2003 Madrid donors' conference, Turkey generously pledged to donate $50 million in aid over 5 years. In addition, Turkish businesses are functioning in Iraq and helping to provide fuel, electricity, and water to the Iraqi people. And many brave Turkish men and women have given the ultimate sacrifice to help build Iraq's nascent democracy. We honor them for their courage.

Turkey's contribution to the reconstruction project in Afghanistan must also not be overlooked. Turkey has taken the lead for the International Security Assistance Force twice in the last 3 years, most recently in February of this year.

And we must not forget that Turkey had been challenged by terrorism at home by the PKK for years before 9/11. Turkey is threatened today as well. Some PKK terrorists are seeking safe haven in northern Iraq, and so I urge the administration and the Iraqi government to take more aggressive action against the terrorists, and deny them any safe haven from which to launch attacks.

Since 9/11, Turkey has also been the target of al-Qaida. In November 2003, 62 people were killed and more than 700 injured in multiple bombings in Istanbul. It was a tragic event that saddened and angered the world, and fortified our resolve to win the war on terror.

Turkey has been a dedicated and reliable ally. Our intelligence communities are in close contact in this war, and Turkey has been instrumental in capturing terrorists, disrupting their logistics and planning, and dismantling their vast financial networks.

I am confident that Turkey will remain determined and resolute in the war on terror, and that enhanced cooperation between our two countries will prove to be fruitful. Turkey's role as a vital and strategic ally can only be enhanced by its membership in the European Union. The United States strongly supports this.

On December 17 last year, EU member states accepted the recommendation of the European commission for the commencement of accession negotiations with Turkey. These talks are scheduled to begin in October. In order to reach this stage, the Turkish government has undertaken sweeping reforms to fulfill the political and economic criteria for membership in the EU.

Since October of 2001, the Turkish parliament has passed nine reform packages to bring Turkish laws into line with EU benchmarks—five under the leadership of Prime Minister Endrogan. Reforms include the legalization of Kurdish broadcasting and education, the enhancement of freedoms of speech and association, greater civilian control over the military, and more thorough and transparent investigations into allegations of human rights abuses. It is crucial that Turkey continue to take steps to meet all of the EU's criteria. This will allow the United States to remain a steady and effective supporter of Turkey's ambitions to join the EU.

Turkey's accession to the EU will have a profound impact on Muslim populations within Europe, in the broader Middle East and beyond. It will further demonstrate that democratic governance and respect for the rule of law are not unique to one religion or one culture, but are the birthright of all peoples everywhere. Just as the people of Iraq, Lebanon, and Afghanistan are setting a remarkable example for the entire Middle East, Turkey's membership in the EU will inspire hope throughout the entire Muslim world.

And, finally, as a secular democracy with a predominantly Muslim population, Turkey's membership in the EU—as in NATO—will demonstrate the United States' and Europe's commitment to diversity and tolerance.

We may not always agree on the same course of action—and sometimes we may not agree on the same ends—but Turkey has, for decades, been a friend. And it has consistently expressed its dedication to the values, ideals, and interests that the United States holds dear.

Like the United States, Turkey is committed to a democratic Iraq that respects the rights of its own people and is at peace with its neighbors. It is committed to a just resolution to the Israeli-Palestinian conflict in which two democratic states, Israel and Palestine, live side-by-side in peace and security. It stands against Iran's nuclear ambitions, and squarely for victory in the war against terror.

The United States and Turkey share the same objectives: peace, security, and the spread of freedom and opportunity.

The partnership between the United States and Turkey has survived disagreements in the past and has been consistently vital in the pursuit of our shared interests. The key has always been strong leadership at the highest levels that articulates our partnership and defends the bilateral ties that help us advance our common goals.

Today, we face a golden opportunity to move beyond recent tensions and strengthen our partnership. The first step is for Prime Minister Erdogan to speak clearly in defense of our partnership, and to dispel a wave of anti-Americanism that runs counter to the last 5 decades of cooperation.

I'm confident that the prime minister will do so during his visit this week, and when he returns home to Turkey. And I'm confident that the United States-Turkish partnership will endure as we confront the challenges of the 21st century together.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

Mr. DURBIN. Will the Chair inform me as to what the situation is concerning morning business or debate.

The ACTING PRESIDENT pro tempore. We are supposed to go into executive session at this time.

