goals.

We do not need judges who will make their own laws and interpret the Constitution based on one political philosophy or another. Rather, we must insist on judges who maintain a fair and judicious tone—judges who rule without the influence of ideology or personal opinion.

After 20 hours of testimony before the Senate Judiciary Committee, I believe the Nation learned a great deal about how Judge Roberts views the judicial role and what kind of service he will provide the Nation as Chief Justice. Judge Roberts is a skilled lawyer who understands and respects the Constitution. I believe he understands that the role of the judiciary is to interpret the law—not make law. It is clear from his testimony that his goal will be to fairly and effectively interpret the Constitution and the law without prejudice and with the utmost respect for the rule of law.

I commend President Bush for his continued efforts to put judges in place who respect the rule of law. I believe that Judge Roberts is a shining example of this type of jurist, and there is no doubt in my mind that he should be confirmed as our country's 17th Chief Justice, and I am proud to support his nomination.

Ms. STABENOW. Mr. President, this is a critical time in our Nation's history. For the first time in more than a decade, we have not just one but two vacancies on the United States Supreme Court. Sandra Day O'Conner, the first woman justice and often the critical deciding vote, is retiring, and Chief Justice Rehnquist, who served on the Court for more than 33 years, passed away after a courageous battle with cancer.

The two nominees who will receive these lifetime appointments will dramatically impact the direction of the Court for decades to come and will shape decisions that will affect the rights and freedoms of all Americans.

Furthermore, the new Chief Justice will play a unique and critical role. He will lead the Court. The new Chief Justice will set the initial agenda of what cases should be considered, and assign the justice who will write the majority opinion when he or she is a part of the majority. He will be the most powerful judge in the country.

We all understand that the U.S. Senate has a constitutional obligation to ''advise and consent'' on all Federal judicial nominees. Unlike other nominations that come before the Senate, judicial nominations are lifetime appointments. These are not decisions that will affect our courts for 3 or 4 years but for 30 or 40 years, making it even more important for the Senate to act carefully and responsibly.

I am one of the newer Members of this chamber. In fact, I rank 74th in seniority. I don't have the 20 year voting history on Supreme Court nominees that many of my colleagues do. I didn't vote on the nominations of Justices Scalia, Ginsburg, O'Connor or Thomas.

But I bring a different kind of history to this Chamber. I am the first woman U.S. Senator in history from the State of Michigan. My office is next door to the Sewell Belmont house, where Alice Paul and Lucy Burns planned their suffrage marches and fought to get women the right to vote.

I can see it from my window and every day I am reminded of what the women before me went through so that I could speak on the Senate floor today. I feel the same responsibility to fight against discrimination and for equal rights, for the women that will come after me.

I take this responsibility very seriously and have closely studied Judge Roberts' writings and testimony at the Judiciary Committee hearings. I commend Senators SPECTER and LEAHY for conducting the hearings in a civil and bipartisan manner.

The Judiciary Committee hearings were the only opportunity for Americans to hear directly from Judge Roberts on issues and concerns that impact their daily lives, and to find out what a ''Roberts Court'' might look like. Unfortunately, Judge Roberts refused to answer many of the questions that are on the minds of most Americans.

However, the American people are being asked to hire Judge Roberts for this lifetime job without knowing the answers to most of the interview questions. This problem has been exacerbated by the White House's refusal to share even a limited number of documents from Judge Roberts' time as Deputy Solicitor General.

The Constitution grants all Americans the same rights, liberties and freedoms under the law. These are the sacred, bedrock values upon which the United States of America was founded. And we count on the Supreme Court to protect these constitutional rights at all times, whether they are popular or not.

Unfortunately, Judge Roberts refused to answer most substantive questions

about how he would protect our fundamental constitutional rights. Because of his failure to answer questions on the major legal issues of our time in a forthright manner, I feel compelled to base my decision on his writings and opinions.

When you closely examine these documents, you see a forceful and instinctive opposition toward protecting the fundamental rights of all Americans. In case after case, Judge Roberts argued that the Constitution did not protect workers, voters, women, minorities and people with disabilities from discrimination. He also argued that the Constitution does not firmly establish the right of privacy for all Americans.

In all of his memos, writings and briefs, Judge Roberts took the view that the Constitution only protects Americans in the most narrow and technical ways, and does not convey to us fundamental rights, liberties and freedoms. Because of these views, after much deliberation, I have concluded that Judge Roberts is the wrong choice for a lifetime appointment as Chief Justice of the U.S. Supreme Court.

Judge Roberts is certainly an intelligent man with a record of public service. However, that alone does not qualify him to lead the entire third branch of our government. I believe that his writings reveal a philosophy that undermines our most cherished and fundamental rights, liberties and freedoms as Americans, and for that reason, I will be voting no on his nomination.

The Supreme Court decides cases that have a broad impact on American jobs and the economy. Manufacturing is the backbone of Michigan's economy, and these court decisions will affect the livelihood of the families, workers and businesses I represent. We in Michigan need to know whether Judge Roberts will stand with us and with our families or be on the side of major special interests who were his clients in the private sector.

Right now, we are feeling the full impact of price-gouging and oil company monopolies at the gas pumps. But Americans don't know what Judge Roberts' views are of antitrust and consumer protection laws that punish these illegal corporate practices. How will he rule on cases dealing with insider-trading, anti-competitive business behavior and other kinds of corporate fraud to prevent another Enron?

We don't know if he supports basic consumer protections like patients' rights to receive a second doctor's opinion if their HMO tries to deny them treatment. Judge Roberts fought against these patients' right when he represented HMOs in private practice and Americans are entitled to know where he stands on this issue.

Americans need to know where Judge Roberts stands on worker protections under the Family and Medical Leave Act. And will Judge Roberts rule to protect their pensions and retirement benefits? We don't have the answers to these basic questions.

The foundation of our democracy is the belief that all people are created equal and that every American deserves an equal opportunity for a good education, good job, and a good life. The Supreme Court will be deciding cases that have an enormous impact on our civil rights protections and this fundamental American notion of equality.

As a lawyer in the Reagan administration, Judge Roberts argued against some of the most basic civil rights protections such as workplace discrimination laws and strengthening the Voting Rights Act. When he was asked if he disagreed with any of those positions today, Judge Roberts said he was just reflecting the administration's views, and refused to provide any clarity on his own personal views.

However these memos expressed more than just the administration's position; they included Judge Roberts' own extreme views on everything from school desegregation to title IX.

When urging the Attorney General to step up efforts to oppose legislation to strengthen the Voting Rights Act, Judge Roberts wrote, ''My own view is that something must be done to educate the Senators on the seriousness of this problem.'' This legislation ultimately passed with overwhelming bipartisan support.

In memos, he referred to the ''purported gender gap'' and ''the canard that women are discriminated against because they receive $0.59 to every $1.00 earned by men. . . .'' In response to an equal pay letter from three Republican congresswomen, Roberts wrote, ''I honestly find it troubling that three Republican representatives are so quick to embrace such a radical redistributive concept. Their slogan may as well be 'from each according to his ability, to each according to her gender.' ''

As special assistant, Roberts criticized the Labor Department's affirmative action program and referred to the policies which required ''employers who contract with the government to engage in race and sex conscious affirmative action as a condition of doing business with the government'' as ''offensive.'' Roberts wrote: ''Under our view of the law it is not enough to say that blacks and women have been historically discriminated against as groups and are therefore entitled to special preferences.''

What is particularly troublesome is not just the content of these writings but his tone toward these issues—one that is disrespectful. And one which Judge Roberts refused to disavow during the hearings.

As Senator FEINSTEIN, the only woman on the Senate Judiciary Committee said, ''If Judge Roberts had provided different answers to these questions, he could have easily demonstrated to us that wisdom comes with age, and a sense of his own autonomy. But he did neither.''

These are opinions and attitudes that will have an impact on real people's lives. And Judge Roberts' opinion matters.

They will affect whether or not we have admissions policies that promote diversity at our Nation's universities and policies that help minority-owned and women-owned businesses compete for government contracts.

They will determine how well our antidiscrimination laws are enforced to protect all Americans from housing discrimination, abusive work environments, sexual harassment, discriminatory hiring policies, and sexism in education and collegiate sports under title IX.

And they will determine whether our most fundamental democratic right—the right to vote—is protected.

As Chief Justice, Judge Roberts would decide in case after case, whether these principals of equal opportunity and equal protection should be upheld and whether these laws should be enforced.

