it the Reagan Restoration. I prefer the latter.

The man from Dixon—lifeguard, radio announcer, actor, Governor, father, adoring husband, President of the United States—restored not only our confidence but our fundamental understanding of the source of America's greatness: each and every one of us striving to realize the American dream.

In his 1982 State of the Union Address, President Reagan told the Nation:

We do not have to turn to our history books for heroes. They're all around us.

To the freedom fighters in the former Soviet Union to his fellow citizens here at home, Ronald Wilson Reagan was one of those real life heroes who brought hope, freedom, and opportunity to millions.

I yield the floor and 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. WYDEN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

I ask unanimous consent to speak in morning business for up to 20 minutes.

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

REAUTHORIZING THE USA-PATRIOT ACT

Mr. WYDEN. Mr. President, tomorrow the Senate Select Committee on Intelligence gets back on the national security high wire as the committee continues to work on legislation reauthorizing the USA PATRIOT Act. I described this process as a high-wire act because success means striking a balance, an equilibrium, between fiercely protecting our country from terrorism while still preserving the privacy and civil liberties that make our democracy so precious.

Chairman PAT ROBERTS, to his credit, has held several open hearings on this issue. I gladly participated because I believed the open hearings would help to address some of the skepticism about why the PATRIOT Act has almost totally been debated in secret.

Unfortunately, the most important part of the debate, the part where the committee must actually discuss how to walk that high wire, is still going to be done behind closed doors. In my view, this secrecy in going forward will undermine any public confidence that open hearings helped to create.

I have repeatedly and vigorously opposed making these decisions out of public view. Holding the decisionmaking process in secret is a mistake because it makes it harder for citizens to hold elected officials accountable. Holding the decisionmaking process in secret is unnecessary because it is not difficult for the committee to go behind closed doors, certainly, briefly, when necessary, to discuss any PATRIOT Act-related issue that requires secrecy. Holding the decisionmaking process in secret gratuitously feeds the cynicism that citizens have about the Government's true intentions with respect to this law. Keeping these proceedings secret fuels concerns that the committee is making choices that will not stand up to public scrutiny—deciding, for example, that you can only have security if you sacrifice privacy. In my view, that is a false choice. I simply do not believe that protecting our country from terrorism and securing the privacy rights of our citizens are mutually exclusive objectives.

So here is my bottom line: Give law enforcement and intelligence officials the tools they need to protect our country, but stay away from the fishing expeditions. I do not think anybody will argue with me when I say that Congress passed the PATRIOT Act shortly after September 11, 2001, because it was necessary to move in a hurry. It was clear no one could have conceived of the way in which our country was exposed to attack. It was clear that the Federal Government needed to make major changes in how it fought terrorism, and those were needed immediately.

The best parts of the law tore down the unnecessary walls that had grown up between law enforcement and the intelligence agencies. Today, if you go out to the National Counterterrorism Center, the people on the ground there will tell you that those walls have been torn down, and they have stayed down. So the men and women on the front lines in the fight against terror are, in my view, more effective than they were.

However, other provisions of the law have sparked serious concerns. Giving Federal authorities broad powers of investigation has raised the specter that the rights of law-abiding citizens might be severely compromised, accidentally or even intentionally. In moving forward, I want to make sure that the right of our citizens to privacy is certainly not compromised intentionally.

I am not suggesting our national intelligence or law enforcement agencies are currently being misused the way they have been during our history—such as in the Watergate scandal. But it is important for us to make sure that appropriate safeguards are in place to prevent unintentional abuses and prevent future even darker episodes in our country's history.

In my view, a proposed addition to the PATRIOT Act, one that certainly warrants open debate, is the administrative subpoena which, in my view, raises the risk of real abuse. I want to make it clear on this subject today, I believe reauthorization of the PATRIOT Act should simply not include new administrative subpoena authority for the FBI.

I am opposed to giving the FBI this authority to write their own administrative subpoenas for foreign intelligence investigations for a number of reasons. Doing so would give the FBI the authority to demand just about anything from just about anybody, with no independent check, simply by claiming that it is relevant to a national security investigation. The FBI already has access to the waterfront of personal information through the FISA warrant process. All they have to do is go before a judge and explain why it is relevant in the most general terms. By giving the FBI the authority to write their own administrative subpoenas, the Congress would be removing this even last modest safeguard.

Administrative subpoenas are currently used by many Federal agencies in many contexts. But, except in a very few limited cases, they are not used for national security investigations. National security investigations are simply different than criminal investigations. They, of course, are conducted in secret and do not require evidence of a crime. This is why there are different rules for the two types of investigations. It is not enough, in my view, to say what is good for the goose is good for the gander. The question here is, What is good for the American people? The answer is not administrative subpoenas.

As proposed, these subpoenas would be extraordinarily broad in their scope. They could be used to gain access to your credit records, your video rentals, your medical records, your gun purchases. They could be used to obtain just about anything. These subpoenas would only be seen by a judge if the recipient of the subpoena decided to challenge it. Even if the recipient was properly notified of his or her right to challenge, they might not be in the position to have the time or the resources to even make that challenge.

For example, there are 56 FBI field offices, one in just about every major American city. The head of the local field office could issue an administrative subpoena to a hospital director and ask for all the hospital's medical records simply by claiming they were relevant to an investigation. If the hospital director was busy or did not have the resources to make a challenge, then no judge—no judge would ever see this administrative subpoena. The patients would not even know that their records had been seized. They would be totally in the dark.

Even the FBI acknowledges that the agency can get all the information they could possibly need with the investigative powers they currently have. The only reason they have suggested for supporting this judge-free administrative subpoena is speed. They say that the FISA warrant process is simply too slow for time-sensitive, emergency situations.

This afternoon I would like to propose on the floor of the Senate an alternative. In this year's reauthorization of the PATRIOT Act, Congress can balance protection for the public with the right of privacy by creating an emergency use provision to the FISA business records authority. This way, under the proposal I make today, if the FBI needs information right away, the FBI could notify a judge that they

were going to get it—send an e-mail, leave a voice message—and then go get it without waiting for a response. Then they would have 72 hours to apply for the warrant so they could do it after the emergency had been addressed. If the judge felt the FBI had acted inappropriately and decided not to grant the warrant, then the Agency would not be able to use whatever information they had gathered. The idea of adding an emergency use provision along the lines I have described would address the FBI's concern for speed without creating a broad new authority that would remove all the independent checks, even in situations where there were not emergencies.

Although time was not taken in 2001 to thoroughly discuss the privacy issues related to the PATRIOT Act, most of the law's more controversial provisions were made subject to sunset. This was done in hopes of a more thoughtful, informed debate during the reauthorization. The sunsets, in my view, have had an unanticipated benefit. They have made the agency very careful about how it uses the powers that have been granted.

In addition to the proposal that I am making today to give the FBI more authority to deal with emergencies, I believe the Senate should also focus its attention on sharper scrutiny for the sunset provisions in the act. Some of the sunset provisions that have existed have not attracted any controversy. Others have not only attracted controversy, serious questions have been raised about their use and possible misuse. I want to consider some of these provisions in detail today and, in addition to the proposal I have made with respect to giving the FBI emergency authority, I urge firm action to safeguard the American people as the sunset provisions are considered in the PATRIOT Act's renewal.

The provision that has attracted the most attention is probably section 215 of the PATRIOT Act. It is commonly referred to as the library records provision, but in fact it ought to be called the business records provision. Suffice it to say, it is a sweeping one. This provision gives law enforcement access to all types of information from video rentals and gun purchases to tax and medical records. In a nutshell, here is how it works.

Under the Foreign Intelligence Surveillance Act, FISA—which I have referred to several times already—it is possible for FBI agents to go to a judge and request a secret warrant to obtain business records. The person to whom the records pertain is not informed. This means that if the FBI serves a FISA warrant on a bank or hospital, the bank president or hospital director would know about it, but the customers or patients whose records had been seized would know nothing at all.

Before the PATRIOT Act, if the FBI wanted to get one of these warrants, they had to show a judge specific and articulable facts that the records pertained to a terrorist or a spy. The PATRIOT Act lowered the standard, so now the FBI simply has to assert that the records are, in their view, relevant to a terrorism inquiry. To protect innocent Americans, the business records provision needs to be modified in several ways.

First, the Congress should require that the application for a FISA warrant include a statement of facts explaining why the records are relevant to an investigation. Congress should also raise the standard for the most sensitive type of records. The ''relevance'' standard may be appropriate for a hotel or car rental record, but it may be necessary to require the FBI to show hard evidence before giving access to more sensitive records such as medical records.

Finally, there must be an increase in the reporting that is done in this area. Congress's duty to look out for abuses of the PATRIOT Act is often a challenging one. Little reporting is required on the use of some provisions. Details regarding the use of the PATRIOT Act are reported, even when reporting is not required. When there is a report, the information is often classified. National security investigations often need to be conducted in secret, but revealing how often particular techniques are used does not make them less effective. Congress needs this information to perform its constitutional responsibilities, and the fact is too often Congress has been doing oversight over the intelligence community in the dark.

The Intelligence reform bill that passed a few months ago tried to fill several of the reporting gaps, but there are others that need to be closed as the PATRIOT Act is reauthorized. These reports should also be made public, to the maximum extent possible so that the American people can know all that is safely to be known about FBI activity under the law.

One of the major reporting gaps I am concerned about involves what the FBI calls discreet inquiries that the agency uses to obtain library records. The FBI Director, Mr. Mueller, has testified before several Senate committees that, while FISA warrants could be used to obtain people's library records, this has never been done. But the FBI director went on to say that the Agency does obtain library records through what he called discreet inquiries. So I think that the American people deserve to know what a discreet inquiry is. The American people deserve to know how often they are used. And I have asked the FBI to get me this information.

Over a month later, despite multiple requests by the staff of the Intelligence Committee, the FBI has still not provided an answer to the question. Suffice it to say, the longer the Agency waits, in terms of answering the question of how they obtain library records, the more Americans believe that the Agency is stepping over the line and into the lives of law-abiding citizens. Those most directly affected by the library records provision have been expressing strong concerns. The American Library Association recently wrote me:

''[D]iscreet inquiries'' by the FBI put our librarians at risk of breaking state laws if agents approach them for information without subpoenas or other properly executed legal documents and intimidate them into complying with the request.

I ask unanimous consent the letter from the American Library Association be printed in the RECORD.

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

AMERICAN LIBRARY ASSOCIATION,
Washington, DC, May 25, 2005.

Hon. RON WYDEN,
U.S. Senate,
Washington, DC.

DEAR SENATOR WYDEN: On behalf of the over 65,000 members of the American Library Association (ALA) I am writing to express our appreciation for your efforts to seek further information about the nature and scope of FBI investigations into library records. We thank you for your hard work examining law enforcement activity in libraries under Section 215 of the USA PATRIOT Act, national security letters, and ''discreet inquiries'' without, apparently, warrants or subpoenas.

Librarians across the country, in all kinds of libraries, take their jobs as public servants very seriously. We are as concerned about our Nation's security as any other sector of the American public. At the same time, the issue of privacy and the confidentiality of library records is a long-held and deep principle of our profession. The American public values this principle as well: forty-eight States have laws protecting the confidentiality of library records, and the other two States have attorney general opinions doing so.

As you know, both the FBI and the Department of Justice have reported that there has been ''zero'' use of Section 215 in libraries. However, our office is aware, at least anecdotally, of FBI inquiries made using other methods in what do not appear to be normal criminal or civil investigations. To determine the extent of these inquiries ALA has begun its own research regarding the scope of law enforcement investigations of library patrons and their reading records.

Leaders of ALA have met with Attorney General Gonzales and FBI Director Mueller to discuss our concerns about these library-related investigations as well as to discuss our ongoing research. We are seeking aggregated data to understand better the breadth of FBI investigations and the impact the investigations have on library users.