Mr. DURBIN. I thank the Chair.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF JANICE ROGERS BROWN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will go into executive session to resume consideration of calendar No. 72, which the clerk will report.

The assistant legislative clerk read the nomination of Janice Rogers Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12 noon shall be equally divided for debate between the two leaders or their designees, provided that the last 20 minutes prior to the vote be divided, with 10 minutes under the control of the Democratic leader or his designee, to be followed by 10 minutes under the control of the majority leader or his designee.

The assistant Democratic leader is recognized.

Mr. DURBIN. Mr. President, under the order, the time is equally divided; is that right?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. DURBIN. I seek recognition under the terms of that order.

The ACTING PRESIDENT pro tempore. The Senator from Illinois, the assistant Democratic leader, is recognized.

Mr. DURBIN. Mr. President, I am sorry that this day has come. Janice Rogers Brown is one of President Bush's most ideological and extreme judicial nominees. This is not just my opinion. I invite anyone, please, read her speeches, read her opinions. They reflect the views of a judicial activist and a person who is, in fact, an ideological warrior. They reflect the views of someone who is outside of the mainstream of American thought. They reflect the views of someone who should not be given a lifetime appointment to the second highest court in America—a court second only to the United States Supreme Court.

I am a member of the Senate Judiciary Committee. I served as the ranking Democrat at Justice Brown's hearing in October of 2003. I asked her a lot of questions. Her answers offered little assurance that she will be anything but a judicial activist with a far-right agenda.

She is a very engaging person. She has a great life story. You cannot help but like her when you first meet her. But then, as you read what she has said and ask her questions about it, you cannot help but be troubled, if you are looking for someone who is moderate and centrist and who will be fair in the way they view the most important cases coming before the court.

Do not take my word for that. Listen to the words of George Will, one of the most well-known, conservative voices in America. Two weeks ago in the Washington Post, George Will wrote the following:

Janice Rogers Brown is out of that mainstream. That should not be an automatic disqualification, but it is a fact: She has expressed admiration for the Supreme Court's pre-1937 hyper-activism in declaring unconstitutional many laws and regulations of the sort that now define the new post-New Deal regulatory state.

I agree with George Will. So do hundreds of other individuals and organizations. Newspaper editorial boards across America are deeply troubled about her nomination by President Bush.

Justice Brown's ideological rants about the role of government in our society are found most often in her speeches. She called the year of 1937 ''the triumph of our own socialist revolution.'' Socialism in America, in the eyes of Justice Brown. Why? Because the Supreme Court decisions that year upheld the constitutionality of Social Security and other major parts of the New Deal. So in the eyes of Justice Brown, the New Deal and Social Security are socialist ideas? That shows how far removed she is from the reality of thinking in America.

She stated:

Where Government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies.

That is a wonderful line to throw in a novel but to announce that as your philosophy as you take off to preside over a bench making decisions involving the lives of hundreds of thousands of Americans is just too extreme.

Justice Brown has praised an infamous case, Lochner v. New York. It is a 100-year-old case. The Supreme Court struck down maximum-hour laws for bakers and ruled that Government regulations interfered with the constitutional right to ''freedom of contract.'' The Lochner case has been repudiated by both liberals and conservatives. They said it went too far. They believed it was extreme, but not Justice Brown. She not only accepts the Lochner decision, she embraces it.

In another speech, Justice Brown said our Federal Government is like slavery. She said:

We no longer find slavery abhorrent. We embrace it. We demand more. Big government is not just the opiate of the masses. It is the opiate.

Think about these words. Interesting things to read. You might want to read them from time to time and say, let's see what the far right thinks about things, except these are the words of a woman who is seeking to bring her views to a lifetime appointment on the Federal bench.

She has blasted Government programs that help seniors, and here is what she said:

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

Think about that. Think of the cynicism in that remark and think about whether she is the judge you would want to face with a critical decision involving your life, your family, your community, or our country—Janice Rogers Brown.

She rebuked elected officials for ''handing out new rights like lollipops in the dentist's office.'' She has complained that ''in the last 100 years, and particularly in the last 30, the Constitution has been demoted to the status of a bad chain novel.''

Think about that. Is Roe v. Wade chapter 1 of Justice Brown's bad chain novel? How about Brown v. Board of Education, Justice Brown? Is that another bad chapter in America's novel? How about Miranda, a decision which has now been accepted across America, another bad chapter in America's novel?