The constitutional right to privacy is one of the most fundamental rights we have as Americans. At its core, it is about the role of government in the most personal of family decisions. It is about a woman's right to make her own reproductive choices and a couple's right to use contraception.

But it is also about keeping medical records private to prevent them from being used against Americans in their jobs or when they are trying to get health insurance. It is about a parent's right to send their child to the school of their choice. And it is about the role of government in right-to-die cases, as the nation witnessed in the Terry Schiavo case.

Our constitutional right to privacy is a complicated and often politically charged area of the law. It is extremely important that a Supreme Court nominee approach this issue as a fair and independent-minded jurist who will uphold settled law, and not approach it with a politically motivated agenda.

While Judge Roberts acknowledged that a right to privacy exists, he refused to explain what he believes that right actually encompasses. Like Justice Thomas in his testimony before the committee, Judge Roberts refused to say whether he believed the right to privacy extended beyond a married couple's right to contraception. Senator SCHUMER asked Judge Roberts whether he agreed that there is a ''general'' right to privacy provided in the Constitution. Roberts' response was, ''I wouldn't use the phrase 'general,' because I don't know what that means.''

He repeatedly refused to answer whether the right to privacy protects a woman's right to make her own reproductive choices, and like many women across the country, I was very disappointed that he was evasive in answering this important privacy question.

How Judge Roberts will approach and decide these questions of law will have a profound impact on not just our lives but on the lives of our children and grandchildren.

I had hoped that the hearings would give us insight into his legal reasoning and judicial philosophy on all of these important issues. And I strongly believe that the American people deserve these answers. This isn't a decision that should be based on guesswork or a leap of faith.

So all we have to go on are Judge Roberts' own writings over the past 25 years. Based on this record, I cannot in good conscience cast my vote for John Roberts to be Chief Justice of the United States Supreme Court.

Mr. KOHL. Mr. President, Judge Roberts came before the Senate Judiciary Committee earlier this month as a very well respected judge with a sterling academic record and a remarkable legal career. He left the Judiciary Committee with that reputation intact, if not enhanced. I have enormous respect for Judge Roberts' legal talents. They are undeniable. As a result, I supported his nomination last week in the Senate Judiciary Committee.

It is for this reason, his distinguished career and his sterling reputation as a lawyer and a judge, that I will vote my hopes today and not my fears and support Judge Roberts' nomination for Chief Justice of the United States.

During a private meeting with him, as well as through four impressive days of testimony, Judge Roberts made clear that he will be a modest judge. He assures us that he will address each case on its merits and approach each argument with an open mind. He recognized that judges should not substitute their policy preferences for those of Congress, and I agree.

Judge Roberts sees a clear boundary to the judge's role. He told us repeatedly that his personal views about issues did not matter. He assured us that he will not be an activist; and that he will rarely, if ever, look to overturn precedent. Rather, precedent, not his version of how the law should be, will mark the beginning of his constitutional analysis.

Judge Roberts recognizes a right to privacy in the Constitution, and he understands that people have come to rely on it. He made clear his agreement with the cases on the right to privacy that led to the Court's decisions in Roe and Casey.

Judge Roberts rejected ''originalist'' or a ''literalist'' philosophies. He does not bind the Constitution to narrow interpretations of the past. Too many judicial activists have used this philosophy to limit our rights and freedoms. Judge Roberts believes that as society evolves, our interpretation of the Constitution must evolve with it.

We choose to take Judge Roberts at his word, and believe that those words will bind him throughout his tenure on the Court. Ultimately, Judge Roberts persuaded us that he will be the Chief Justice we saw during his hearing, not the Chief Justice that his critics see in his past.

Nonetheless, the decision was not an easy one. While I support moderation in judicial temperament, I do not support inaction in the face of injustice. I worry that a Court full of neutral umpires would not have decided Brown v. Board of Education or other cases in which the Court moved America forward. Modesty is to be respected to a point, but not when it stands in the way of progress. Historically, the courts have often succeeded when our democratically-elected branches could not.

However, Judge Roberts testified, and I do not disagree, that his confirmation to replace Chief Justice Rehnquist will not radically shift the balance of the Court. If he had been nominated, as he was originally, to replace Justice O'Connor then his confirmation would have moved the Court to the right. That would have been a much more difficult decision. It is my hope that the White House recognizes this concern when they choose their next nominee.

In considering my decision, I was troubled by parts of Judge Roberts' record, but I was impressed by the man himself. I will support him as a Chief Justice who will keep an open mind and reject ideological extremism and simplistic approaches to interpreting the Constitution. I will vote my hopes and not my fears.

Mr. ROCKEFELLER. Mr. President, I rise today in support of the nomination of Judge John G. Roberts, Jr., to be Chief Justice of the United States Supreme Court.

In Judge Roberts the Nation is presented with a nominee who possesses an extraordinary intellect, a modest temperament, and a steady hand. I see in him the will and the ability to seek common ground among the Justices of the Court on important national issues. And I believe he possesses sufficient humility, as a man and as a judge, to be mindful of the powerful impact of his actions on the lives of average Americans.

Four days of intensive hearings allowed all of us, and much of America, to come to know something of John Roberts and to observe and assess what we don't know.

None of us can fully fathom the matters that will be determined, and the people who will be affected, by a judge with lifetime tenure on the highest Court of the land. John Roberts today very likely becomes the Chief Justice of a generation.

It is not surprising that this President would select a nominee with whom I disagree on some important issues, particularly as articulated in his early policy work. But it is reassuring, and ultimately determinative, that the President has selected a nominee who asserts with conviction, supported by the record, that he is not an ideologue, that he takes precedent as established law and people and cases as they come before him. I take him at his word, and trust that in interpreting and applying the law he will be his own man.

Yet once a nominee's high credentials and unimpeachable integrity have been established, the selection of a Supreme Court justice further demands of us a leap of faith. And it is in that leap of faith that we must attempt to know more: Who is he as a person? What is his understanding of the human condition? Does he take seriously our fundamental responsibility to people as well as to legal concepts?

Judge Roberts and I had the opportunity to meet in recent days to discuss his nomination. We had a good, long talk about West Virginia and our country and the people who make America great.

In talking with Judge Roberts I looked for assurance that when he tackles the grave questions that will come before his Court, he will consider fully the lives of average people, the lives of those in need and those whose voices often are not heard, the lives of working men and women, children, the elderly, our veterans.

Judge Roberts listened. He is a careful and attentive listener. And, I want my fellow West Virginians to know, Judge Roberts shared that his grandfather was a coal miner and his father worked in the steel mills, and that he is, in fact, mindful of the awesome responsibility he faces toward all Americans, from all walks of life, equally and unequivocally deserving of the rights and protections of our Nation.

I yield the floor.

Mr. LAUTENBERG. Mr. President, the Constitution grants the Senate the power and responsibility to advise and consent on the President's judicial nominations. And there is no more important judicial nomination than Chief Justice of the United States.

The President and Congress share responsibility for the makeup of the third branch. The President nominates a candidate to be a Federal judge, and the Senate is required to give its advice and consent for that nominee to be placed on the bench. It is a shared function; the Senate is not merely a rubber stamp for a President's nominee.

To evaluate a nominee, Congress must be informed about that nominee. We are not supposed to consent first and be informed later.

In the case of Judge Roberts, we cannot make an informed judgment because he was so evasive at his hearing. During his confirmation hearing, Judge Roberts declined to answer questions more than 90 times. The Senate and the American people deserve to know more about an individual who will lead our Nation's judiciary for decades to come.

Despite numerous efforts by members of the Senate Judiciary Committee, the Bush administration was not forthcoming. Not a single document from the years when Roberts was deputy Solicitor General was made available.

To be deprived of important information left me unable to give informed consent. The Constitution requires the

Senate to advise and consent on these lifetime appointments, not to consent first and advise later.

However, there are some things we do know about John Roberts. We know that as an attorney for the Reagan and first Bush administrations, his writings on many issues relating to women's rights were disturbing for those concerned about such matters. In an official memo to the Attorney General, Roberts wrote about the ''so-called right to privacy.'' In the Supreme Court case Rust v. Sullivan, Roberts co-authored a brief that declared Roe v. Wade was ''wrongly decided'' and should be overturned. At his hearings, Mr. Roberts refused to clarify whether he still would vote to overturn Roe.