We very much appreciate your questions seeking further information from Director Mueller about these inquiries. Specifically, we would like to know:

What exactly is a ''discreet inquiry?''

Do these inquiries require a subpoena and are they subject to any judicial oversight?

How many ''discreet inquiries'' have been made in the last four years? 1 year? In general, what kind of evidence was uncovered?

Have these inquiries been related only to foreign intelligence investigations or have they been used in non-intelligence investigations?

What are the procedures and authorization for such inquiries?

Are there pertinent FBI guidelines and related oversight procedures for assessing ''discreet inquiries'' and if so, are there aggregated public reports on this type of inquiry?

The American Library Association holds that privacy is essential to the exercise of free speech, free thought, and free association and that, in a library, the subject of users' interests should not be examined or scrutinized by others. Whether there has been one F.B.I. inquiry at libraries on the reading habits of patrons or thousands, the threat to the confidentiality of library records chills library use by the public and threatens confidentiality in other venues where privacy is the essence of the service/relationship.

Thank you again for all your work on issues surrounding law enforcement investigations in libraries and on the other important provisions of the USA PATRIOT Act and related regulations that affect the privacy and civil liberties of the public. We support your efforts to address both the need for effective law enforcement and the civil liberties of the American public in an appropriate and proportional manner.

Sincerely,

LYNNE E. BRADLEY,
Director of OGR, ALA—Washington Office.

Mr. WYDEN. Mr. President, no one is saying the FBI should not be allowed to conduct voluntary interviews. A voluntary interview is certainly a legitimate and often nonintrusive investigative technique. But the FBI agents must not be out there in effect demanding the records of our citizens without following proper legal procedures. Since the FBI has been so reluctant to discuss the activities relating to these discreet inquiries of libraries, the PATRIOT Act should require the Bureau to report on this topic. At a minimum, they should be required to tell the Congress how this information is being used so the Congress can determine whether the FBI's use of this provision is appropriate.

In several other areas of the PATRIOT Act there should be modifications. A major problem area, for example, is section 505 that deals with national security letters. National security letters are another way for FBI agents to obtain records. Unlike FISA warrants, national security letters do not require the approval of a judge. The FBI has said the national security letters can be appealed, but the current PATRIOT Act does not specifically discuss this. It is often difficult for recipients to learn more about the requests in their letters and their right to refuse since they are usually barred from discussing the letter with anyone, including a lawyer.

In the recent case of Doe v. Ashcroft, the Federal judge found that the FBI had abused this authority by using a national security letter to demand records from an Internet service provider without telling the provider that the letter could be challenged or even that it could be discussed with a lawyer. Congress should reform the national security letter statute to make it clear that national security letters can be challenged, that they can be discussed with a lawyer, and that anyone who receives one has the right to be informed as to their rights. Congress certainly ought to consider adding sunset to this provision.

Section 206 authorizes the FBI to use roving wiretaps in national security investigations. The roving wiretap authority allows the FBI to tap not just a particular phone but any phone the person being targeted might use. Unlike criminal investigations, there is not even a requirement for the FBI to make sure that the person being investigated is using a line. If a suspected terrorist worked in a warehouse, roving wiretap authority could be used to tap a pay phone in that warehouse, and every person who used that phone could have their conversations secretly recorded. This provision, in my view, again, should be modified, and the sunset should definitely be renewed so the Congress has more time to investigate how it has been used.

Finally, some of the tricky wording in several places of the PATRIOT Act needs to be clarified. A provision that looks like a safeguard for civil liberties may expose Americans to unfair scrutiny when they exercise their rights. In several places, the PATRIOT Act prevents the use of various investigative techniques when the investigation is based solely on the first amendment activities of U.S. persons. Our colleague, Senator LEVIN, has pointed out that simply saying ''solely'' without clarification can create problems and seems to indicate that it is acceptable to investigate Americans largely or even primarily on the basis of their first amendment activities. I am not convinced this safeguard is actually a safeguard. I hope it will be clarified and strengthened throughout the consideration of the PATRIOT Act.

The Intelligence Committee may finish drafting a reauthorization of the PATRIOT Act in the near future. My sense is the Judiciary Committee will move shortly afterward. It is possible other committees may wish to weigh in on these portions of the PATRIOT Act that fall under their jurisdiction. As we go forward in this debate, as the Congress proceeds to try to walk on that high wire, striking a balance between fighting terrorists ferociously while protecting our civil liberties, I simply say to the Senate this afternoon that the Senate can do better. It is possible, for example, to give the FBI additional emergency power, power that should address the concerns they have raised in the open hearings, without removing the independent checks so necessary in circumstances that are not emergencies.

The bottom line is, let's make sure law enforcement has the tools that are necessary to fight terrorism, to protect the people of our country, but not hang up a sign on this PATRIOT Act reauthorization that says: You hereby have a right to go on any fishing expedition you desire.

The Senate can do better. The job of creating a more balanced protector of security and civil liberties still has work ahead of us. I look forward to working with our colleagues on a bipartisan basis to achieve those ends.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. BOXER. Mr. President, as I understand, the Democrats have until 4 p.m. to speak as in morning business.

The PRESIDING OFFICER. The Senator is correct. The time is to speak on the nomination.

Mrs. BOXER. Excellent. Mr. President, I am going to speak about the nomination of Janice Rogers Brown. Before I go into the reason I hope the Senate will reject this nomination—and the ''reasons'' because there are many—I wish to put into context for my colleagues, and for anyone watching this debate, why the Senate has spent so much time looking at the rules surrounding the nomination and confirmation of Federal judges.

It is very clear when you vote to confirm a Federal judge that it is a very important vote. Why is that? It is because these judges really vote on so many issues of importance to us, whether it is our right to vote, our right to a safe workplace, our right to privacy, our consumer rights—it goes on and on—our victims' rights. The fact is, these issues are crucial, and who winds up on the bench on Federal courts is very important to the American people.

This is not an abstract debate about Senate rules and procedures; it is really about who sits on the courts, and why is it that for 200-plus years the minority party has had the right to filibuster or delay the vote on nominees who they believe are outside the mainstream—whether that means they are to the far right of the mainstream, as in this particular case, or to the far left of the mainstream.

Presidents who have tried to pack the courts in the past, have tried to twist the arms of the court, have been rebuffed, from Thomas Jefferson, once, to Franklin Delano Roosevelt, another time, when FDR had 74 Democrats in this Chamber. He could do anything he wanted, if they agreed. He had won his election by 60 percent of the votes. He decided he did not like what the courts were doing, so he said: Well, I want to double the size of the courts. He had the votes. But the Democrats in the Senate said: Mr. President, we like you. We love you. We think you are a great President. But we will not allow you to pack the courts because the bottom line is that our Founders did not want a ruler, they wanted someone to govern. They did not want a ruler, they wanted someone to govern. Therefore, they believed very strongly in checks and balances and the rights of the minority so that we do not have a court system that has on it people who would be so far out of the mainstream as to disrupt the very fabric of our country.

Now, this President did his own move to pack the courts. Let's face it, that is

what happened. He had the agreement and acquiescence of almost a majority of the Senate, until a few brave Republicans came over to our side and said: Look, let's step back from this precipice. Let's not do away with the filibuster. These are lifetime appointments. These judges get good pay, and they are never up for election. This is the only check and balance we have, when their names are brought before us.

So I was so appreciative of my colleagues on the other side for standing up and saying: We are not going to change the rules of the game in the middle of the game because some President wants to pack the courts with people who are so far out of the mainstream that it could set our country back for generations. That is what really happened.

Now, in order to get that deal they came up with, they said to our side: You are going to have to give. You are going to have to give on three judges whom you have stopped. This 10 on the chart represents the number of judges Democrats have stopped. They said: In order to get this deal, you have to give up on three. One of those three judges is Janice Rogers Brown, a nominee way out of the mainstream, to the extreme, which I will explain.

But we have to remember this deal only involves the vote to end the filibuster. We said: OK, enough of our colleagues will join with you to end the filibuster. But the deal did not say: Therefore, she would get automatically voted in. We still have the up-or-down vote on Janice Rogers Brown. A lot of us believe very strongly that 51 of us should oppose this nomination. I think we might well get those 51 noes, or close to it, but, obviously, we are pushing for 51.

Now, again, I want to focus your attention on these numbers: 208 to 10. It is actually 209 to 10 with the Priscilla Owen judgeship approved. We have stopped 10. We have approved 209. And this President and the Republicans here have been crying every morning that they do not get 100 percent of what they want. They have gotten 95 percent of what they want. It is not good enough. When you want all the power, it is not good enough.

When I go home and look in the eyes of my constituency, I ask: If you got 95 percent in your course, would you be happy? Oh, yes. If you got 95 percent of what you wanted from your spouse, would you be happy? Oh, ecstatic. If you wrote a list down of everything you wanted in your life—where you wanted to go for a vacation, where you wanted to be educated, the kind of car you wanted—and at the end of the day you got 95 percent of what you wanted, you would be thrilled, except if you believe you deserve 100 percent, by God, and nothing less will do. That is what we are facing with this Republican power grab. That is what we are facing.

Remember those numbers: 209 to 10. When you are out somewhere and somebody says: Well, aren't the Democrats blocking all these judges? No, no, no. Ten; and we approved 209.

Now, I am going to show you in just a moment the list of the groups that oppose Janice Rogers Brown to be put on the DC Circuit Court of Appeals. Now, when you see these groups, you will be shocked because I think everybody knows by now that Janice Rogers Brown is the daughter of a sharecropper. We have heard that over and over again, and that is remarkable. We have a lot of remarkable stories in America.

My own mother never even went to high school. I am in the Senate. She had to drop out to support her family. There are lots of stories like that. But I do not expect people to automatically support me because in my family I went to the Senate and my mother never graduated from high school. It is interesting and it is important, and it certainly says a lot about our country and the opportunity our country affords people such as Janice Rogers Brown and BARBARA BOXER, and particularly people of color, women of color who have even a harder time.

It is a miraculous country we live in. That is why I oppose her nomination, because she would set it back. It is not her life that I attack when I say I am not for Janice Rogers Brown; it is what she will do to your life. If you look at her record, you will see why the things she will do to your life are things you would not want.

So I want you to listen to the groups that are opposed to Janice Rogers Brown:

ADA Watch/National Coalition for Disability Rights; Advocates for the West; AFL–CIO; Alliance for Justice; Alliance for Retired Americans; American Association of University Women. I want you to think about why these groups are opposed to her. Every one of them is opposed to her because they have read her list of cases and they understand that she will hurt them. Retired Americans, when you hear about what she thinks about seniors, you will understand that.

American Federation of State, County, and Municipal Employees; American Lands Alliance; American Planning Association; American Rivers; Americans for Democratic Action; Americans United for Separation of Church and State; Amigos Bravos; Bazelon Center for Mental Health Law; Center for Biological Diversity; Center for Medicare Advocacy; Citizens Coal Council; Clean Water Council; Clean Water Action; Clean Water Action Council; Black Women Lawyers of Los Angeles; California Abortion and Reproductive Rights Action League; California Association of Black Lawyers; Californians for Fair and Independent Judges; California Federation of Labor, AFL–CIO; California League of Conservation Voters; California National Organization for Women.

Do we have more here?

California Native Plant Society; California Women's Law Center; Californians for Alternatives to Toxics; Chinese for Affirmative Action; Environmental Defense Center; Environmental Law Foundation; Equality California; John Muir Project; Coalition of Labor Union Women; Coast Alliance; Committee for Judicial Independence; Community Rights Counsel; Congressional Black Caucus; Defenders of Wildlife; Delta Sigma Theta Sorority; Disability Rights Education and Defense Fund; Earthjustice; Earth WINS; Endangered Species Coalition; Equal Justice Society; Families USA; Feminist Majority; Friends of the Earth; Georgia Center for Law in the Public Interest; Gray Panthers; Great Rivers Environmental Law Center; Leadership Conference on Civil Rights; Legal Momentum, formerly the NOW Legal Defense and Education Fund; Northwest Environmental Advocates; NOW Legal Defense and Education Fund; Oil Field Waste Policy Institute; People for the American Way; Planned Parenthood Federation of America; Progressive Jewish Alliance; Religious Coalition for Reproductive Choice; Service Employees International Union; the Sierra Club; Southern Appalachian Biodiversity Project; the Foundation for Global Sustainability.