Justice Brown just does not get it. America has changed, thank God, in recognizing the right of privacy, in recognizing that we are putting behind us segregation, separate but equal schools, in recognizing that when it comes to the power of the State, there are limitations and there are rights of individuals. For Justice Brown, these are part of a bad chain novel. What a choice of words.

Justice Brown's rhetoric suggests she is guided more by ''The Fountainhead,'' ''Atlas Shrugged,'' and ''The Road to Serfdom'' than by our Constitution and Bill of Rights. And she wants a lifetime appointment on the bench?

The Washington Post asked a question in an editorial this morning of Republicans in the Senate: If you truly want moderate people who are not activist, who do not come to the bench with an agenda, how can you support Justice Brown? When you take a look at what she has done and said, how can you honestly believe she is going to be moderate in her approach on the bench?

The question is whether Republican Senators will march in lockstep because President Bush says take it or leave it. It is Justice Janice Rogers Brown, you have to have her. If they take it, they are basically turning their backs on the fact they have argued against activism on the bench. Hers is activism from the right, not from the left. But if you are opposed to judicial activism, how could you support her based on what she said?

In her confirmation hearing, Justice Brown dismissed her speeches. She said they were just an attempt to stir the pot. They did more than stir the pot. They set the kitchen on fire. Her speeches show she has the temperament and ideology of a rightwing radio talk show host, not of a person we want to serve on the second highest court of the land for a lifetime—a lifetime.

Justice Brown's nomination to the DC Circuit of all courts is particularly troubling. The DC Circuit is a unique court. It is the court that most closely oversees the operations of Government, such as dealing with worker safety and unfair labor practices. It is the only appellate court with exclusive jurisdiction over many aspects of environmental and energy laws. How ironic and unfortunate to have someone considered for that position who is so openly hostile to the role of the Government when it comes to the environment, when it comes to protecting individual rights.

As a member of the California Supreme Court, Justice Brown has put her theories into practice. In case after case, Justice Brown has sided with anti-Government positions, and she has sided consistently against victims seeking rights and remedies. She is a tough judge. Sometimes you want a tough judge, but you also want a balanced judge, one who is going to be fair in what they do on the bench.

Oftentimes she is the loan dissenter—remarkable—because the California Supreme Court has six Republicans and only one Democrat. Senator BARBARA BOXER of California has counted at least 31 cases where Justice Brown was the sole dissenter. Let me give a few examples.

She was the only member of the California Supreme Court to find the California Fair Employment and Housing Commission did not have the authority to award damages to housing discrimination victims.

She was the only member of the court to conclude that age discrimination victims should not have the right to sue under common law, an interpretation directly contrary to the will of the California Legislature.

She was the only member of the California Supreme Court who voted to strike down a San Francisco law that provided housing assistance to displaced low-income, elderly, and disabled people.

In a case last year, Justice Brown was the sole member of her court who voted to strike down a law that required health insurance plans that cover prescription drugs to include prescription contraceptives in that coverage. Her open hostility to access to contraception is particularly worth noting today, June 7, 2005. Today is the 40th anniversary of the landmark Supreme Court case Griswold v. Connecticut, which established a constitutional right to marital privacy. That case really was a watershed decision.

In the State of Connecticut and several other States, a religious group had been successful in convincing the State

legislature to dramatically limit the availability of birth control and contraception. Forty years ago, some of us did not know it was happening, but it was happening. In some States, you could not buy birth control because the legislature said no. That is a decision the State had decided that you could not make as an individual.

The Griswold case overthrew that law and said that your personal right to privacy trumped State rights when it came to access to contraception.

It turns out that Justice Brown's hostility to access to contraception runs counter to 40 years of thinking in America about our rights as individuals to privacy and to make those decisions involving personal responsibility. Justice Janice Rogers Brown might take that right away.

To reward her for this extreme and fringe view, President Bush wants to give her a lifetime appointment to the second highest court of the land. There she will sit day after day, week after week, and month after month making decisions that affect the lives of individuals. It is her point of view that will prevail. She has shown no inclination toward moderation. She will push that agenda on that court, and people will come into that courtroom and wonder what country they are living in, where this court might be meeting because it is so inconsistent with what America has stood for.

In another case, Justice Brown was the only member of the California Supreme Court who voted to make it easier to sell cigarettes to minors. Isn't that perfect? She wants the Government to invade your privacy when it comes to the decisions about birth control and your family, but she does not want the Government to stop the gas station down the street from selling cigarettes to a 12-year-old.