Roberts also wrote of a ''perceived'' gender bias in the workplace. A ''perceived'' bias?

I know that Roberts admitted in his confirmation hearings that there has been discrimination against women in the past. He had to say that. But did he really once believe such a bias was merely ''perceived,'' and could he still believe that today?

Let me tell my colleague, about gender bias that was not perceived. When my father died at an early age, my mother was left a young widow. I watched her struggle to make her way in the workplace. She never got the same opportunities for advancement as men. She was very successful as an insurance sales person, but she was told that after the war, the company she worked for would be unable to continue her employment. Her manager told her, ''You know, we don't hire women for these jobs,'' and thus she was terminated.

The views of John Roberts portray a judge who could also undermine important protections for the environment and minorities. In his 2 years as a judge on the U.S. Court of Appeals for the DC Circuit, for instance, Mr. Roberts did not support congressional powers to use the commerce clause of our Constitution to pass clean air and clean water regulations.

While working for President Reagan, Roberts opposed a bill in Congress that would have strengthened the protections of the Voting Rights Act. Memos from the 1980s also show that Roberts supported the Reagan administration's opposition to measures initiated to redress past racial discrimination.

John Roberts has said that when writing many of these memos in Republican administrations, he was merely a staff attorney, just doing his job, advocating the position of his client. He claims that these memos do not necessarily reflect his views.

Yet, when the Judiciary Committee gave him ample opportunities to clarify exactly which memos expressed his views and which ones did not, he declined to answer.

So, even though Mr. Roberts had ample opportunity to answer the questions of the Judiciary Committee, we are still uncertain what he really believes.

I believe the risk is too great to support the confirmation of a Chief Justice to the United States Supreme Court, the highest-ranking leader in the judicial branch of our Government.

The fact that he is an intelligent and experienced fellow isn't enough. That is not enough for me to be able to reassure the people of New Jersey that he would preserve and protect their rights. I don't know some things that I need to know and some of the things that I do know are disconcerting. I will therefore oppose his confirmation.

Mrs. DOLE. Mr. President, Judge John Roberts is indeed an outstanding choice to be the 17th Chief Justice of the United States. He is one of our Nation's top legal minds, and as the American public has learned, he is a man of great intelligence and skill who will serve our country with the same integrity that has been the hallmark of his professional career.

In fact, it is hard to think of anyone who is more qualified to lead this Nation's High Court. Soon after graduating magna cum laude from Harvard Law, where he was managing editor of the Harvard Law Review, Roberts clerked for then-Associate Justice Rehnquist—a man he learned much from and deeply admired for 25 years. He went on to work in various legal capacities in the Reagan administration and later went into private practice. Just 2 ago, the Senate confirmed Roberts for a seat on the DC Circuit Court of Appeals.

In his distinguished career, including his tenure as a government lawyer, Roberts has argued a remarkable 39 cases before the Supreme Court. The issues at the heart of these cases have spanned the legal spectrum—from healthcare law to Indian law, environmental law to labor law, and many, many other areas of the law as well.

In his Senate confirmation hearings last week, John Roberts reinforced that he will be the kind of Chief Justice America needs and deserves. Undergoing hours upon hours of questioning, Judge Roberts maintained a steady, even temperament. He politely and respectfully answered more than 500 questions—and amazingly without much of a glance at notes. Most importantly, Judge Roberts revealed a great deal about how he views the judicial role. He emphasized that he is committed to the rule of law, not to his personal preferences or views. He emphasized his belief that judges are not politicians or legislators and that the role of a judge is limited. I wholeheartedly agree with Judge Roberts' assessment of the appropriate role of judges, and I am confident that he will strictly uphold the law and not attempt to legislate his own personal views from the bench.

I can think of no vote more important, save a declaration of war, than giving advice and consent to a nominee for Chief Justice of the United States. This has been a fair process, and the Judiciary Committee held extensive and meaningful hearings. Over the course of the last week, the Senate has conducted a spirited debate on the qualifications of John Roberts to be the next Chief Justice. And today, we will give him an up or down vote.

I am very pleased that my colleagues have proceeded expeditiously on the nomination of Judge Roberts, as it is of utmost importance that this nation's High Court have a new Chief Justice before the start of the Court's fall term.

For many in this Chamber, today's vote will be the only time in their entire Senate careers that they provide advice and consent on a nominee to be Chief Justice. I commend my colleagues who have risen above the normal day-to-day politics of this institution. But still, there are some of you who question how Judge Roberts will vote on specific cases in the future. Others of you may also be swayed by the passions of partisans.

But none have questioned Judge Robert's integrity. None have questioned his temperament. None have questioned his intellectual ability. And none have questioned his qualifications. These are the traditional measures the Senate has looked to when evaluating a judicial nomination of this importance. I would ask that my fellow Senators look to these time-tested standards and vote to confirm John Roberts as Chief Justice of the United States.

Ms. LANDRIEU. Mr. President, I will vote for the nomination of John Roberts to be the next Chief Justice of the United States. He is intelligent with an impressive educational background; extensive experience arguing before the Supreme Court; and distinguished public service experience at the highest levels of government. Based on his resume, he has the qualifications to be Chief Justice.

But a nominee's resume alone is not automatic grounds for confirmation to any office. The Senate has a duty to delve more deeply beyond a nominee's paper record. So while Judge Roberts's credentials are clearly impressive, I still had concerns about his original nomination to the Court.

My concern lay in the fact that Judge Roberts was originally nominated to replace Justice Sandra Day O'Connor who in her 24 years on the court brought a voice of moderation and balance to an increasingly polarized body. She wrote opinions that surprised and outraged both the right and the left; proof positive that she was not grinding a particular political ax or was beholden to one unbending judicial philosophy. She judged and considered both sides of a case and the law carefully and was more interested in getting the case right than pushing a particular agenda.

Justice O'Connor understood, just as Potter Stewart did before her, that power on the Court lay in the center, not at the extremes. Judge Roberts was about to replace that all-important center. I was not sure which way he would go. In the wake of William Rehnquist's death, my concerns for this nominee deepened.

We had seen far right wing conservative ideologues nominated for these life-long positions on the Federal bench. Democrats fought for greater consultation with the President about them, only to be met with the ''nuclear

option.'' Fortunately, a group of my colleagues and I were able to reach agreement to avoid this outcome; we were called the Gang of 14. Judge Roberts's nomination was going to be the first major test of this agreement.

When I had the opportunity to meet with Judge Roberts, he was able to relieve some of my concerns, enough that I knew we would not have to consider a filibuster. He struck me in two ways. First, he described his judicial philosophy as modest. Modesty is not a word that gets used to describe public figures in Washington, DC, that often. He saw the role of a judge as being limited. As he said in his opening remarks before his hearing: ''I come before the committee with no agenda. I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda, but I do have a commitment. If I am confirmed, I will confront every case with an open mind.'' He further said that the legitimacy of a judge's role is confined to interpreting the law and not making it.

The second thing that impressed me in our meeting was his appreciation that for many in this country the Supreme Court is seen as the last hope they have to ensure that their rights are not taken away. Earlier this year, as my colleagues will remember the Senate finally went on record apologizing for lynching. James Allen's book ''Without Sanctuary'' described in vivid black and white photos and prose the acts of barbarism that were used to terrorize African Americans in our Nation's not too distant past.

I showed this book to Judge Roberts and he was visibly moved. He told me that he never wanted to forget that the courts were there to protect the powerless. Lynching victims did not get due process of law, even though many of the mobs had law enforcement officers in their midst, and often acted to avenge some perceived crime. Those victims did not get a jury trial with the right to face their accusers as called for under the Constitution.

I came away from this meeting believing he will treat all people who come before the Court with respect. That every argument would receive fair consideration because for the party making that argument a tremendous amount could be at stake.

I am well aware of the criticism of Judge Roberts's earlier writings both those we have seen and several we have not. Some of the things he wrote while a young lawyer in the Reagan White House and Justice Departments indicate that he was hostile to civil rights, women's rights, the Voting Rights Act, and the right of privacy. While he was in the Solicitor General's office he wrote a brief suggesting that Roe v. Wade be overruled.

In thinking about these writings and what they mean for who he is now, I was reminded of something that Justice Oliver Wendell Holmes once said: ''The character of every act depends upon the circumstances in which it is done.'' I chose to look at Judge Roberts's earlier writings in the same light. When Judge Roberts wrote those things he was a young lawyer who came to the Reagan Administration fresh from a prestigious clerkship with then Associate Justice William Rehnquist. He was a young conservative working at the highest levels of power in our country for a conservative icon, President Reagan. In those positions he was an advocate for the administration and the President's agenda at the time.