And I have some more to share with you. It is very rare to see such an outpouring of opposition to a court nominee.

Planned Parenthood Golden Gate; Planned Parenthood of Los Angeles; San Bruno Mountain Watch; San Francisco La Raza Lawyers; SEIU Local 99; Stonewall Democratic Club of Los Angeles; Unitarian Universalist Project Freedom of Religion; Western Law Center for Disability Rights; Women Lawyers Association of Los Angeles; Women's Reproductive Rights Assistance Project; Lawyers Committee for Civil Rights of the Bay Area, NARAL Pro-Choice California; National Association of Women Business Owners, San Francisco Chapter; National Council of Jewish Women, California; National Council of Jewish Women, Los Angeles; National Women's Political Caucus of California, which is a bipartisan organization; Pacific Institute for Women's Health; Mexican American Legal Defense and Educational Fund; Mineral Policy Center; NAACP Legal Defense and Educational Fund; NARAL Pro-Choice America; National Abortion Federation; National Asian Pacific American Legal Consortium; National Association for the Advancement of Colored People, the NAACP; National Bar Association.

And there are more. This is remarkable. I needed this time to go through this extraordinary list, representing millions and millions of Americans who are saying no to Janice Rogers Brown.

National Council of Jewish Women; National Council of Women's Organizations; National Employment Lawyers Association; National Committee to Preserve Social Security and Medicare—folks, when you hear what she

says about Social Security, you will understand it, and senior citizens—National Fair Housing Alliance; National Family Planning and Reproductive Health Association; National Health Law Program; National Organization for Women; National Partnership for Women and Families; National Senior Citizens Law Center; National Urban League; National Women's Law Center; Natural Heritage Institute; Natural Resources Defense Council; New Mexico Environmental Law Center; the Wilderness Society; Union for Reform Judaism; Unitarian Universalist Association; USAction; Valley Watch, Inc.; Washington Environmental Council; Western Land Exchange Project.

So that is a long list. That is a long list. There is a reason why these organizations—many of which are nonprofit, many of which are bipartisan, many of which represent women, represent minorities, represent families, represent seniors, represent the environment, represent fairness in the judicial system—there are many reasons why they oppose Janice Rogers Brown.

I hope if this debate on Janice Rogers Brown does nothing else, it sends a message to the American people that when the Democrats stood up and said no to 10 people—and, by the way, said yes to 209—said no to 10 people—actually, now it is 9 people—they are people like this. They are people like Janice Rogers Brown who are opposed by mainstream America.

At the end, I will read the editorials that are coming out across the country against Janice Rogers Brown. Packing the courts with people like this will set our country back, and these organizations that have worked for so many years for fairness, for justice, for equality, for fairness in the workplace, for equal pay for equal work, for good treatment in the workplace, to protect the air and water, know what they are talking about.

Let's see some of the things that she has said in her lifetime on the bench. She said:

> Where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: Families under siege—

This is Janice Rogers Brown. This is what she thinks of America. This is what she thinks of the greatest country in the world—

> families under siege; war in the streets; unapologetic expropriation of property—

As someone who owns property, no one has ever tried to take it away from me. I don't know what her problem is—

> the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility; and the triumph of deceit.

She must hang out with some pretty tough people.

> The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

This is Janice Rogers Brown's view of life in America. I didn't know, when we passed the seatbelt law or legislation to help the victims of domestic violence, that our society disintegrated. But she thinks so.

She calls Supreme Court decisions upholding New Deal protections such as the minimum wage and the 40-hour workweek ''the triumph of our own socialist revolution.'' I didn't know it was socialism to say that people ought to work 40 hours, basically.

She accuses senior citizens of ''blithely cannibilizing their grandchildren because they have a 'right' to get as much free stuff as the political system permits them to have.''

So she looks at grandparents like me as cannibalizing our grandchildren. I ask every grandmother and grandfather in America to oppose this woman getting on the bench. How can someone look at grandparents as cannibals because they may think it is important to get the Social Security and Medicare for which they paid into the system? It is outrageous.

She declares:

> Big government is . . . [t]he drug of choice—

Here she goes after everybody—

> for multinational corporations, single moms, regulated industries, rugged Midwestern farmers, and militant senior citizens.

Every time I read that I think of the senior citizens I know getting dressed up in a military uniform and taking over the country. OK everybody, it is 12 o'clock, let's play bingo now.

She declares:

> Big government is . . . [t]he drug of choice for militant senior citizens, for single moms, for rugged Midwestern farmers.

She takes them on, too. What is she thinking? I don't know any farmers who believe big government is what they want in their lives.

She is bad on first amendment rights of individuals. She argued that e-mail messages sent by a former employee to coworkers criticizing a company's employment practices were not protected by the first amendment. This was a young man who sent out a few e-mails during a very long time period, and she said he had no right to free speech. He couldn't do it. But the corporation could do it all day long.

This is showing you some of her decisions and her statements. She said a manager could use racial slurs against his Latino employees. Can you imagine that? Using racial slurs in the workplace? That was fine with Janice Rogers Brown.

She is way outside the mainstream. She argued that a city's rent control ordinance was unconstitutional as a result of the revolution of 1937. Believe me, most of the people who passed that ordinance weren't alive in 1937, so that is her other attack on the New Deal. She is way back. She has this thing about the New Deal, as if the New Deal is what we are talking about today. Everyone agrees that what has survived of the New Deal is very important wage and hour laws and protections and Social Security. She is after it all.

She argued that a law that provided housing assistance to displaced elderly, disabled, and low-income people was unconstitutional. This is very interesting because having been in local government myself, one of the things that we try to do is help get housing for people who are so vulnerable. This is a law in San Francisco for the elderly, disabled, and low-income people. Who could you find who was more compelling to help than, say, an elderly woman, whom she calls a militant senior citizen, who can barely stand up or look up from her walker?

She said San Francisco was ''turning into a kleptocracy'' and that ''private property is now entirely extinct in San Francisco.''

This woman absolutely lives in a dream world to say something like this. If you try to buy a home in San Francisco, you can buy it, if you have $1 million. So I don't know what she is talking about. She makes things up that fit her ideology. Imagine saying that providing housing assistance to displaced elderly, disabled, and low-income people has no chance of succeeding because it is unconstitutional. Her views stand alone as being so out of the mainstream.

Speaking of standing alone, I wanted to tell you about Janice Rogers Brown. She sits on the California Supreme Court where she has been since 1996. She is on a court that has six Republicans and one Democrat. She is a Republican. Follow this: She sits on a court that is made up of six Republicans and one Democrat. You would think she would be happy as a clam. No, she is not because those other Republicans, not to mention the one Democrat, don't see life through her eyes. She is so outside of the mainstream that she stood alone on court decisions 31 times. I am going to tell you of some of these cases where she stood alone.

She was the only member of the court to vote to overturn the conviction of the rapist of a 17-year-old girl because she believed the victim gave mixed messages to the rapist. She was the only one on the court who stood on the side of the rapist. This is who George Bush wants to put on the bench so she can stand against your daughter? I don't think we should do that. We should stand up and be counted on this vote. We should not be standing with someone who supports a rapist. It is as simple as it gets.

She was the only member of the court to find that a 40-year-old woman who was fired from her hospital job could not continue with her lawsuit. I want you to think for a moment of a 60-year-old woman with a great employment record—and I have to tell you, maybe it is my age, but you are still going pretty strong at 60—and she was fired based on age discrimination. This is Janice Rogers Brown:

> Discrimination based on age does not mark its victims with a stigma of inferiority and second-class citizenship.

Really? The woman was fully employed, did a great job, was doing her

work, was getting rewarded with a salary, and the next day she wakes up, and for no reason, she is fired. And Janice Rogers Brown says: That is not a stigma. That is no reason to feel bad. That is not a reason to feel like a second-class citizen.

I beg your pardon. Six others on that court—five Republicans and one Democrat—thought Janice Rogers Brown was off the wall. Her position saying that age discrimination is not a stigma and, in fact, was really not discrimination at all is contrary to State and Federal law. So George Bush wants to elevate a woman who says essentially there is no such thing as age discrimination. Let's face it, that is the bottom line.

Someone can ask: Well, Senator, where did she say that? That is the result of her ruling. She stood alone 31 times, and now George Bush wants to elevate her.

There were other times that she stood alone. This is how far out of the mainstream she is. She was the only member of the court to oppose an effort to stop the sale of cigarettes to children. I say to every parent in America who may be listening to the debate, you don't want your 10-year-old or 9-year-old or 11-year-old or 12-year-old to walk into a supermarket to start smoking, which we know is devastating, which we know is addictive, which we do everything we can to stop our kids from doing. If you want your kid protected, then you tell George Bush Janice Rogers Brown doesn't deserve to be elevated for that kind of decision.

This isn't the 1950s. I remember the 1950s where they used to say cigarettes are great for you. They are relaxing. They are wonderful. We gave them out free to people to tell them: Calm yourselves. This is terrific. You will live a long time.

The leading cause of cancer death among women is not breast cancer, it is lung cancer. In the meantime, she is saying: No, you can't stop the sale of cigarettes to children in this particular case, which was the case that came before her.

She was the only member of the court—remember, five Republicans and one Democrat—who voted to strike down a State antidiscrimination law that provided a contraceptive drug benefit to women. In the old days in this country getting a contraceptive was illegal. It was the Supreme Court eventually—and there is actually a 40th anniversary of this tomorrow, the Griswold case. Until the Griswold case, it was illegal to use contraception in this country. The bottom line is, this case of the Supreme Court turned it around and said you can't stop something. So here you have a situation where the State is saying you can't discriminate against women. You need to allow them to be covered with this prescription drug contraception. Janice Rogers Brown says: Wait a minute. I am standing alone.

She was the only member of the court who said women can be discriminated against and their contraception does not have to be protected.

Talk about going back. We are going back with this woman. She stood alone.

The only member of the court to find that a county could not sue a utility company for illegal price fixing that had substantially increased the county's costs for natural gas.

Where has this woman been? Does she think about things like Enron? The scams that went on in California and on the west coast? Maybe she should go see that movie, ''The Smartest Guy in the Room,'' I think is the name of it. It is a story about Enron and their manipulation of the market. Here you had a situation where a county was being run into bankruptcy because of the utility bills they were getting from a private utility. Every single justice on that court in California said absolutely the county has a right to sue that utility company. They ran up the price of natural gas. They hurt consumers. They hurt the county. But not Janice Rogers Brown. She stood with the utility company.

Are you getting the picture here of someone who deserves a promotion? I hope not because I don't think she does. I hope that what I am doing today is making the record clear that when we stood up against these 10 judges—although in essence now 9—she was one of them for a reason. It is not happy for me to have to go against someone from my own State. It is not enjoyable for me to have to go against somebody who is a woman whose life story is remarkable. It is not easy for me to have to take a stand against a minority woman, and it is not easy for every civil rights organization in this country to do the same. But we need to know what we are doing.

This President has to get a message. This could have been avoided if he had sent his people to see the Senators, which is the way it used to be done. Do you think it is OK to give this woman a promotion? No. Let's talk. Can we talk? Can I show you this research? Can I show you how many times she stood alone, how she is bad for families, how she is horrific for senior citizens, how she has ruled against consumers, how she stood with the rapist? Can I show you? We never got the chance.