She was the only member of her court who dissented in two rulings that permitted counties to ban guns or gun sales on fairgrounds or other public property.

She was the only member of her court who voted to overturn the rape conviction of a 17-year-old girl because she believed the victim gave mixed messages to the rapist. She was the only member to dissent. She read the facts and concluded that she sided with the rapist and not the victim—the only member to dissent.

She was the only member of her court who concluded there was nothing improper about requiring a criminal defendant to wear a 50,000-bolt stun belt at his trial—the only member of the court, a court of six Republicans and one Democrat. In many of these cases, there were clear precedents, decisions by the court which Justice Brown chose to ignore. Her personal philosophy was more important to her than the law. That is known as judicial activism. That is what Republicans have condemned, and that is what they will endorse if they vote for her nomination.

Why does she ignore the law so often? It gets in the way of her personal beliefs. Those are the most important things from her point of view.

This is not a new revelation about Justice Brown. Back in 1996, the California State Bar Commission rated Justice Brown as ''not qualified''—not qualified—for the California Supreme Court. Here is what they said about her: She had a tendency ''to interject her political and philosophical views into her opinions.'' No surprise. Read what she has done on that court. Read what she said about the law. And do not be a bit surprised when she comes to this DC Circuit Court, if she is approved by the Senate for a lifetime appointment, and does exactly the same thing. It is not as if we can say 2 years from now: Well, we guessed wrong; she is not independent, she is not moderate, she is an activist, we will remove her. No way. This is a lifetime appointment to this court by the Bush administration, just the kind of ideologue they want to put on that bench to influence decision after decision as long as she lives.

Nine years later, the American Bar Association, in evaluating Justice Brown for the position we are voting on today, gave her the lowest passing grade. Several members of the ABA screening committee rated Justice Brown ''not qualified'' again.

In the editorial I mentioned earlier, entitled ''Reject Justice Brown,'' the Washington Post today asserted:

> No Senator who votes for her will have standing any longer to complain about legislating from the bench.

And the Washington Post is right. Do not complain about judicial activism if you vote for Janice Rogers Brown. She is a judicial activist. She has an agenda, and she has been loyal to it on the California Supreme Court. There is no reason to expect anything different on the DC Circuit Court.

A Los Angeles Times editorial entitled ''A Bad Fit for a Key Court'' stated:

> In opinions and speeches, Brown has articulated disdainful views of the Constitution and Government that are so strong and so far from the mainstream as to raise questions about whether they would control her decisions.

That is from a Los Angeles Times editorial which, incidentally, is her home State newspaper. They know her best.

The New York Times stated that Justice Brown ''is an outspoken supporter of a radical movement to take constitutional law back to before 1937, when the Federal Government had little power to prevent discrimination, protect workers from unsafe conditions or prohibit child labor.''

The Detroit Free Press put it this way:

> Since her appointment to the State court in 1996, Brown has all but hung a banner above her head declaring herself a foe to privacy rights, civil rights, legal precedent and even colleagues who don't share her extremist leanings.

Over 100 organizations oppose Justice Brown. It takes something in this town to get 100 groups to oppose someone. She pulled it off, including almost every major African-American organization in America, despite the fact that Janice Rogers Brown is an African American.

Dr. Dorothy Height, the great civil rights leader, recipient of the Congressional Gold Medal, attended a press conference before the Judiciary Committee vote on Justice Brown in November of 2003 and said this:

> I cannot stand by and be silent when a jurist with the record of performance of California Supreme Court Justice Janice Rogers Brown is nominated to a Federal court, even though she is an African-American woman. In her speeches and decisions, Justice Janice Rogers Brown has articulated positions that weaken the civil rights legislation and progress that I and others have fought so long and hard to achieve.

How hard it must have been for Dorothy Height, this great civil rights leader, to come out and publicly say that this African-American woman, Janice Rogers Brown, was not the right choice for the DC Circuit Court, the same city that Dorothy Height calls home.

The Senate rejected the nomination of Janice Rogers Brown in 2003. Her renomination this year is less about confirmation than it is about confrontation. It is evident the White House wants to pick a fight over this nomination. Well, they will get their wish today.

This White House strategy of confrontation does a great disservice to the American people, who have every right to expect their elected representatives to work together to address the real problems facing our Nation, rather than fighting the same battles over and over.