His most recent experience in private practice has changed his views on the role of the court, the law, and the needs of individuals. He pointed out to me that he has represented a wide range of clients in his private practice: large and small businesses, indigent defendants, and State governments. Each one, he said, deserved a careful analysis of their position and how the law would apply to their case. He took that approach to his current work on the Court of appeals.

I believe that Judge Roberts has taken to heart another observation by Oliver Wendell Holmes and that is, ''to have doubted one's own first principles is the mark of a civilized man.'' Judge Roberts, I am sure would look back on his earlier writings and understand that he must revisit them in light of the new responsibilities he is about to undertake.

In the weeks leading up to the confirmation hearings, there was a great deal of discussion and criticism of the administration for not turning over memoranda Judge Roberts wrote while he was Deputy Solicitor General at the Department of Justice. I was disappointed that the administration was not more forthcoming with these documents. I hope in the future we can reach an accommodation of some kind so that Senators will have complete information on a nominee. But the fact that we do not have these memos is not enough to keep this highly qualified nominee from becoming our next Chief Justice.

I want to congratulate Chairman SPECTER and Ranking Member LEAHY for the quality of the hearings they held for this nominee. The questioning was tough, but fair, and the committee performed its work with dignity. The hearing record gave us plenty of information to go on in making our decisions about this nominee. The qualities that every member of the Judiciary Committee saw in Judge Roberts, I saw firsthand in our meeting.

John Roberts is an excellent nominee who will be a fine Chief Justice. I encourage President Bush to send us a similarly qualified, modest, fair nominee to replace Justice O'Connor. The White House reached out to many Senators before naming Judge Roberts and I hope the administration will continue to build on that approach for this next nominee. I fully expect the President to nominate a conservative to fill Justice O'Connor's seat, but I also expect that nominee to be fair. Judge Roberts has set a very high bar. I hope the next nominee meets that standard.

The PRESIDING OFFICER. The majority whip.

Mr. MCCONNELL. Madam President, Senators cast many important votes—votes to strengthen our highway system, or to implement a comprehensive energy strategy, for example—but it is not often we cast a vote that is both important and truly historic. We do so, however, when we vote on whether to confirm a nominee to be Chief Justice of the United States.

There have been 9,869 Members of the House of Representatives, 1,884 Senators, and 43 Presidents of the United States, but only 16 Chief Justices. On average, each Chief Justice serves for well over a decade. Our last Chief Justice served for 19 years, a little short of two decades. The occupant of the ''center seat'' on the Court often has had a profound impact on the shape and substance of our legal system. But despite such profound effects, the position of Chief Justice actually got off to a rather inauspicious start.

The Constitution of the United States mentions the position of Chief Justice only once. Interestingly, it does not do so in Article III, which establishes the judicial branch of our Government. Rather, the Constitution refers to the position of Chief Justice, almost in passing, only in Article I, which sets forth the powers of the legislative branch.

There, in section 3, clause 6, it discusses the Senate's procedures for a trial of an impeached President, stating that ''When the President of the United States is tried, the Chief Justice shall preside.'' That is the sum and substance of his constitutional authority.

The Judiciary Act of 1789, which established the Federal court system, did not add much to the Chief Justice's responsibilities. It specified merely that ''the supreme court of the United States shall consist of a chief justice and five associate justices.''

It is not surprising, then, that the position of Chief Justice initially was not viewed as particularly important. Indeed, the first Chief Justice, John Jay, left completely disillusioned, believing that neither the Court nor the post would ever amount to very much.

It took George Washington four tries to find Jay's successor, as prominent people repeatedly turned him down. They were turning down George Washington's offers to make them the Chief Justice of the United States.

With such humble constitutional roots for the office, the power, prestige, and independence of the Supreme Court and the Federal court system in general often has been tied to the particular personal qualities of those who have served as Chief Justice.

John Marshall was our first great Chief Justice. His twin legacies were to increase respect for the Court and, relatedly, its power as well. He worked to

establish clear, unanimous opinions for the Court, and his opinion in Marbury v. Madison forever cemented the Court as a coequal branch of Government.

Marshall's successes were viewed, then as now, as a function of his formidable personal qualities. He is said to have had a ''first-class mind and a thoroughly engaging personality.'' Thomas Jefferson, for example, tried, in vain, to break his influence on the Court. In writing to James Madison, his successor, about Supreme Court appointments, Jefferson said:

[I]t will be difficult to find a character of firmness to preserve his independence on the same bench with Marshall.

That is Thomas Jefferson speaking about Chief Justice Marshall.

I find myself agreeing with the columnist George Will, who wrote recently in one of his columns:

Marshall is the most important American never to have been President.

William Howard Taft and Charles Evans Hughes also used their individual talents to become great Chief Justices. Taft, the only Chief Justice to serve also as President, which was prior to that, had a singular determination to modernize the Federal courts. He used his energy and his political acumen to convince Congress to establish what is now the Judicial Conference of the United States to administer the Federal courts; enact the Judiciary Act of 1925, which allowed the Court to decide the cases it would hear; and, before he left office, to give the Court its first, and current, permanent home—a stone's throw from where we stand today, across the East Lawn of the Capitol.

A fellow Justice called Charles Evans Hughes ''the greatest in a great line of Chief Justices.'' He was known for his leadership in running the Court and for constantly working to enhance the public's confidence in the Court. His successes were at least partly due to his keen appreciation of the limits of that office. This is what Charles Evans Hughes had to say:

The Chief Justice as the head of the Court has an outstanding position, but in a small body of able men with equal authority in the making of decisions, it is evident that his actual influence will depend on the strength of his character and the demonstration of his ability in the intimate relations of the judges.

Hughes was famous for the efficient, skillful, and courteous way in which he presided at oral argument, ran the Court's conferences, and assigned opinions, calling the latter his ''most delicate task.'' But his greatest service may have been in spearheading public opposition to FDR's court-packing plan.

Our last great Chief Justice, William Rehnquist, may be said to have possessed the best qualities of Marshall, Taft, and Hughes. He had an exceptional mind, an engaging personality, boundless energy, and a courteous and professional manner. These qualities helped him revolutionize Federal jurisprudence, administer the Supreme Court and the court system very efficiently, and interact constructively with those of us here in Congress.

Of course, we will soon vote on the nomination of his successor, Judge John Roberts, who, in one of life's bittersweet turns, served as a young and able law clerk to then-Associate Justice Rehnquist. In meeting with him, and watching his confirmation hearings, I believe Judge Roberts possesses many of the qualities of our great Chief Justices: an impressive legal acumen, a sterling reputation for integrity, and an outstanding judicial temperament. But I want to focus on one quality in particular; and that is, his devotion to the rule of law.

We use that term all the time, but the question is, what does it mean? I focus on the rule of law because of the positions my colleagues have taken during his nomination. One distinguished Member of this body said on the floor that he needed to find out ''whose side'' John Roberts ''is on.'' Another asked Judge Roberts whether, as a general proposition, he will be on the side of the ''big guy'' or the ''little guy.'' Still another insisted that the position to which Judge Roberts is nominated is akin to an elected official; in other words, an elected politician. Comments such as these are based on a fundamental misunderstanding of the role of a judge.

Many of the Founders were politicians, and they, of course, recognized that politics may favor certain constituencies. Judges, however, are not supposed to be on any group's ''side.'' They are not supposed to favor one party's ''little guy'' at the expense of another political party's ''big guy.'' In short, judges are anti-politicians; at least they are supposed to be.

In giving life tenure to Federal judges, the Founders did not want them—did not want them—to exercise the powers of politicians, to whom they had denied life tenure. None of us are given life tenure here, for good reason. As Alexander Hamilton wrote in Federalist No. 78:

It can be of no weight to say that the courts . . . may substitute their own pleasure to the constitutional intentions of the legislature. . . . The Courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment—

''Will instead of judgment''—

the consequence would equally be the substitution of their pleasure to that of the legislative body.

In other words, judges must only interpret the law, not write it in order to favor one group over another. Judge Roberts understands the role of a judge is that, and he is committed to adhering to it. Here is what he had to say. This was Judge Roberts at his hearing:

Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda, but I do have a commitment. If I am confirmed, I will confront every case with an open mind. . . . and I will decide every case . . . according to the rule of law, without fear or favor, to the best of my ability.