This President doesn't believe in advice and consent. He does not believe in it. He looks at it as an annoyance. He should read the Constitution. Senators are supposed to be giving advice and consent—advice at the front end, consent when we have the vote. But, no, they want 100 percent. They want to pack the courts. They want to pack the courts with people who will hurt average Americans and stand up for the special interests and the far rightwing of this country.

That is not what this President said he was going to do. I remember the day when he declared victory in 1992 and the Supreme Court gave him his seat. He came out in a most humble way, he said: I will govern from the center.

I believed him at that point; I honestly did. And then you have a nomination like this, and you just wonder were those empty words? I have to say they were because you have to judge people not by their words, but by their deeds. You have to judge this judge by her decisions. She was standing alone 36 times in a court of 6 Republicans and 1 Democrat. We have some more.

The only member of the court to find that a State fair housing commission could not award certain damages to housing discrimination victims.

Imagine that. This is a minority woman, and she doesn't understand in her heart how it must feel to be discriminated against when you are looking for housing simply because of the color of your skin or perhaps your religion. It is stunning. It is absolutely stunning to me. The only one to stand alone on this court.

So I am going to close with—wait, there is more. We have a few more of these ''only times to stand alone.''

The only member of the court to find that a jury should not hear expert testimony in domestic violence cases about battered women's syndrome.

You all know what battered women's syndrome is. It is a situation where a woman has been beaten and beaten and abused and abused—sometimes to a pulp. And it impacts her actions toward her abuser. She was the only member of the court to find that a jury should not hear expert testimony dealing with Battered Women's Syndrome.

Well, to me, that says she stands with the batterer against the woman, against the victim. I have colleagues here who want, and support, an amendment to the Constitution to give rights to victims. Yet, they are going to vote for this woman who stood with a rapist and who stood on the side of batterers. It doesn't make sense.

This woman does not deserve to be promoted for standing against the victims of violence and with the perpetrators of violence, and she stood alone.

The only member of the court who dissented from a decision that a standard worker's compensation claim did not bar her civil claim for sexual harassment.

That makes absolutely no sense. You go to work and you sign documents. One of them is a workers' comp release form. They are forms. Then this person finds out there is sexual harassment in the workplace, and she brings a lawsuit to stop it, and Janice Rogers Brown says: Well, the day you came to work and filled out all your forms, you said you would not file a workers' comp claim.

Workers' comp is not a civil remedy for sexual harassment, in my opinion. Workers' comp is getting hurt on the job; it is not sexual harassment. She stood alone. I am sure her colleagues on the court were stunned, but that is Janice Rogers Brown. She stands alone against victims and with the perpetrators of violence and harassment.

The only member of the court to find nothing improper about requiring a criminal defendant to wear a 50,000 volt stun belt while testifying.

This is amazing. She thought: Oh, no, wear a 50,000-volt stun belt. And every other judge on the court said: No, no, no, this is America. We don't do that here. But not Janice Rogers Brown because she is so out of the mainstream.

The only member of the court to find that a disabled worker who was the victim of employment discrimination did not have the right to raise past instances of discrimination that had occurred.

So here you have a disabled victim. She had multiple sclerosis. So I say to those who have a disability or to those who have compassion in their heart, you have a string of examples of how you were discriminated against. Janice Rogers Brown said: Oh, no, that is not admissible. We don't want to know about it. She stood alone. She is bad for workers, for victims, and the disabled. That, I think, completes our work on when she stood alone. I am going to close, in the few minutes I have remaining, with some editorials to show the broad range of comments about Janice Rogers Brown. I am going to lead off with George Will, a very conservative columnist, as I think most of my colleagues know. He talks about the deal that was cut on the filibuster, and he says:

Janice Rogers Brown is out of that mainstream.

It is a fact, he is calling her out of the mainstream. This is George Will, and there is not much room on his right. So that is interesting.

The MercuryNews:

As an appellate judge who would hear the bulk of challenges of Federal laws coming out of Washington, her appointment would be disastrous.

I want you to know, the MercuryNews is in Silicon Valley. The MercuryNews is very balanced. The MercuryNews is very moderate. They say her appointment would be disastrous.

She'd be likely to strike down critical environmental, labor laws, and antidiscrimination protections. Brown, though, has infused her legal opinions with her ideology, ignoring higher court rulings that should temper her judgment.

That is a scathing editorial of this nominee.

The issue isn't Brown's qualifications—

The Sacramento Bee says—

it's her judicial philosophy.

This is the Sacramento Bee. This is California speaking to the rest of the country. We should be prideful, but we are not. We are upset about this appointment. The issue is not her qualifications, it is her philosophy.

The minority in the Senate certainly is justified in filibustering a lifetime appointment of Brown. The Court of Appeals for the District of Columbia Circuit is the last place we need a judge who would impose 19th century economic theory on the Constitution and 21st century problems.

How far back are we going to go?

I have to say to my colleagues who may be watching this or may be coming back to the Hill today, we have an opportunity here to stand up for the people of the United States of America. We have an opportunity to say no to someone—not that they do not have a wonderful life story, but in spite of that life story because this appointment is not about her life, it is about our life, it is about your life, it is about the lives of your children, your grandchildren, your grandmother, your grandfather.

This is an appointment that is out of the mainstream, so stated by George Will. This is a woman who stood alone 31 times. You will hear my colleagues on the other side say: Don't listen to Senator BOXER, her explanation of these cases is inaccurate. But I have to tell you, it is accurate. When you have a woman who is a Republican who stood alone against five other Republican mainstream judges 31 times, who dissented more than a third of the time in a courtroom such as this, you know you are looking at someone who does not deserve a promotion.

I am going to keep talking about this nomination. We are going to have a press conference with all of these groups that we can manage to muster, and we are going to be very strong to our colleagues in saying, yes, we are not filibustering Janice Rogers Brown—we gave that up as part of the deal we made so that we would not see filibusters outlawed—but we are going to fight to see that she does not get the 51 required votes.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask the question: How did a wonderful person and a wonderful nominee, such as Judge Janice Rogers Brown, become so controversial? What is it that is going on here?

She served 8 years on the California Supreme Court. She has served on the Third Appellate District Court of Appeals of California. Every member of that court of appeals with whom she has served has written in support of her nomination. She was reelected to the California Supreme Court with 76 percent of the vote. I think there were four other judges on the ballot. She had the highest vote of any of those judges. California is certainly not a right-wing State.

She grew up in my home State of Alabama, not too far away from my hometown in a small town area of Greenville, AL. She is the daughter of a sharecropper. A sharecropper is a person who does not own land but farms a part of somebody else's property. He pays the landowner with some of the produce and keeps a little of the produce for himself and his family. That is how she grew up. Somehow, as a teenager, she moved off to California, worked her way through college and then law school.

She then worked for the attorney general's office of the State of California in which she represented the State on appeals of criminal cases. She wrote the briefs, she argued the legal questions, she participated in the trials of criminal cases, but I think most of her time was spent writing the appellate briefs to the court of appeals.

By the way, of course, supreme court justices, like appellate judges, do not try cases, like the big cases we see in the newspapers. They simply review the trial record of cases that have been tried.

They determine whether a fair trial occurred and whether the judgment should be affirmed or reversed and a new trial held, that sort of thing. That is what she has been doing on the California Supreme Court. That is exactly what she would do if she were appointed to the court of appeals in the DC Circuit.

Her judicial philosophy is absolutely mainstream. She agrees with the President of the United States, President George W. Bush. She is in harmony with his view of the role of courts and the rule of law in America. Make no mistake, this is a big question. He campaigned on that issue around the country. President Bush talked about the courts and about the role of courts in America. He talked about what we should do to strengthen the rule of law in this country, how important it was to him, and he promised to appoint judges who would show restraint and not utilize their opportunity on an appellate bench to redefine the meaning of words, to have it say what they want it to say so they can impose their political views through a court ruling.

He said, I do not believe in that kind of jurisprudence. In fact, it has not been the heritage of our country for 200 years, but in recent years it has become the vogue in law schools and in certain areas of the country, California being one of them, frankly, to have an activist judiciary.

Judges are praised for being bold and stepping out. We had one judge under President Clinton who was confirmed to the court of appeals from California. He had been in the court system and he said, well, it is the duty of a judge to act when the legislature would not act. That is what the definition of activism is, a judge who believes he has a duty to do something if he thinks the politically accountable bodies in our country do not; that it is perfectly all right for a judge to act if the legislature does not act.

I will tell America, and this is important, when a legislature does not act, it made a decision not to act, and those legislators are responsible to the people. If they are irresponsibly failing to deal with a problem, they will be removed from office eventually.

A Federal judge is given a lifetime appointment. They are not accountable to the public. We cannot cut their salary. So what we need is judges who understand the role of the judiciary in

the American system. We need judges who show restraint and who understand that America is built on a political system and a constitution that should be faithfully followed and the political decisions ought to be made by those people in rooms such as this, in the State legislatures and in the Congress. We are accountable to the people who elect us.

Make no mistake about it, empowering judges to carry out political agendas is an anti-democratic act. It undermines the power of the people of our country. Many of the complaints made against Janice Rogers Brown are because she adopted and does believe in the view of a judiciary that the American people value, that President Bush values and that was affirmed in this past election when he won. That is what she believes.

Now, the Court of Appeals in the Ninth Circuit Federal court in California a few years ago was reversed by the U.S. Supreme Court 27 out of 28 times. They reviewed 28 cases from that court and reversed it 27 times. The New York Times said a majority of the members of the U.S. Supreme Court considered the California court to be a rogue circuit.

So this is not an itty-bitty matter. People have been saying, oh, this is politics, this is Democrats and Republicans fussing and it is a little political discussion which does not amount to much, and what does it have to do with us.

Well, the truth is, the issue is simple, but it is far more important than party politics. I am sure some in this body vote for political reasons and have not given a lot of thought to the judiciary and what is important, but we are dealing with the role of the judiciary in America.

As a Senate, when we deal with confirmations, it is all right to ask somebody about their political views or to look at their political views, but we do not vote for and against nominees based on that. I voted for 95 percent of President Clinton's nominees. I did not agree with their political views on many things. I felt most of them who came through, certainly the ones I voted for, were committed enough to the rule of law that I could vote for them. Some I had doubts about, but I gave the President the benefit of the doubt and voted for them. A few I opposed.

What was the deal? It is not their politics that counts. It is their judicial philosophy. That is what counts. What is their view of the role of a judge? What is their understanding of what law means in this country?

There are people who are teaching postmodernism in our law schools today. Some of them have been called advocates of the critical legal studies idea. And what do they say? Nothing is really true; one cannot look at a statute and interpret it. One can look at that statute and they can make it say whatever they want it to say and justify that.

It is a dangerous philosophy. People have fought for our country, died for our country, and in large part they died to preserve the rule of law. Maybe they did not even believe in the war, but they were called to go and they went and served their country because they were legally called to serve. They did their duty. It has been the cornerstone of this country's strength since its founding.

As I travel the world, as I have the opportunity to do as a Senator on occasion, I am more and more convinced that our legal system, our respect for law, is what makes this country great. If someone signs a contract, they can expect it to be enforced. If they do not pay their house note, someone will come and take the house. But because of that, a person can borrow $200,000, a middle-class working American, and pay it back at 6 percent interest over 30 years. Now, tell me where that happens in another place in the world?

It is part of the legal system that is so important, and we have a dangerous trend in this country. We have members of the U.S. Supreme Court quoting the European Union as if that would affect how they interpret a statute passed by a State legislature or the Congress or the Constitution ratified in 1789. What possible value could that have? This is a dangerous trend.

Judges are getting to the point where they feel they have to solve difficult questions; that the legislatures cannot get them figured out quick enough to satisfy them so they want to solve them. It is not good. It erodes public respect for the courts because more and more they realize they are not deciding these cases on what the law says or what the Constitution says but what they think.

Who cares what they think? We do not pay judges to think. We pay judges to rule on the law.

It is a big deal and this is what it is all about. Do not make any mistake. The left understands it. They understand this absolutely, and the courts have been the one branch of Government they have been utilizing to advance agendas the American people are not supportive of—in fact, oppose. But if someone can get a judge to say the Constitution says a marriage can be a union among whatever, then that is it. What does one do then? What does it take to have a constitutional amendment? It takes a two-thirds vote of both Houses of Congress and three-fourths of the State legislatures. So judges have great power. If they abuse it, it is a big deal. I think that is why we are seeing the attack on a number of our nominees that I think is not fair. It goes beyond what is right. In fact, they have sort of become pawns in this battle over the nature of our judiciary.

I have watched these groups closely over the years, and I have to tell you some of these leftwing groups that create these attack ads and attack pieces on these nominees ought to be ashamed of themselves. It is not legitimate or fair what they do. They dig into their records, every statement they have ever made, their personal history, the cases they have had, the speeches they have made, and they try to find anything they can. They will take one sentence. Maybe there are two paragraphs of qualifying explanation and they will take one sentence out of context and say that represents a certain thing and therefore this nominee should be voted down.

But we are Members of the Senate. We are the ones who took an oath to do our duty to enforce the Constitution, to fairly judge nominees the President sends up here. That is our responsibility. We cannot pass that off to some group, some polling data, some newspaper editorial. So they take a bit here, a bit there, a statement, a word, a case, a circumstance—they take it out of context and distort it, many times dishonestly; dishonestly, many times deliberately doing so, to try to create a caricature of this nominee.

Then they ask the people of the Senate to vote against them. Vote against them. But we should not do that. That is not what the Senate should be about.

Janice Rogers Brown sees things different from some people; particularly, I guess, in California. She has a more classical understanding. She made a speech one time in which she questioned the validity of the welfare state and whether it helps people. So they say she is against all poor people and welfare. She questioned overreaching regulations. They say she is against all regulations. She is a throwback. She doesn't believe in any government regulation. Whereas she has ruled on hundreds of cases affirming government regulations, for Heaven's sake.

But some regulations do overreach. Is there any doubt about that? One of them dealt with rental property in California. The owner had long-term leases and decided to convert them to short-term hotel work. He wanted to convert the building to a full-fledged hotel. Do you know what they told him in California? Well, we know this is your property, Mr. Owner, but, you know, we want to help poor people and we want you to pay money to create low-income housing before you can do that. Before you can do that you have to pay this money or create some other housing. What kind of thing is this in America?

They say she doesn't believe in government regulations. That doesn't sound like a decent regulation to me. So she opposed that, citing Supreme Court precedent. I am going to tell you, the Constitution of the United States provides someone's property cannot be taken from them without just compensation having first been paid. That is what the law is and what it ought to be. Private property is protected in our Constitution as much as free speech. The left talks about free speech, but we will talk about a case or two that they have accused Justice

Brown of acting improperly on and all she was doing was affirming clearly and unequivocally the right of free speech in America. But the left doesn't really believe in free speech. They have an agenda they want to promote. It is big government in domination of our lives in any number of different ways.

I think this lady is a superb justice. She writes beautifully. She cares about America. She grew up in a land of segregation. They have accused her of not favoring civil rights. She has been discriminated against herself. She is an African American who was raised in segregated Alabama and went off to California and had a tremendous success story. The judges who write about her or lawyers who write about her say she is brilliant, intellectually honest, always thinking to do the right thing. She speaks with clarity and integrity. She is highly qualified. She doesn't agree with the leftwing agenda politically and she said so, but that doesn't impact her legal decisions. That is what is important: How do you rule in cases?

A judicial philosophy that shows restraint, let me say, is far less dangerous than a judicial philosophy that justifies expanding power. I think this nominee, with her experience as a prosecutor and understanding criminal law will do an excellent job on the federal bench.

Some critics complain about her sole dissents. She was a sole dissenter in a death penalty case, saying that the lawyer was inadequate. No other person complained about her dissents, presumably because she was some rightwing person, but she believed this defendant had not been properly defended by his lawyer, so she was the sole dissenter in that case.

She dissented in another case, a criminal case, in which a person was stopped because he was riding his bicycle the wrong way on a street, and she believed it was a racial profile stop. They didn't have a basis to stop that person to begin the search that resulted in the discovery of illegal drugs. That was a dissent, also. So what are these dissents about? You don't dissent in America? Judges dissent all the time. Every time you have a 5-to-4 decision of the U.S. Supreme Court you have four dissenters. There are many 8-to-1 decisions and one judge dissents. That is nothing unusual.

Some of these dissents she participated in were joined in by liberal members of the California Supreme Court. Also, I think it is important for us to note that in 2002 she was called on to write the majority opinion for the California Supreme Court more often than any other member of that court. So how is she such an out-of-the-mainstream person? She wrote more majority opinions in 2002 than any other member of the court. What happens is, when a court gets together and discusses a case before they finally vote and make their opinion, they see how the judges analyze the case. If it is a majority or a unanimous decision one way, someone is selected to write the opinion for the majority. If it is 5 to 4, someone is selected to write the opinion for the five, the majority. Sometimes there will be four different dissents, maybe one dissent with all the rest joining in. Judges can do it any number of different ways.

This idea that she is out of the mainstream because she has dissented on cases is a total mischaracterization of her record. They have gone back and dug through her records and tried to find numbers and ideas and concepts that put her in a bad light. They ignore the fact she wrote the majority opinion in 2002 in more cases than any other of the nine justices on the California Supreme Court.

There are a lot of different cases in which she has been criticized. A lot of great dissents have been issued in this country. There is the dissent of Justice Harlan in the separate but equal case of Plessy v. Ferguson. Was that a good dissent? I think it was a good dissent.

By the way, in the zoning case her critics talk about, alleging that she was taking an extreme position on that case, that vote in the California Supreme Court was 4 to 3. Only four judges were for it; three were against it. She wrote the dissent. I thought it was a great dissent.

Several times, Senator BOXER and others have said Justice Janice Rogers Brown said it was okay for Latinos to have racial slurs uttered against them in the workplace. That is a terrible charge. That is not true. Sometimes we wonder if there is a lawyer in this whole building. Is there anyone who knows how the legal system actually works? The case they referenced was the Aguilar case. A court injunction or court order barred a manager from using racial epithets in the future, raising grave first amendment concerns to tell someone in our country, you cannot say something in the future. You can say what you said in the past was wrong and you can be sued for it, you can be put in jail, perhaps, if it amounts to a criminal action; but the courts in this country have always, as a result of free speech concerns, been very reluctant to enter into prior restraint, as the judges call it, to stop someone from saying something in the future. You pay a price if you say the wrong thing in the future, but to order them never to say something is a very dangerous thing.

The court split on that case, 4 to 3. Yes, she was a dissenter, but also dissenting with her in that case was the liberal icon of California jurisprudence, Stanley Mosk, her colleague on the bench. This was a 4-to-3 decision representing a very important idea. She specifically condemned the language. She said people could be sued, they could have penalties imposed. She was concerned about a court injunction saying to somebody, they could not say certain words in the future. That is what the question was. Any legal scholar in this country would agree that is a difficult matter. We ought to be careful before we pass injunctions saying people cannot say something. A prominent liberal jurist, Justice Mosk agreed with her on that point, as did three of the justices on that court.

One of the things one of the groups has attacked her about, and I don't know if the Senators have raised it yet—I wouldn't be surprised, is the use of stun belt on a criminal defendant in court.

We are familiar with the recent case in the Atlanta, GA, courthouse, where a violent defendant overpowered the guard, took a gun, shot a bunch of people, ran off. There was a national uproar over what to do about it, why that shouldn't have happened, and how we ought to take steps to prevent this in the future. That was a good, healthy debate.

There is a device called a stun belt that can be placed on a defendant. Simply by pushing a button, apparently, one can immobilize a subject wearing a stun belt.

In recent years, we cannot bring criminals into the courtroom in prison garb. You cannot bring a prisoner in a courtroom and sit them before a jury in handcuffs. That would bias the jury, the courts have said, in their effort to be fair to defendants.

I was a prosecutor; I remember when that started happening. So we had to sit them up there in the witness box without any chains or handcuffs. You never knew what they were going to do. There were marshals and sheriff's deputies standing on alert to see if this guy was going to make a break.

They came up with this idea to put a stun belt around a defendant, under their clothes, that could not be seen. This guy was referred to as being psychotic, violent, dangerous in any number of ways and the California Supreme Court said, you cannot make him wear it. It made him nervous.

I hate to say that was a silly opinion, but it was, in my view. I bet if the decision was made after the Atlanta courtroom incident, they may not have ruled the same way. But one justice on that court saw it correctly: Janice Rogers Brown. She dissented from that decision. That was the right thing to do. Absolutely the right thing to do. I salute her for it. She should not be voted down for those issues.

There are many of these examples of distortions of her record we could talk about. One interesting case in which Justice Brown authored a majority opinion deals with the question of affirmative action. It is the kind of case that gets someone in trouble with certain leftwing groups in this country but is consistent with the law of America and the law of the State. She did the only thing appropriate. It is the High-Voltage Wireworks case. In this case, the California Supreme Court unanimously concurred in Justice Brown's opinion.

They say she does not believe in affirmative action, quotas, and things of

that nature. This is one of the cases they cite. It was a unanimous supreme court decision case. It demonstrates her ability to follow the Constitution and Federal law.

California proposition 209 was passed by the people of California. It added a provision to the California Constitution that provided:

The states shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contract.

The people from California passed that.

There was a minority contracting program in San Jose that said contractors bidding on city projects must utilize a specified percentage of minority and women contractors or document efforts to include minority and women contractors in their bids. Every judge who reviewed the case, including the trial, appellate, and supreme court, agreed that the San Jose program constituted preferential treatment within the meaning of proposition 209. Why, certainly it did.

Justice Brown's opinion demonstrates her firm commitment to the bedrock principles of civil rights. She noted:

Discrimination on the basis of race—

Remember, she is an African American.

Discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society.

Contrary to the assertions of liberal smear groups, Judge Brown is not opposed flatly to all affirmative action programs in all circumstances. She has specifically acknowledged that ''equal protection does not preclude race conscious programs.'' Certain race-conscious programs can be approved under the law. And she favorably cites Supreme Court decisions establishing the affirmative duty to desegregate where there has been a showing of a prior discrimination, that you can issue orders, then, if there has been a proof of discrimination.

She provided a historical discussion of all of American equal protection law. It was part of an extremely well-reasoned opinion. But it has made some of those on the left unhappy, you see, because she is not in lockstep for all these items, she is not in agreement with everything. She thinks there are limits to what the Government can do in this area, and should do, consistent with the Constitution of the United States.

There are many other cases she has ruled on. I will simply add this, in conclusion, that she has been a sterling justice, a justice who believes in law. She has approached each case she has dealt with from a perspective of trying to find out what the law is and how to do the right thing about it. She has courage and had the courage to stand up in the face of a legal system that has not been supportive of classical understandings of how we interpret statutes, how we enforce the law, and what the law means. She has been in an agenda-driven environment where judicial activism is more prominent in certain areas of the country. The fact she has dissented and has raised questions to defend private property and to question turning criminals loose on a rapid basis, as some have, and those kinds of things, speak well of her.

What is important mostly is that she has a judicial philosophy that is consistent with the judicial philosophy our country has had, our heritage of law. That is what she believes in. That is what she has given her life and career to. She loves the law, and she cares about it. She cares about it enough to speak out if she thinks things are going wrong. Her views are consistent with the American people. President Bush campaigned on these issues aggressively in this last election. He won 52 percent of the vote. It is the first time in many years a Presidential candidate received over half the votes in this country. I think if you took on the question of judicial activism and the feeling of the American people with regard to judges who exceed their bounds of power and start legislating from the bench rather than making decisions, he would have had much higher support.