''Without fear or favor, to the best of my ability.''

To put it more simply, he knows if the law favors the ''little guy,'' then the ''little guy'' will win. If the law favors the ''big guy,'' then the ''big guy'' will win. It is as simple and principled as that.

I do not know—none of us do—the mark a Chief Justice Roberts will leave on the Court. With his many fine qualities, he may be a great administrator. He may lead some great reform of our court system. He may revolutionize some area of law. But he will be a successful leader. And I suspect that whatever else, with his total devotion to the rule of law, he will instill in our legal system a renewed appreciation for the role of judges in our Republic and, thereby, keep the Court on the path the Founders intended.

So today, I, like my colleagues, am mindful of the gravity and the privilege of this vote to confirm our 17th Chief Justice. I do so with the absolute conviction that Judge John Roberts meets the measure of his great predecessors, and will lead the Court with judgment, skill, and integrity as befits the third branch of Government—the branch that protects our liberties by insisting that ours is a country of laws and not of men.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Madam 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 10:30 a.m. to 10:45 a.m. will be under the control of the Senator from Vermont.

Mr. LEAHY. Madam President, as we come to the conclusion of these confirmation proceedings, I commend Senators on both sides of the aisle for taking the time and making the effort to actively participate in this process. Few duties and few votes are as enduring and as consequential as deciding on a nomination for the premier jurist of the United States in our Federal court system. We have had 43 Presidents in our Nation's history. We have only had 16 Chief Justices of the United States. In fact, only slightly under two dozen Members of the Senate have ever voted on the question of a Chief Justice.

We have had full and fair hearings. We have had a constructive debate. This process has been a credit to the Senate and to the Judiciary Committee. I commend especially Senator SPECTER of Pennsylvania, our chairman, and all of the members of the committee on both sides and their staffs for the detailed, sometimes grueling, preparation that evaluating a Supreme Court nomination requires.

I am sure people understand when I refer to the committee's Democratic

staff. They worked for 2 months. They labored dutifully. They gave up their weekends and their evenings, and with professionalism they helped Senators in our review of this important nomination. I particularly thank Bruce Cohen, Edward Pagano, Andrew Mason, Chris Matthias, Daniel Fine, Daniel Triggs, David Carle, Ed Barron, Elizabeth Martin, Erica Chabot, Erica Santo Pietro, Helaine Greenfeld, Jennie Pasquarella, Jeremy Paris, Jessica Bashford, Joe Sexton, Joshu Harris, Julia Franklin, Julie Katzman, Kathryn Neal, Katy Hutchison, Kristine Lucius, Kyra Harris, Lisa Anderson, Margaret Gage, Marit DeLozier, Mary Kate Meyer, Matt Nelson, Matt Oresman, Matt Virkstis, Nate Burris, Noah Bookbinder, Sam Schneider, Sripriya Narasimhan, Susan Davies, Tara Magner, Tracy Schmaler, Valerie Frias and William Bittinger. And their experience was duplicated by the hardworking Republican staff.

As a member of the minority party, I speak about our vital role in our system that is often less visible, but is crucial just the same. The minority sharpens the Senate's and the public's focus on issues that come before the Senate or sometimes on unattended issues that deserve the Senate's attention.

In these proceedings, we have helped sharpen the Senate's focus on issues that matter most in the decision before us, that of confirming a new Chief Justice of the United States.

I especially commend my fellow Democrats for taking this responsibility so dutifully. They waited to hear the evidence and to learn the particulars about this nomination. They did not rush to judgment. They did not speak out until after the hearings. Individual Senators now have weighed the evidence, and they have come to their individual conclusions.

On this side of the aisle, there will not be a lockstep vote. I appreciate the thoughtful remarks by those who decided to vote in favor of confirmation and by those who decide to vote against the nomination. I respect the decisions of Senators who have come to different conclusions on this nomination. I know for many, including myself, it was a difficult decision. I have said that each Senator must carefully weigh this matter and decide for herself or himself.

We are, each of us, 1 vote out of 100, but those 100 votes are entrusted with protecting the rights of 280 million of our fellow citizens. We stand in the shoes of 280 million Americans in this Chamber. What a somber and humbling responsibility we have in casting this vote.

I was glad to hear the Republican leader say earlier this week that a judge must jettison politics in order to be a fair jurist. He is right. I thought the remarks of the senior Senator from Maine were especially meaningful, and I appreciated that she was careful to include judicial philosophy among the criteria she considered on this nomination. And of course she is right.

As the Senate considers the nomination, it is important to have more information, rather than less, about a nominee's approach to the law and about his or her judicial philosophy.

For the American people whose lives will be directly and indirectly affected by the decisions of a nominee, it is equally important that the Senate's review process be fair, that it be transparent, and that it be thorough. The hearings we conduct and the debates we hold are the best and only opportunity for the American people to hear from and learn about the persons who could have significant influence over their constitutional protections and freedoms. We owe the people we represent a vigorous and open review, including forthright answers to questions.

My Vermont roots, which go back three centuries, 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 the Judiciary Committee in the hearings and to me in our meetings have meaning. I have taken him at his word that he does not have an ideological agenda, that he will be his own man as Chief Justice. I take him at his word that he will steer the Court so it will serve as an appropriate check on potential abuses of Presidential power, not just today but tomorrow. I hope that he will, and I trust that he will.

As we close the debate on this nomination and move to a vote, we do so knowing we will soon be considering another Supreme Court nominee in the Senate. Last week, Chairman SPECTER and I, along with the Republican and Democratic leaders of the Senate, met with the President. I urged him to follow through with meaningful consultation. I urged him to share with us his intentions and seek our advice on the next nomination before he acts.

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. I am sorry there was not, but there could and should be meaningful consultation on the person to be named to succeed Justice O'Connor, who has so often been the decisive vote of the Supreme Court.

The stakes for all Americans and for the Nation's well-being are high as the President contemplates his second pick for a Justice on the Nation's highest Court, a choice that will fill a swing vote and could steer the Court's direction long after the President is gone and long after most of us are gone.

The President does have this opportunity to work with us to unite the country, to be a uniter, to unite us around a nominee to succeed Justice O'Connor. Now more than ever, with Americans fighting and dying in Iraq every day, with hundreds of thousands of Americans displaced by disasters at home, it is a time to unite rather than divide. The Supreme Court belongs to all Americans, not to any faction. So for the sake of the Nation, I urge the President to live up to his original promise, to be a uniter and not a divider.

If I might speak just personally to Judge John Roberts who will soon be Chief Justice John Roberts: Be there for all Americans. And whoever comes before you as Chief Justice, it should make no difference if their name is PATRICK LEAHY or Patrick Jones, George Bush or George Smith. No matter what their issue is, be there for all of us because what you do will affect our children and our grandchildren. And, Judge Roberts, it will affect your two lovely children. It will affect all Americans.

We are a great and a good country, but we are a diverse country. Any nation the size of ours, a nation built on immigrants—such as my Italian grandparents or my Irish great grandparents—has to be diverse. But we are diverse in all ways. Protect that diversity. Protect that diversity because it is that diversity that makes us strong as a nation, far more than our military might if we protect our diversity—a diversity of thought, a diversity of religion, a diversity of race, a diversity of politics.

Judge Roberts, soon to be Chief Justice Roberts, be there for all 280 million Americans. That is what I have tried to do in putting myself in the shoes of those 280 million Americans. I will cast my vote with hope and faith, but you, Judge Roberts, show the same hope and faith for this great country that you love and I love and all the other 99 Members of the Senate love.

Madam President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the time from 10:45 a.m. to 11 a.m. will be under the control of the Senator from Pennsylvania.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, at the outset, I compliment and salute my distinguished colleague, Senator LEAHY, for his appropriate, really elegant, remarks in support of the nomination of Judge Roberts to be Chief Justice. I compliment him on his leadership in taking a difficult stand, being the first Democrat to announce support for Judge Roberts' confirmation. It is difficult to step out against party leadership, against what may be a party position, but I believe it is precisely that kind of leadership which is so important for the Senate to discharge its constitutional responsibility in the confirmation process. I compliment as well the other committee members—Senator KOHL and Senator FEINGOLD for stepping out in support of Judge Roberts. And at last count, I know that some 18 Democrats have stated their intention to vote for Judge Roberts.

As yet, there are some who are undeclared, so that number will grow

beyond. I believe it is a matter of real urgency that when we come to the designation of the Chief Justice of the United States, or any Supreme Court nominee, that politics stop. We say in foreign policy that partisanship should stop at the water's edge, and I extend that metaphor on the recognition that the pillars of the Senate immediately outside the Chamber are lined up directly with the pillars of the Supreme Court of the United States.

In that intervening few blocks on the green, on the Capitol complex, that partisanship should stop at the Senate pillars as they extend across the way to the Supreme Court pillars.

In the confirmation of a Supreme Court nominee, there is a unique confluence of the three branches of Government on our separation of powers, with the President exercising the executive authority to nominate, the Senate on the confirmation process, and then the seating of the new Justice in the Supreme Court. It is a matter of vital concern that it be nonpartisan.

Twelve days ago, on September 17, at the Constitution Center in Philadelphia, the 218th anniversary of the signing of the Constitution was celebrated. Today is an historic day, with Judge Roberts, by all conventional wisdom, slated to become the 17th Chief Justice of the United States. On only 16 occasions in the past have we had a new Chief Justice of our Nation.

I believe Judge Roberts comes to this position uniquely qualified, with an academic record of superior standing, magna cum laude, summa cum laude, Harvard College and Harvard Law School, a distinguished career clerking first with Circuit Judge Henry Friendly, a very distinguished judge in the Court of Appeals; then clerked for then Associate Justice Rehnquist; then as an assistant to Attorney General William French Smith; later as associate White House counsel in the Reagan administration; a distinguished practice in the law firm of Hogan & Hartson; then 39 cases argued before the Supreme Court of the United States. So he has a phenomenal record.

His answers to the questioning before the committee, which I think was very intense, very directed, appropriately tough, was that he saw the Constitution as a document for the ages responding to societal changes; that he saw the phrases ''equal protection of the law'' and ''due process of law'' as expansive phrases which can accommodate societal changes.

As he approaches the job of Chief Justice, he has a remarkable running start. He described his arguments before the Court as a dialog among equals, a phrase that I think is unique and in a sense remarkable; that as an advocate he had the confidence to consider himself talking to equals when he addressed the nine members of the Supreme Court.

There have already been indications from the members of the Court about their liking the fact that Judge Roberts is going to be the new Chief Justice. It is not easy to come into a court at the age of 50, where Justice Stevens, the senior Justice, is 85 and others, Justice Scalia, 68, the next youngest member, Justice Thomas, 57. When he has the self-confidence to consider as an advocate a dialog among equals, that is a good sign that he has the potential to bring consensus to the Court.

There was an extended discussion during his confirmation proceeding about what Chief Justice Earl Warren did in bringing the Court together for a unanimous decision in Brown v. Board of Education and how important it was. In a case involving deep-seated patterns of segregation and the difficulty of implementing that decision and the years it has taken—it is still a work in process to give quality to African Americans, to Blacks in our society—let us make no mistake about it, it has been, since 1954 when the decision came down, 51 years, and there is still more work to be done, but it was an outstanding job by Chief Justice Warren to bring the Court together with a unanimous decision to put desegregation on the best possible plane with unanimity among the nine Justices who decided the case.

As I emphasized during my questioning of Judge Roberts, there is much to be done to move away from the 5-to-4 decisions of the Court, some inexplicable this year. The Court upheld the displaying of the Ten Commandments on a tower in Texas 5 to 4, and rejected displaying the Ten Commandments in Kentucky; within the past 5 years, inconsistent decisions on the interpretation of the Americans with Disabilities Act, 5 to 4 upholding the access provisions, 5 to 4 rejecting the constitutionality on the provisions relating to discrimination in employment.

Judge Roberts as Chief Justice has the capacity to fully understand the balance of power between the Congress and the Court and to move away from the denigrating comments that the Court made in Alabama v. Garrett that in declaring an act unconstitutional they had a superior ''method of reasoning,'' or that in establishing the flabby test, flabby being the words of Justice Scalia, on invoking the test of proportionality and congruence in the 1997 case of Boerne, where Justice Scalia accurately noted in his dissent in Tennessee v. Lane that it was a flabby test that allowed judicial legislation and that the Court was setting itself up as the taskmaster of the Congress to see that the Congress had done its homework.

So the new Chief Justice will have his work cut out in trying to bring a consensus on the reduction of the proliferation of opinions with so many concurrences coming out of the Court.

Yesterday's Washington Post had a headline about a filibuster showdown looms in the Senate and a recitation of frustration among so-called Democratic political activists who do not think their elected leaders put up a serious enough fight as to Judge Roberts.

Having been there for every minute of the Roberts proceeding in my capacity as chairman to preside, it was a searching, probing inquiry into Judge Roberts' background and his approach to the issue confronting the Court. When they say there was not a sufficient fight, there were very senior Senators, very experienced, leading the opposition. Who can challenge the tenacity of Senator KENNEDY, Senator BIDEN, Senator FEINSTEIN, Senator SCHUMER, and Senator DURBIN putting up that battle?

In the final analysis, we have had many experienced Senators who have come forward to join Senators LEAHY, KOHL, and FEINGOLD on the committee, and Senators of standing and distinction—Senator BYRD, who has been in this body since his election in 1958, Senator LEVIN, 27 years in this body, Senator DODD, 25 years, Senator LIEBERMAN, and so many among the 18 Senators—where there is the showing of that kind of bipartisanship.

It is my hope we will carry forward the spirit of bipartisanship which was demonstrated in the last two confirmation proceedings. Justice Breyer was confirmed in 1994 with an 87-to-9 vote, with 31 Republicans joining 56 Democrats, so it did not make any difference to 31 Republicans that Justice Breyer was nominated by President Clinton, who was a Democrat.

The year before, Justice Ginsburg was confirmed 96 to 3, with 41 Republicans voting for her nomination. Before that, Justice Souter was confirmed 90 to 9, with 45 Democrats joining 45 Republicans. Nine Democrats did vote ''no'' against Justice Souter, perhaps influenced by the posters that he would wreck Roe v. Wade. We know he was in the joint opinion in Casey v. Planned Parenthood.

Before that, the votes were unanimous as to Justice John Paul Stevens and Justice Scalia, 98 to 0, and Justice O'Connor was confirmed 99 to 0.

While the votes among the Democrats will not be as strong as the 41 Republicans who voted for President Clinton's nomination of Justice Ginsburg, we have a sufficient indication of a strong bipartisan vote so that I think it is not unduly optimistic to look for a future where we will have partisanship stopping at the Senate columns.

We face another nomination imminently. There have been discussions as to what our sequence and timing will be. We have shown, with the cooperation of Senator LEAHY and the Senate Democratic leader, Senator REID, as we negotiated this timetable—and we had some angst in the negotiations but we worked in a cooperative way so that on September 29 we have met the timetable which we anticipated, although nobody was bound to it. There could have been objections and there could have been delaying tactics, but Senator REID, Senator LEAHY, and the Judiciary Committee, with Democrats as

well as Republicans, supported that timetable.

It is my hope we will have a nominee who will come forward to replace Justice O'Connor who will be in the mold of Judge Roberts. In a sense, Judge Roberts replaces Chief Justice Rehnquist. Perhaps the ideology is not so important with that replacement, but it is my hope we will have someone who in the mold of Judge Roberts will stand up to the job, looking for the interpretations of due process and equal protection as Judge Roberts did in an expansive way, and looking for societal interests in that broad interpretation.

I am pleased to be a participant in this historic occasion, and again I salute my colleagues on both sides of the aisle for the dignified proceeding and meeting our timetable, in coming forward to this confirmation vote at 11:30 this morning.

The PRESIDING OFFICER (Mr. ENSIGN). Under the previous order, the time from 11 a.m. to 11:15 a.m. will be under the control of the Democratic leader.

Mr. REID. Mr. President, as I announced on this floor last week, I intend to vote against the nomination of Judge John Roberts to be Chief Justice of the United States. In my meetings with John Roberts, I found him to be a very nice person. I like him. I respect his legal skills. I respect much of the work he has done in his career. For example, his advocacy on the environmental side of the Lake Tahoe takings case several years ago was remarkably good. He decided the law did not look too good to him, so he figured the way to win the case was to argue to the Court the facts, and he did that and he won the case. So I admire his legal skills, as I think everyone in this body does. But at the end of the day, I have had many unanswered questions about the nominee, and because of that, I cannot justify a vote confirming him to this lifetime position.