Senators who joined this body defeating incumbents or winning open seats—the winners of those seats—consistently have been Senators who have talked to the people of their States about the problem of an overreaching judiciary and the need to make sure the judges we have are talented, smart, proven men and women of integrity and ability, but men and women who will show restraint on the bench, who will follow the law as written, even if they may not personally agree with it. Because if they want to write the laws, they ought to run for office and see if they can get elected. Maybe the reason people who got elected did not pass a law they wanted is because the American people did not want that law, their constituents did not want it, and that is why they did not pass it. So they are not empowered to impose their personal views by subtly manipulating words and language and phrases and other things to make the case come out the way they want it to come out. That is not what they are empowered to do.

I think Janice Rogers Brown represents the classical view of law, the mainstream view of law, which I will admit is under attack today in this country. It was a big issue in the campaign. President Bush took his case to the American people, and he was reelected on it. That was a big issue in his election. There is no doubt about it. The American people want judges with the philosophy of Justice Rogers Brown, her legal philosophy. What she says politically somewhere in a speech is not important, as long as her judicial philosophy is such that she shows and has demonstrated she will be faithful to the Constitution and to the law, whether or not she agrees with it.

That is what we in the Senate need to be doing in our confirmation process. We need to ask ourselves: This may be a view by a nominee I agree with or I do not agree with, but will they enforce the law? Because we cannot expect every nominee to agree with us on our religious values, our moral values, or our political beliefs. Judges are not expected to do that. You do not expect that. It is not running for office. They are not going to be voting on these things. You want people who understand the law and who will be fair and show intelligence and diligence and a determination to get it right. That is what she said in her testimony. She said: My goal is to get it right.

I believe this is a good nominee. I believe she will be a tremendous addition to the Court of Appeals for the United States. I am proud she is a native of my home State, and I am honored to have these moments to speak on her behalf.

I thank the Chair and yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I was talking about Justice Janice Rogers Brown and her record of courage and ability on the Supreme Court of California.

I note an article by Nat Hentoff. It is in the Jewish World Review. Mr. Hentoff is a noted civil rights lawyer, of courage and independence, who writes with clarity and is a civil libertarian who believes in American civil liberties, who has a long record of it. He is not someone who is slavishly part of any political agenda and is willing to speak the truth wherever he sees it. Sometimes I agree with it; sometimes I don't. But he has written an article about the filibuster of Janice Rogers Brown. He talks about the ''Action Alert'' from the National Association for the Advancement of Colored People that ''accuses [Janice Rogers Brown] of having extreme right-wing views'' and ''issuing many opinions hostile to civil rights.''

She has been a victim of civil oppression and segregation. She is a true champion of civil rights, as I think I indicated in my remarks.

He goes on to show ''how prejudicially selective the prosecution of her is by the Democrats, the NAACP, People for the American Way, and her other critics.''

He says:

To my knowledge, not one of her attackers has mentioned the fact that in the case of

People v. McKay, Brown was the only Supreme Court justice to instruct her colleagues on the different standards some police use when they search cars whose drivers are black:

This is Justice Brown's quote:

There is an undeniable relation between law enforcement stop-and-search practices and the racial characteristics of the driver. . . . The practice is so prevalent, it has a name: ''Driving While Black.''

Does that sound like somebody who is hostile to civil rights? He goes on to criticize the Action Alert and the selective comments that are made there.

He says:

Sen. Ted Kennedy has accused Justice Brown of hostility not only to civil rights but also to ''consumer protection.'' But in Hartwell Corp. v. Superior Court (2002), she declared that water utilities could be sued for having harmful chemicals in the water that result in injuries to the residents of the State who drink that water. Also in People ex rel. Lungren v. Superior Court, Justice Brown affirmed the authority of California's attorney general to haul into court faucet manufacturers who include lead in their faucets.

Another charge by the NAACP in its ''Action Alert'' is that Justice Brown dissented from ''a ruling that an injunction against the use of racially offensive epithets in the workplace did not violate the First Amendment.''

Mr. Hentoff then says this:

I know this case—Aguilar v. Avis Rent A Car System Inc.—well, having covered it from the beginning and interviewed lawyers on both sides. Brown dissented from an astonishing decision by the California Supreme Court that authorized the trial judge to actually put together a list of words that would be forbidden for all time in that workplace, even if uttered out of the presence of employees.

That is what Mr. Hentoff says about this opinion of the majority that she dissented from. He goes on to say:

This extreme gag rule on speech turned the First Amendment upside-down because as Stanley Mosk, a much-respected civil libertarian on that California Supreme Court, emphasized: ''The offensive content of using any one or more of a list of verboten words cannot be determined in advance.'' As Brown said plainly and correctly: ''We are not dealing merely with a regulation of speech, we are dealing with an absolute prohibition—a prior restraint.'' This could ''create the exception that swallowed the First Amendment.''

Do you see what we are talking about here?

That is what has been going on on the floor of the Senate that is so distressing to me. Let's lay it out here on the table.

Justice Janice Rogers Brown, according to one of the great civil liberty lawyers in America, Nat Hentoff, was defending first amendment free speech, joined by one of the most liberal members of the California Supreme Court to defend free speech. What did they accuse her of? They said that she approved of using racial slurs against Hispanics. Now, that is beyond unfair. It is beyond unfair. It is beyond decency and integrity, and it is not right. It is wrong. That is what we have been doing to nominees here to justify the opposition because fundamentally they believe in a classic rule of law and don't believe in judicial activism.

Hentoff goes on further and talks about another case.

As for this justice's hostility to civil rights and liberties, there was her dissent in In Re: Visciotti in which she declared the sentence of John Visciotti—convicted of murder, attempted murder, and armed robbery—be set aside because of his defense lawyer's incompetence. In another capital murder case (In Re: Brown) she reversed the death sentence of John George Brown because the prosecutor subverted the defendant's fundamental right to due process by not disclosing evidence that could have been exculpatory.

Not a word about those two cases was in the NAACP ''Action Alert'' or the New York Times editorial [or the Sacramento Bee].

I ask unanimous consent to have printed in the RECORD the article of Mr. Hentoff of May 9, 2005, entitled ''Filibustering Janice Rogers Brown.''

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

[From the Jewish World Review, May 9, 2005]

FILIBUSTERING JANICE ROGERS BROWN

(By Nat Hentoff)

Janice Rogers Brown of the California Supreme Court has been the Bush nominee for a federal circuit court judgeship facing particularly fierce resistance by Democrats and their allies. For example, the April 26 ''Action Alert'' from the National Association for the Advancement of Colored People accuses her of ''having extreme right-wing views,'' issuing ''many opinions hostile to civil rights.''

I do not agree with all of Justice Brown's opinions, but I write this to show how prejudicially selective the prosecution of her is by the Democrats, the NAACP, People for the American Way and her other critics. She was filibustered in the last Congress, and may be again, now having been sent to the floor on a 10-to-8 party-line vote by the Judiciary Committee.

To my knowledge, not one of her attackers has mentioned the fact that in the case of People v. McKay (2002), Brown was the only California Supreme Court justice to instruct her colleagues on the different standards some police use when they search cars whose drivers are black:

''There is an undeniable correlation between law enforcement stop-and-search practices and the racial characteristics of the driver. . . . The practice is so prevalent, it has a name: 'Driving While Black.' ''

The three-page ''Action Alert'' I received from the NAACP ignored that opinion, in which Brown added that while racial-profiling is ''more subtle, more diffuse and less visible'' than racial segregation, ''it is only a difference of degree. If harm is still being done to people because they are black, or brown, or poor, the oppression is not lessened by the absence of television cameras.''

This is right-wing extremism? Yet, an April 28 lead New York Times editorial accuses Justice Brown of being ''a consistent enemy of minorities (and is) an extreme right-wing ideologue.''

Sen. Ted Kennedy (D–Mass.) has accused Justice Brown of hostility not only to civil rights but also to ''consumer protection.'' But in Hartwell Corp. v. Superior Court (2002), she declared that water utilities could be sued for having harmful chemicals in the water that result in injuries to residents of the state who drink that water.

Also in People ex rel. Lungren v. Superior Court (1996), Justice Brown affirmed the authority of California's attorney general to haul into court faucet manufacturers who include lead in their faucets.

Another charge by the NAACP in its ''Action Alert'' is that Justice Brown dissented from ''a ruling that an injunction against the use of racially offensive epithets in the workplace did not violate the First Amendment.''

I know this case—Aguilar v. Avis Rent A Car System Inc.—well, having covered it from the beginning and interviewed lawyers on both sides. Brown dissented from an astonishing decision by the California Supreme Court that authorized the trial judge to actually put together a list of words that would be forbidden for all time in that workplace, even if uttered out of the presence of employees.

This extreme gag rule on speech turned the First Amendment upside-down because as Stanley Mosk, a much-respected civil libertarian on that California Supreme Court, emphasized: ''The offensive content of using any one, or more, of a list of verboten words cannot be determined in advance.'' As Brown said plainly and correctly: ''We are not dealing merely with a regulation of speech, we are dealing with an absolute prohibition—a prior restraint.'' This could ''create the exception that swallowed the First Amendment.''

As for this justice's hostility to civil rights and liberties, there was her dissent in In re Visciotti (1996) in which she declared that the sentence of John Visciotti—convicted of murder, attempted murder and armed robbery—be set aside because of his defense lawyer's incompetence. In another capital murder case (In re Brown) she reversed the death sentence of John George Brown because the prosecutor subverted the defendant's fundamental right to due process by not disclosing evidence that could have been exculpatory.

Not a word about those two cases was in the NAACP ''Action Alert'' or The New York Times editorial.

Were I on the Senate Judiciary Committee, a critical question I would ask Justice Brown is: ''Is it true, as has been charged, that you believe the drastically anti-labor 1905 Supreme Court decision in Lochner v. New York was correctly decided?''

In that decision, which placed bakery owners' contract rights over the health of workers and the health of buyers of the company's products, the High Court ruled that employers had the right to insist that their employees work unlimited long hours, even if the public's health were to be endangered because sick workers couldn't even take the day off.

If Justice Brown does indeed agree with that decision, which was influential until President Roosevelt's New Deal, I would have difficulty voting for her; but I would not unjustly accuse her of having nothing in her record that strongly upholds the interests of justice. She does not deserve being stereotyped as an archetypical reactionary. And her defense of the Fourth Amendment's protection of our rights against government search and seizure are much stronger than any current member of the Supreme Court.

Mr. SESSIONS. What kind of lady is this? She graduated from UCLA, one of our Nation's finest law schools. In February of 2004, the alumni of that not-so-conservative law school presented Janice Rogers Brown with an award for public service. In recognizing Justice Brown, her fellow UCLA alumni, the people who know her, did not criticize her and say she was an extremist. They didn't say anything like that. At UCLA law school, where they gave her an award, they said:

Janice Rogers Brown is a role model for all those born to prejudice and disadvantage, and she has overcome adversity and obstacles and, since 1996, has served as a member of the California Supreme Court. . . . The professional training she received at the UCLA School of Law has permitted her, even now when decades remain to further enhance her career,—

Yes, we need to see her career be enhanced by this court of appeals appointment.

to have already a profound and revitalizing impact upon the integrity of American jurisprudence.

I will repeat that. They said:

. . . even now, when decades remain to further enhance her career, [she has been shown] to have already a profound and revitalizing impact upon the integrity of American jurisprudence.

I think that is a good description.

Despite her incredible intellect, work ethic, determination, and resultant accomplishment, she remains humble and approachable.

That is not the Janice Rogers Brown you hear her opponents describe. I will take the words of the people who know her and who have actually studied her record over the rhetoric of special interest groups who are not the least bit concerned, it seems to me, about being fair in their description of the nominee.