Each one of the 100 Senators applies his or her own standard in carrying out the advice and consent clause of the Constitution. That is a constitutional role that we have. I know that elections have consequences, and I agree that Presidents are entitled to a measure of deference in appointing judicial nominees. After all, the Senate has confirmed well over 200 of President Bush's nominees, some of whom possess a judicial philosophy with which I disagree. But deference to the President can only go so far. Our Founding Fathers gave the Senate the central role in the nominations process, and that role is especially important in placing someone on the Supreme Court.

If confirmed by the Senate, John Roberts will serve as Chief Justice of the United States and leader of the third branch of the Federal Government for decades to come. He will possess enormous legal authority. In my view, we should only vote to confirm this nominee if he has persuaded us he will protect the freedoms that all Americans hold dear. This is a close question for me, but I will resolve my doubts in favor of the American people, whose rights would be in jeopardy if John Roberts turns out to be the wrong person for the job.

As I have indicated, I was impressed with Judge Roberts the first time I met him. This was a day or two after he was nominated. I knew that he had been a thoughtful member of the DC Circuit Court of Appeals for the last 2 years. But several factors caused me to reassess my initial view. Most notably, I was disturbed by memos that surfaced from John Roberts' years of service in the Reagan administration. These documents raised serious questions about the nominee's approach to the rights of women and civil rights.

In the statement that I gave last week, I gave some specific examples of the memos that concerned me. I also explained that I was prepared to look past these memos if the nominee distanced himself from these views at his Judiciary Committee hearings. He did not. I was so disappointed when he took the disingenuous stance that the views expressed in these memos were merely the views of his client, the Reagan administration. Anyone who has read the memos can see that their author was expressing his own personal views.

When I saw Senator SCHUMER throw him the proverbial softball in these hearings, I waited with anticipation for the answer that I knew would come. This brilliant man, John Roberts, certainly could see what Senator SCHUMER was attempting to do. He was attempting to have John Roberts say: Well, I was younger then. It was a poor choice of words. If I offended anyone, I am sorry. I know it was insensitive. I could have made the same point in a different manner.

But he didn't say that. For example, the softball that was thrown to him by Senator SCHUMER was words to the effect: In a memo you wrote that President Reagan was going to have a meeting in just a short period of time with some illegal amigos, Hispanics—that was insensitive. It was unwise. And it was wrong. And he should have acknowledged that and he did not.

That affected me. It gave me an insight into who John Roberts is.

My concerns about these Reagan-era memos were heightened when the White House rejected a reasonable request by the committee Democrats for documents written by the nominee when he served as Deputy Solicitor General in the first Bush administration. The claim of attorney-client privilege to shield these documents was unpersuasive. This was stonewalling, plain and simple.

In the absence of these documents, it was equally important for the nominee to answer fully questions from the committee members at his hearing. He didn't do that. Of course a judicial nominee should decline to answer questions regarding specific cases that will come before the Court to which the witness has been nominated. We all know that. But Judge Roberts refused to answer many questions certainly more remote than that, including questions seeking his views of long-settled precedents.

Finally, I was swayed by the testimony of civil rights and women's rights leaders against this confirmation. As we proceed through our public life, we have an opportunity to meet lots of people. That is one of the pluses of this wonderful job, the great honor that the people of the State of Nevada have bestowed upon me. During my public service, I have had the opportunity to serve in Congress with some people whom I consider heroes. One of those is a man by the name of JOHN LEWIS. JOHN LEWIS was part of the civil rights movement, and he has scars to show his involvement in the civil rights movement. Any time they show films of the beatings that took place in the Southern part of the United States of people trying to change America, John Lewis is one of those people you will see on the ground being kicked and stomped on while punches are thrown. He still has those scars.

But those scars are on the outside, not the inside. This man is one of the most kind, gentle people I have ever met, someone who is very sensitive to the civil rights we all enjoy. Congressman JOHN LEWIS is an icon and, as I have said, a personal hero of mine. When JOHN LEWIS says that John Roberts was on the wrong side of history and should not be confirmed, his view carries great weight with me.

So I weigh John Roberts' fine résumé and his 2 years of mainstream judicial service against the Reagan-era memos, the nominee's unsatisfactory testimony, and the administrations's failure to produce relevant documents. I have to reluctantly conclude the scales tipped against confirmation.

Some have accused Democrats of treating this nominee unfairly. Nothing could be further from the truth. There are volumes written about the uncivil atmosphere in Washington, about how things could be better in the Senate. All those people who write that, let them take a look at how this proceeding transpired in the Senate and I hope on the face of America. It was not easy to get to this point. In 20 minutes, we will have a vote on the Chief Justice of the United States. But people should understand that the Judiciary Committee conducted itself in an exemplary fashion, led by ARLEN SPECTER and PAT LEAHY. No better example in Government could be shown than to look at how they conducted the hearings and the full breadth of everything that took place with this confirmation process. It is exemplary.

People have strong feelings, not only in that committee but in the Senate, and there were many opportunities for mischief. But because of the strong leadership of two distinguished Senators—one from the tiny State of

Vermont and one from the very heavily populated State of Pennsylvania—it all worked out. They trusted each other and the members of the Judiciary Committee trusted them, and after a few weeks of this process, which went on for months, by the way, every Member of the Senate saw that this was going to be a civil proceeding, and it was. It has been. I commend and applaud the dignity of these hearings.

Each Democrat considered the nomination on the merits and approached the vote as a matter of conscience. Democrats were not told how to vote, not by me, not by the chairman of the Judiciary Committee, not by the senior Member of the Senate, Senator BYRD. They will vote their conscience.

Democrats have not employed any procedural tactics that we might have otherwise considered. As Senator SPECTER and Senator LEAHY have said to the President himself—I have been there when they said it—we want the next nominee not to be extreme.

The fact that some Democrats will vote no on this nomination is hardly unfair. We are simply doing our duty under the Constitution that we hold so dearly. The Constitution—that is what this is all about, this little document. We have a role, a constitutional role, of giving advice and consent to the President. The consent will come in a few minutes. The advice has been long in coming.

In the fullness of time, John Roberts may well prove to be a fine Supreme Court Justice. I hope that he is. If so, I will happily admit that I was wrong in voting against his confirmation. But I have reluctantly concluded that this nominee has not satisfied the high burden that would justify my voting for his confirmation based on the current record.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I wonder if the senior Senator from Nevada will yield to me. I wish to make a comment. I know he still has a couple of minutes left.

Mr. REID. The time is yours.

Mr. LEAHY. Mr. President, I want to compliment the senior Senator from Nevada, the Democratic leader. I supported him for assistant leader, and I supported him for leader, and I have never regretted, nor doubted, that support.

I have been here 31 years. He is a fine leader. I have been here for 12 nominations to the Supreme Court, 2 of them for Chief Justice. I am one of only a handful of Senators who can say that. I know, throughout all this process, the Senator from Nevada, Senator REID, dealt with us evenhandedly and fairly. Never at any time did he try to twist any arms on this side of the aisle. Throughout it all he said: Keep your powder dry—his expression which I picked up—until the hearings were over. That is the sort of thing we should do. Hear the evidence first. Hear the evidence, and then reach a verdict. I am extremely proud of him.

We have reached different conclusions on this, but we remain friends and respectful to each other throughout. His praise of Senator SPECTER and of myself means so much to me. But I think, more importantly, what he has done means so much to the Senate. Senator REID has worked with both sides of the aisle to make sure that we were going to have a hearing for the Chief Justice of the United States that reflected what was best in this country.

When I finished my speech, I spoke directly to Judge John Roberts, and I will do so again: Please, remember there are 280 million Americans. Be a Chief Justice for all of us.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

The majority leader is recognized.

Mr. FRIST. Mr. President, the duty before us today to provide advice and consent on John Roberts' nomination as Chief Justice of the United States is perhaps the most significant responsibility we will undertake as elected leaders. It is a duty decreed to us by the Constitution and an obligation the American people have entrusted us to fulfill.

In this Chamber today, we are seated at the drafting table of history. We are prepared to write a new chapter in the history of our Nation. Our words and our actions will be judged not only by the American people today but by the eyes of history forever.

As we prepare to pick up the pen to write these words that will shape the course of our highest Court, I ask that we think hard about the words we will write. I ask that we think hard about the question we must answer: Is Judge Roberts qualified to lead the highest Court in the land? I believe the answer to this question is yes.