She spent 8 years as a deputy attorney general in the Office of the California Attorney General, where she prepared briefs and participated in oral arguments on behalf of the State's criminal appeals; she prosecuted criminal cases and litigated a variety of civil issues. Her keen intellect and work ethic made her a rising star on the California legal scene, and in 1994, Governor Pete Wilson tapped her as his legal affairs secretary. She served in that capacity until 1994, when she was nominated and confirmed as an associate justice on the California Third District Court of Appeals. In May of 1996, to honor her for her superior performance on the appellate court, Governor Wilson elevated her to the California Supreme Court, where she has performed admirably.

Since she was appointed to the California Supreme Court, a couple of things have happened which demonstrate she is doing her job and doing it well. During the 1998 elections, she was retained with 76 percent of the vote, receiving a higher percentage of the vote than any other judge on the ballot and in 2002, she authored more majority opinions than any other Justice on the Court.

The people of California who actually know the law and study the law and who have not been brainwashed by attack sheets that come out, by liberal groups, support her. For instance, Gerald Ullman, a California law professor, has expressed public support for this nominee. His statement sums up what we ought to consider with regard to Justice Brown's nomination. Let me quote it:

Although I frequently find myself in disagreement with Justice Brown's opinions, I have come to greatly admire her independence, her tenacity, her intellect, and her wit. It is time to refocus the judicial confirmation process on the personal qualities of the candidates, rather than ''hot button'' issues of the past. We have no way of predicting where the hot button issues will be in years to come, and our goal should be to have judges in place with a reverence for our Constitution, who will approach these issues with independence, an open mind, a lot of common sense, a willingness to work hard and an ability to communicate clearly and effectively. . . . Janice Rogers Brown has demonstrated all these qualities in abundance.

That is what Professor Ullman said.

Her colleagues and former colleagues also support her. A bipartisan group of Justice Brown's current and former judicial colleagues, including all of her former colleagues on the Court of Appeals, Third Appellate District, and four current members of the California Supreme Court, also have written in support of her nomination.

Twelve current and former colleagues noted in a letter to the committee that:

Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the Federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and a very hard worker. We know that she is a jurist who applies the law without favor, without bias, with an even hand.

That was sent to Chairman ORRIN HATCH in October 2003.

Ellis Horvitz, a Democrat and one of the deans of the appellate bar in California, has written in support of Justice Brown, noting that:

In my opinion, Justice Brown [possesses] those qualities an appellate judge should have. She is extremely intelligent, very conscientious and hard-working, refreshingly articulate, and possessing great common sense and integrity. She is courteous and gracious to the litigants and counsel who appear before her.

That was another letter to Chairman ORRIN HATCH.

The praise for Justice Brown and her performance on the bench goes on and on. Sure, some do not agree with her politically, but they recognize and appreciate her approach to jurisprudence. She is a restrained jurist who refuses to change the definition of marriage or to strike down the Pledge of Allegiance or throw out the ''three strikes and you are out'' law in California.

She is the kind of judge President Bush promised to support. Again, I think she has done a terrific job on the Supreme Court of California. I am proud she is from Alabama. I am sorry the discrimination she believed she and her family faced in our State was, I am sure, part of the reason they left Alabama to seek a fair life. She went to California and has taken advantage of the opportunities given her. She achieved a tremendous record. It is an honor for me to speak in support of her nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank my colleague from Alabama for his remarks. I did not hear them all, but he did say the record of Justice Janice Rogers Brown is compelling, and I agree with that. It is so far off the mainstream that one has to look at it compellingly. It is hard to believe, frankly, that the President nominated someone with these views. I think it shows how far over and out of the mainstream the President's nominees are and, unfortunately, how much in lockstep the majority in the Senate walks with these nominees.

I have no doubt that Justice Brown is smart and accomplished. Her rise from humble beginnings is impressive. That does not make somebody who belongs on the second most powerful court in the land. Someone's rise from humble beginnings is very important, but it does not mean they can run a major company. It does not mean they would be a great lineman or center or linebacker for the New York Giants. It is a wonderful thing, but it does not qualify them for the job.

Judge Janice Rogers Brown's humble rise cannot offset her radical and regressive approach to the law. I would argue that none of the views of the nominees we have had so far are so off the charts as Janice Rogers Brown. None of what she has done in her life can mitigate her hostility to a host of litigants who have appeared before her. If someone is polite and then takes your argument and throws it out, even though the law is behind you, and leaves you hopeless, it does not mean they have done a good job as a judge.

Janice Rogers Brown, on the merits, is the most out of the mainstream, the least deserving of all of the President's appeals court nominees. In a moment, I am going to review those reasons. Before I do, I want to ask a question that has been nagging me for a while: Why are so many self-described conservatives planning to vote for her? She is not conservative, she is a radical. She is the opposite of a conservative. And why are moderate Senators on the other side of the aisle boarding the Brown bandwagon when everything she believes is against what they believe?

Is it that this nominee, more than any other, embodies the conservative ideal for an appellate judge? Let's see what conservatives describe as what a judge ought to be.

This is the President and Republican leaders. They said a model judge should be a strict constructionist, judicially constrained, and mainstreamed. Janice Rogers Brown is none of those, absolutely none. Let's take a look at the record.

Is she a proud and principled strict constructionist? Is that why the President and Republican leaders are pushing her? President Bush has said time and again that he wants judges who will not legislate from the bench. He

said he wants strict constructionists in the mold of Antonin Scalia. But Janice Rogers Brown is no more a strict constructionist than I am a second baseman for the New York Yankees. Anyone who says that the New Deal is a socialist revolution and ought to be undone, when we have had 70 years, seven decades of law based on the construct of the New Deal; where 99 percent of America agrees—does that person belong on the bench? Absolutely not. The New Deal is a socialist revolution and ought to be undone—does anyone on this side of the aisle agree with that?

And then defend for me once, I would like to hear in all the debate we had and will have on Janice Rogers Brown one person defending those comments. The only person I heard is ORRIN HATCH: Well, she tries to be inflammatory, or she tries to get people's attention. She has said things such as this over and over.

If you believe the New Deal was a socialist revolution that ought to be undone, you are not a strict constructionist. The legislature, the Congress, and the President, Democrats and Republicans, from 1932 on have said the things we have done in the New Deal and built upon on the basis of the New Deal ought to stay. Should one judge be able to undo that? Then why are we voting for her? That is not strict constructionism. That is not conservatism.

Listen to what a conservative commentator, Ramesh Ponnuru, wrote about her in the National Review some time ago. The National Review is a conservative publication.

Republicans and their conservative allies have been willing to make lame arguments to rescue even nominees whose juris prudence is questionable.

He continues to say—this is not my quote:

Janice Rogers Brown has argued there is properly an extra constitutional dimension to constitutional law.

Those are her words.

She has said that judges should be willing to invoke—

And this is Mr. Ponnuru quoting Janice Rogers Brown, not me—

She has said that judges should be willing to invoke ''a higher law than the Constitution.''

You can find a higher law to the Constitution if you so believe from the far right, from the far left, maybe from the animal rights people or the vegetarians, but that is not what judges should do.

Take a look at her own words in a dissent involving a California proposition, proposition 209. In that case, which involved affirmative action, Justice Brown did not feel compelled to limit herself strictly to the language of that proposition. Instead, she decided that she should ''look to the analytical and philosophical evolution of the interpretation and application of title VII to develop the historical context behind proposition 209.''

This sounds like Justice Brennan or some of the very liberal judges the conservatives decry. If you are going to make up your own law, are we saying on the other side of the aisle, you are not a strict constructionist if you want to make up your own laws to the left, but you are a strict constructionist if you want to make up your own laws to the right? As somebody who believes deeply in moderation on the bench, I am offended by either side.

So Janice Rogers Brown is not a strict constructionist, but is she otherwise a proven warrior against the scourge of conservatives everywhere—judicial activism? No. She is clearly an activist judge. She takes what comes into her own mind—she is bright, but a lot of her views compared to American law veer way off course—and she writes them in her opinions. Decades of elections, tens of thousands of legislators, executives, and she just throws them out the window because she happens to believe she knows better than everybody else.

That is what a judicial activist is. That is what the conservative movement against judicial activism rebelled against.

Well, conservatives and moderates alike have criticized her for her activism, and her own words show her to be as activist as they come. Her own words demonstrate she is quick to want to reverse precedent, the very definition of an activist judge. When it comes to reversing precedent, one might say Janice Rogers Brown has an itchy trigger finger; she cannot wait to reverse precedent.

Here is what she said in People v. Roberman, 1998: We cannot simply cloak ourselves in the doctrine of stare decisis. Hello? I went to law school. I learned throughout law school, one studies cases because of stare decisis. One is supposed to look at the train of law, and here she is: Forget stare decisis.

If that was said by a liberal who wanted to move things way over to the left—a liberal would not say it; it would be someone further over—what would be heard on that side of the aisle? What does it say about her reluctance to be an activist?

Time and time again she has jumped at the chance to reshape settled law. Listen to a few statements from opinions she has written, not from speeches. Everyone has said, do not judge her speeches—they are inflammatory and intended to be so—but her opinions. Here she says: The commercial speech doctrine, which has been established in our law for decades, needs and deserves reconsideration and this is as good as any place to begin.

She wrote she was disinclined to perpetuate dubious law for no better reason than it exists.

I had a history professor in college. He said his first lesson of history is we are no smarter than our fathers, and people who think they are much smarter than people who came before them and have nothing to learn from them do not belong on the bench. Here she is: disinclined to perpetuate dubious law for no better reason than it exists. Is she saying all the people who wrote those opinions should be ignored?

On other occasions she has talked about ''taking a fresh look'', her words, at settled doctrine under California law. And just listen to the California State Bar Judicial Nominees Convention which gave Justice Brown a not qualified rating when nominated to the California Supreme Court in 1996. The rating in part was because of complaints that she was ''insensitive to established legal precedent.''

Or listen to the words of conservative writer Andrew Sullivan who agrees with many of Justice Brown's views. He said there is a case to be made for ''the constitutional extremism of one of the President's favorite nominees, Janice Rogers Brown. Whatever else she is, she does not fit the description of a judge who simply applies the law.'' This is Andrew Sullivan, conservative commentator, not CHUCK SCHUMER. He said: If she is not a judicial activist, I do not know who would be.

Mr. Sullivan made it a point to say he might agree with some of her views but not her penchant for imposing those views in her position as a judge, and that is the point. God bless her for her views. This is America. We can all have different views. But when one becomes a judge and they take an oath of office to uphold the Constitution, part of that means they uphold the traditions of law that are under the Constitution.

Here is what Sullivan said:

I might add, I am not unsympathetic to her views but she should run for office, not the courts.

He has it exactly right. Let her run on her views that the New Deal was a socialist revolution. Let her run on her views that there should not be child labor laws. Let her run on her views that there should be no zoning laws so someone who wanted to open a pornographic store next to a high school had a constitutional right to do so or somebody could buy a tract of land right next to your nice suburban house and put in a factory.

How about Mr. Ponnuru, again, a conservative writer from the National Review magazine:

She has said that judicial activism is not troubling per se. What matters is the world view of the judicial activist. In other words, one can be a judicial activist if they agree with her views, not if they do not.

I have to say to my friends on the other side of the aisle, they have lost a lot of the argument on judicial activism when they support Janice Rogers Brown. Judicial activism is not sometimes yes and sometimes no. An activist is somebody who makes his or her own law, it comes out of their own head and supersedes everything we have known, whether it is left, right, center.

It is incredible. It is incredible that we are discussing Janice Rogers Brown. I can imagine the reaction if a Democratic President put forward a nominee

who said all of these things. We would have pandemonium on that side of the aisle. But guess what. President Clinton never would have nominated someone like this. It is only because President Bush is so in the thrall of the hard right that he has to do this. Thank God it is not true of most of the judges he has nominated, conservative though they may be.

So as the record reflects, Janice Rogers Brown does not have the impulses of a restrained judge. She has the passions of a judicial activist and that was the type I thought conservatives wanted to keep off the bench at all costs.

How about this argument: She is not a strict constructionist and she is a judicial activist. But are her judicial views otherwise in the mainstream of conservatism? Is that why people on the other side of the aisle support her? My friend JEFF SESSIONS said Justice Brown is in the mainstream. Well, let us ask the American people if her views are in the mainstream. Or first let us ask conservative commentator George Will, a very respected man—and I have more respect for him because at least he is calling the shots as he sees them, not like my colleagues who seem to be marching to the tune of Janice Rogers Brown without even thinking. Here is what George Will said, and in fairness to George Will he was first saying that Priscilla Owen, who we opposed, is part of the mainstream, but here is what he said about Brown:

> Another of the three, Janice Rogers Brown, is out of that mainstream. That should not be an automatic disqualification, but it is a fact . . .

I say to Mr. Will, it surely is a disqualification to me, but that is not the point. Even George Will says Janice Rogers Brown is out of the mainstream. Which mainstream was he talking about? George Will was talking about the mainstream of conservative jurisprudence.

He went on to say, and these are his words:

> It is a fact she has expressed admiration for the Supreme Court's pre-1937 hyperactivism in declaring unconstitutional many laws and regulations of the sort that now define the post-New Deal regulatory state.

George Will has the forthrightness, straightforwardness, and courage to admit what Janice Rogers Brown is. When will one of my colleagues from the other side?

What does the record then show about Janice Rogers Brown? She is not strict in her construction. She is not mainstream in her conservatism. Nor is she quiet about her activism. So I am left with the same question: Why is it that Janice Rogers Brown is touted as the model conservative judge when she is anything but conservative in her judicial approach?

I believe there are many Senators across the aisle who would vote against such a candidate because her judicial philosophy could not be more out of sync with theirs, but I worry that there is enormous political pressure, party pressure, on those moderate Senators.

Senator FRIST has spoken the last few weeks about leader-led filibusters of judges, whatever that means. Well, is this a leader-led rubberstamping of nominees who have not even convinced noted conservatives that they belong on the bench?

Let me make one other point. If one looks at all the nominees, 45 court of appeals nominees, every measure that was put forward on the other side of the aisle for every one of the court of appeals nominees, whether it is to invoke cloture or to vote for them, there was not a single Republican dissent, except one: TRENT LOTT on Roger Gregory for the Fourth Circuit. That was the man Jesse Helms blocked, mostly because he did not want a Black man on the Fourth Circuit, which has not had a Black man before, even though the Fourth Circuit, North Carolina, Virginia, has a large Black population.

Let us look at the merits of Justice Brown. Let us look at her views and why I feel she could not have been a worse pick. This has nothing to do with her faith, her race, her gender, or her background. We are being blind to all that. Any nominee who has these views—could be Black, White, Hispanic, Asian, man, woman—you just can't support somebody like this because of their views, not because of who they are and not because of their background. What a record she has.

In case after case, Justice Brown goes through contortions of legal logic that reach results to hurt workers, limit environmental protections, and injure basic rights. Time and time again, when a legal question is presented twice, she takes two polar opposite approaches in order to achieve the outcome she wants. That is judicial activism at its worst.

Judicial activism can be dangerous on any court, but it is especially dangerous on the DC Circuit, which is known, for good reason, as the Nation's second highest court.

Some of the things she said. She said that the Lochner case was decided correctly. The Lochner case says that States cannot pass any laws protecting workers. If you ask most lawyers to name the worst Supreme Court decision of the 20th century, Lochner would be at the top of any list. Fortunately, the Court threw it out a few decades later. Not even Justice Scalia believes States should be prohibited from passing wages and hours laws. But Janice Rogers Brown believes not only is the Federal Government not allowed to, under the commerce clause, but the States themselves cannot do anything. It is confounding. It is just unbelievable.

How about her views in the San Remo case, where she says all zoning laws are a taking of property, an unconstitutional taking of property? Does anyone in America believe that? Does the most conservative Member of this Chamber? I don't know who it might be. We might have a race for that. But does the most conservative Member of this Chamber believe there should be no zoning laws? These are State laws, which has nothing to do with federalism, which Justice Scalia made one of his hallmarks. I disagree with him on those issues, but that is a different argument. These are local zoning laws. Unconstitutional? Is it unconstitutional to say you cannot put poison in the air? Is it unconstitutional to say you can't pollute the water? Is it unconstitutional to say in a residential community you cannot put in a factory or a porno palace? What are we doing here? What is going on here?

I have to tell you, I do not see how anyone on that side of the aisle can look in the mirror and say they really think this woman belongs on the DC Court of Appeals.

If it were just one view, you would say: Well, these guys are just focusing on one view. It is over and over again. Until Santa Monica—just to go back to Lochner— v. Superior Court, she called the demise of the Lochner era ''the revolution of 1937.'' That is that socialist revolution, the New Deal. She wants to undo it.

Here is what she said on another occasion:

> Today's senior citizens blithely cannibalize their grandchildren because they have the right to get as much free stuff as the political system will permit them to extract.

I suppose you read from that that she wants to repeal Social Security. After all, that was part of the socialist revolution. Does anyone here believe we should repeal Social Security? Anyone?

In a dissenting opinion, she wrote:

> I would deny the senior citizen plaintiff relief because she has failed to establish that public policy against age discrimination inures to the benefit of the public is fundamental and substantial.

It goes without saying that a nominee who does not agree that public policy against age discrimination benefits the public is far out of any mainstream.

I don't know of a single person on the U.S. courts—and there may be one or two but none that have come to my attention—who is as out of the mainstream, as far over to the right as Janice Rogers Brown.

So my colleagues—and this is really a plea to those on the other side of the aisle—we have already come to an agreement, at least 14 in the middle—God bless them for trying—that we are going to invoke cloture on Janice Rogers Brown, which means there will be an up-or-down vote. But no one here has voted up or down on Janice Rogers Brown before, except Members of the Judiciary Committee.

I urge, plead with my colleagues on the other side of the aisle—particularly those who are somewhat more moderate—look at the record of this nominee. Look at what she says and what she stands for. If there were ever a time to show some independence, to not march in lockstep, to vote your

convictions because you can't believe that someone of these views belongs on the court, now is that time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

(The remarks of Mr. NELSON of Florida pertaining to the introduction of S–1168 are printed in today's RECORD under ''Introduced Bills and Joint Resolutions.'')

Mr. NELSON of Florida. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO JUDGE CHARLES R. SIMPSON III

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to an ambassador of the law. Charles R. Simpson III, judge of the United States District Court for the Western District of Kentucky, is a renowned fixture of the legal community in his home state as well as a world traveler, in his capacity as a member of the Committee on International Judicial Relations of the Judicial Conference of the United States. In that role, he serves as both a student and a teacher in courtrooms all over the world.

Judge Simpson is also an old friend of mine. He graduated from my alma mater, the University of Louisville, where he received both his bachelor's degree in 1967 and his law degree in 1970. Soon afterwards, we both helped found the law firm of Levin, Yussman, McConnell & Simpson. Obviously it was not the last stop for either of us.

After serving the public in county government, where I also served, Judge Simpson was appointed to the District Court by President Ronald Reagan in 1986. He has retained that post for nearly 20 years, rising to become one of the most respected voices in Louisville and throughout the State. But he also wanted to take his legal knowledge and his love of Kentucky and spread it beyond America's borders.

Dating to a period in his youth when he studied painting and architecture in Europe, Chuck has enjoyed an adventurer's spirit. So he spearheaded the establishment of a sister-court relationship between his court and one in Croatia. Through this friendship, Croatians got a firsthand look at American jurisprudence, and Judge Simpson learned how the law deals with the difficulties of life in Eastern Europe.

Because of his groundbreaking efforts, Chief Justice of the United States William H. Rehnquist appointed Judge Simpson to the Committee on International Judicial Relations of the Judicial Conference of the United States in 2004. His wide travels have included countries such as Russia, Croatia, Slovenia and Cyprus.

Once on a visit to Ivanovo, Russia, Judge Simpson caused a minor international incident when he accidentally locked himself in the courtroom cage usually reserved for the defendant. Apparently, it was quite difficult to find the key. Everyone handled the situation with great humor, and Chuck struck a blow for diplomacy when his story made the front page of the local Ivanovo newspaper.

In 1999 Judge Simpson was named outstanding alumnus of the University of Louisville's Louis D. Brandeis School of Law, and in 2000 the Louisville Bar Association named him judge of the year. He and his wife Clare have three children, one of whom, their daughter Pam, has served with distinction for 2 years in my Washington office.

For his decades of service, the Kentucky Bar Association has named Chuck the 2005 outstanding judge of the year. They recognize that he is a superb representative of the American justice system to our friends across the world, and the knowledge he brings home from his travels enriches us all. Mr. President, today I ask my colleagues to join me in commending Judge Simpson for receiving this high honor, and for his service to the law and his country.

NOMINATION OF JOHN BOLTON TO BE UNITED STATES AMBASSADOR TO THE UNITED NATIONS

Mr. CORZINE. Mr. President, I will be voting against the nomination of John Bolton to be Ambassador to the United Nations.

When the President first nominated Mr. Bolton for this position, I expressed deep disappointment and concern. First, because of his repeated expression of disdain for the organization. But, more importantly, because Mr. Bolton is as responsible as any member of the administration for the needless confrontations with the rest of the world and for the international isolation that plagued President Bush's first term and for the shaky credibility we carry today. At a time when we need to be strengthening our alliances and making full use of international institutions to achieve our foreign policy goals, sending Mr. Bolton to the United Nations sends the exact wrong message. I do not accept his view that the U.N. is a vehicle to be used by the U.S. ''when it suits our interests and we can get others to go along.'' Diplomacy in most people's minds requires attention to more than just coalitions of the willing.

Over the past month, the Senate Foreign Relations Committee has uncovered a pattern of behavior on the part of Mr. Bolton that has only confirmed my concerns. Most disturbing to me is the evidence of Mr. Bolton's troubled and confrontational relationship with our intelligence community.

In speeches and testimony, he has appeared to stretch the available intelligence to fit his preconceived views. On three separate occasions, he tried to inflate language characterizing our intelligence assessments regarding Syria's nuclear activities. He sought to exaggerate the intelligence community's views about Cuba's possible biological weapons activities. His track record, on these and other matters, was so bad that the Deputy Secretary of State made an extraordinary order—that Mr. Bolton could not give any testimony or speech that was not personally cleared by the Deputy Secretary or the Secretary's chief of staff.

He also dampened critical debates among professionals on important policy issues by retaliating against analysts who presented a different point of view than his own. For example, on three occasions over a 6 month period, he sought to remove a midlevel analyst who disputed the language he tried to use about Cuba. The proliferation of weapons of mass destruction is a serious matter. I would not criticize Mr. Bolton for asking intelligence analysts hard questions about proliferation issues, nor should policy makers refrain from challenging the assumptions of those analysts. But Mr. Bolton was doing something far different. He made it clear that he expected intelligence analyses that conformed with his preconceived policy views. Rather than welcome contrary intelligence analyses as essential to an informed debate, he retaliated against those who offered contrary views.

Mr. Bolton's approach to those around him has been harshly criticized by those who have worked with him. Larry Wilkerson, the chief of staff for Secretary Powell, called him a ''lousy leader.'' Carl Ford, former head of the State Department's Bureau of Intelligence and Research, referred to Mr. Bolton as a ''quintessential kiss-up, kick-down sort of guy.''

This is not the person we need at the United Nations. Good diplomacy, like good business, relies on a great team and a good leader. Good leaders listen. They listen to their troops, they make reasoned decisions, they take responsibility, and they build the respect and loyalty of their staff. Management by fear is a recipe, in both public service and the private sector, for getting only the information that you want to hear. Shoot the messenger and other messengers will not volunteer to deliver the bad news. And I submit that Mr. Bolton has developed a reputation for shooting the messenger.