Judge Roberts possesses the qualities Americans expect in the Chief Justice of its highest Court and the qualifications that America deserves. Without a doubt, he is the brightest of the bright. His understanding of constitutional law is unquestionable. Judge Roberts has proven through his tenure on the District of Columbia Circuit Court of Appeals and in his testimony before the Judiciary Committee that he is committed to upholding the rule of law and the Constitution. He has demonstrated that he won't let personal opinions sway his fairminded approach. He will check political views at the door to the Court, for he respects the role of the judiciary and recognizes the importance of separation of powers.

As he so eloquently stated before the committee: ''Judges are like umpires. Umpires don't make the rules, they apply them . . . They make sure everybody plays by the rules, but it is a limited role.''

Judge Roberts will be a great umpire on the High Court. He will be fair and openminded. He will stand on principle and lead by example. He will be respectful of the judicial colleagues and litigants who come before the Court. And above all, he will be a faithful steward of the Constitution.

This is what we know about John Roberts: In the last few weeks, he has provided us information and answered our questions. John Roberts has fulfilled his obligation to the Senate.

Now it is time to fulfill our obligation to the American people. It is time for each Member to answer, Is John Roberts the right person for the job of Chief Justice of the United States? It is my belief that the answer is yes. It is my belief that the chapter we write should begin with his name. It is my hope that today Members will join me in writing the words; that Members will join me in writing ''yes'' for John Roberts' nomination as our Nation's 17th Chief Justice.

I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of John G. Roberts, Jr., of Maryland, to be the Chief Justice of the United States?

Under Resolution 480, the standing orders of the Senate, during the yea and nay votes of the Senate, each Senator shall vote from the assigned desk of the Senator.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 78, nays 22, as follows:

[Rollcall Vote No. 245 Ex.]

YEAS—78

Alexander	Dole	Martinez
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Ensign	Murkowski
Bennett	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Frist	Nelson (NE)
Brownback	Graham	Pryor
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Burr	Hagel	Salazar
Byrd	Hatch	Santorum
Carper	Hutchison	Sessions
Chafee	Inhofe	Shelby
Chambliss	Isakson	Smith
Coburn	Jeffords	Snowe
Cochran	Johnson	Specter
Coleman	Kohl	Stevens
Collins	Kyl	Sununu
Conrad	Landrieu	Talent
Cornyn	Leahy	Thomas
Craig	Levin	Thune
Crapo	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dodd	Lugar	Wyden

NAYS—22

Akaka	Corzine	Kennedy
Bayh	Dayton	Kerry
Biden	Durbin	Lautenberg
Boxer	Feinstein	Mikulski
Cantwell	Harkin	
Clinton	Inouye	

Obama	Reid	Schumer
Reed	Sarbanes	Stabenow

The nomination was confirmed.

Mr. FRIST. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FRIST. I ask that the President be immediately notified of the Senate's action.

The PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. FRIST. I ask that the Senate resume legislative session.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

IRAQ

Mr. FEINGOLD. Mr. President, I rise once again today to comment on the deeply disturbing consequences of the President's misguided policies in Iraq. I have spoken before about my grave concern that the administration's Iraq policies are actually strengthening the hand of our enemies, fueling the insurgency's recruitment of foreign fighters, and unifying elements of the insurgency that might otherwise turn on each other.

But today I want to focus on a different and equally alarming issue, which is that the Bush administration's policies in Iraq are making America weaker. None of us should stand by and allow this to continue.

It is shocking to me this Senate has not found the time and the energy to take up the Defense authorization bill and give that bill the full debate and attention it deserves. Our men and women in uniform and our military families continue to make real sacrifices every day in service to this country. They perform their duties with skill and honor, sometimes in the most difficult of circumstances. But the Senate has not performed its duties, and the state of the U.S. military desperately needs our attention.

The administration's policies in Iraq are breaking the U.S. Army. As soldiers confront the prospect of a third tour in the extremely difficult theater of Iraq, it would be understandable if they began to wonder why all of the sacrifice undertaken by our country in wartime seems to be falling on their shoulders. It would be understandable if they and their brothers and sisters in the Marine Corps began to feel some skepticism about whether essential resources, such as adequately armored vehicles, will be there when they need them. It would be understandable if they came to greet information about deployment schedules with cynicism because reliable information has been hard to come by for our military families in recent years. And it would be understandable if they asked themselves whether their numbers will be great enough—great enough—to hold hard-won territory, and whether properly vetted translators will be available to help them distinguish friend from foe.

At some point, the sense of solidarity and commitment that helps maintain strong retention rates can give way to a sense of frustration with the status quo. I fear we may be very close to that tipping point today. It is possible we may not see the men and women of the Army continue to volunteer for more of the same. It is not reasonable to expect that current retention problems will improve rather than worsen. We should not bet our national security on that kind of wishful thinking.

Make no mistake, our military readiness is already suffering. According to a recent RAND study, the Army has been stretched so thin that active-duty soldiers are now spending 1 of every 2 years abroad, leaving little of the Army left in any appropriate condition to respond to crises that may emerge elsewhere in the world. In an era in which we confront a globally networked enemy, and at a time when nuclear weapons proliferation is an urgent threat, continuing on our present course is irresponsible at best.

We are not just wearing out the troops; we are also wearing out equipment much faster than it is being replaced or refurbished. Days ago, the chief of the National Guard, GEN H. Steven Blum, told a group of Senate staffers that the National Guard had approximately 75 percent of the equipment it needed on 9/11, 2001. Today, the National Guard has only 34 percent of the equipment it needs. The response to Hurricane Katrina exposed some of the dangerous gaps in the Guard's communications systems.

What we are asking of the Army is not sustainable, and the burden and the toll it is taking on our military families is unacceptable. This cannot go on.

Many of my colleagues, often led by Senator REED of Rhode Island, have taken stock of where we stand and have joined to support efforts to expand the size of our standing Army. But this effort, which I support, is a solution for the long term, because it depends on new recruits to address our problems. We cannot suddenly increase the numbers of experienced soldiers so essential to providing leadership in the field. It takes years to grow a new crop of such leaders. But the annual resignation rate of Army lieutenants and captains rose last year to its highest rate since the attacks of September 11, 2001. We are heading toward crisis right now.

Growing the all-volunteer Army can only happen if qualified new recruits sign up for duty. But all indications suggest that at the end of this month the Army will fall thousands short—thousands short—of its annual recruiting goal. Barring some sudden and dramatic change, the Army National Guard and Army Reserve too will miss their annual targets by about 20 percent, missing their targets this year by 20 percent in terms of recruitment. GEN Peter Schoomaker, the Army's Chief of Staff, told Congress recently that 2006 ''may be the toughest recruiting environment ever.''

Too often, too many of us are reluctant to criticize the administration's policies in Iraq for fear that anything other than staying the course set by the President will somehow appear weak. But the President's course is misguided, and it is doing grave damage to our extraordinarily professional and globally admired all-volunteer U.S. Army. To stand by—to stand by—while this damage is done is not patriotic. It is not supportive. It is not tough on terrorism, nor is it strong on national security. Because I am proud of our men and women in uniform, and because I am committed to working with all of my colleagues to make this country more secure, I am convinced we must change our course.

As some of my colleagues know, I have introduced a resolution calling for the President to provide a public report clarifying the mission the United States military is being asked to accomplish in Iraq, and laying out a plan and a timeframe for accomplishing that mission and subsequently bringing our troops home. It is in our interest to provide some clarity about our intentions and restore confidence at home and abroad that U.S. troops will not be in Iraq indefinitely. I have tried to jump-start this discussion by proposing a date for U.S. troop withdrawal: December 31, 2006.

We need to start working with a realistic set of plans and benchmarks if we are to gain control of our Iraq policy, instead of simply letting it dominate our security strategy and drain vital resources for an unlimited amount of time.

So this brings me to another facet of this administration's misguided approach to Iraq, another front on which our great country is growing weaker rather than stronger as a result of the administration's policy choices, and that is the tremendously serious fiscal consequences of the President's decision to put the entire Iraq war on our national tab. How much longer can the elected representatives of the American people in this Congress allow the President to rack up over $1 billion a week in new debts? This war is draining, by one estimate, $5.6 billion every month from our economy—funds that might be used to help the victims of Hurricane Katrina recover, or to help