I know my colleagues across the aisle have steadfastly supported President Bush's judicial nominees, but I urge them to at least stand up to the President on this one.

I ask them to consider the story of Stephen Barnett, a distinguished constitutional law professor at the University of California at Berkeley. Professor Barnett enthusiastically endorsed Janice Rogers Brown before her October 2003 hearing, and Senator HATCH specifically mentioned Professor Barnett and his endorsement in his opening statement at Justice Brown's hearing.

But Professor Barnett changed his mind after he learned more about her record. After the Brown confirmation hearing, Professor Barnett sent a letter to Senator HATCH withdrawing his support. Here is what he said:

> Having read the speeches of Justice Brown that have now been disclosed, and having watched her testimony before the Committee on October 22, I no longer support the nomination. Those speeches, with their government-bashing and their extreme and outdated ideological positions, put Justice Brown outside the mainstream of today's constitutional law.

I urge my colleagues across the aisle, who were initially inclined to support

the Brown nomination, like Professor Barnett, to reconsider. Federal judges serve for life. The views of Janice Rogers Brown are too extreme and too radical for a lifetime of service on the second highest court in America.

It is well known that the last time the nomination of Janice Rogers Brown came before the Senate, it was filibustered. I voted to continue that filibuster because I do not believe she is the right person for the job. There was a big controversy over the use of the filibuster, and a decision was reached that Janice Rogers Brown would not be subject to a filibuster when she came up this week. That is an effort to move the Senate forward, to put the nuclear option and that constitutional confrontation behind us.

I urge my colleagues who believe in good faith we need to be bipartisan to show that bipartisanship today. Take an honest look at her record. Understand she is not a good person for a lifetime appointment. Join us in defeating the nomination of Janice Rogers Brown.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise to speak on the same subject as my good colleague from Illinois. I hope everyone heard his outstanding comments on Janice Rogers Brown. If there were ever a nominee who is out of the mainstream of every nominee of all the 219 who have come before us, there is no one more extreme than Janice Rogers Brown.

I have a special plea today. It is to my moderate colleagues across the aisle. They have stood with their party and their President on wanting an up-or-down vote, but that does not mean they have to vote yes. If there was ever a nominee whose views are different from theirs, it is Janice Rogers Brown. She is so far out of the mainstream that conservative commentators such as George Will who have defended the other nominees have said that she is out of the mainstream.

She is so far out of the mainstream that she makes Justice Scalia look like a liberal. She is so far out of the mainstream that she wishes to roll back not 20, not 40, not 60, not 80, but 100 years of law and jurisprudence. She is typical of the kind of nominee we should not have on the bench, whether they be far right or far left, someone who thinks their own views ought to take precedence over the views of the law, over the views of the people, over the views of the legislature and the President.

There is no doubt that Janice Rogers Brown is smart and accomplished. There is no doubt that she rose from humble beginnings, and that is truly impressive, but none of that can offset her radical and regressive approach to the law. None of that can mitigate her hostility to a host of litigants who have appeared before her. The biography, as wonderful as it is, is no justification to put on the courts someone who clearly does not belong there. Particularly to place such a nominee on the DC Court of Appeals, the second highest court in the land, would be one of the worst wrongs we would have done in the short span of the 21st century for which this Congress has met.

To my mind, Janice Rogers Brown is the least deserving of all of President Bush's appeal court nominees. Before I review the reasons I will vote against her, I wish to ask a question that continues to nag at me. I asked it yesterday, but let me ask it again in a different way because I do not have a good answer, and I do not think there is a good answer. Why are even moderate Republican Senators boarding the Brown bandwagon when clearly her views are so far away from what any moderate, Democrat or Republican, believes? A second question: Why are so many self-described conservatives voting for her when she stands against all the things this conservative movement has said they believe in?

Does this nominee embody the conservative ideal of an appellate judge? If the rhetoric from the President and the Republican leadership is to be believed, a conservative nominee must be at least three things: He or she must be a strict constructionist, he or she must be judicially restrained, and he or she must be mainstream.

I ask my friends on the other side of the aisle to take this little multiple-choice quiz before they vote for Janice Rogers Brown. Which of these describes the nominee? Is she a strict constructionist if she says the whole history of the New Deal should be washed away? Is she a strict constructionist if she says zoning laws, which have been with us for over 100 years, are unconstitutional? Is she judicially restrained when she says that the elderly are cannibalizing the young because they want benefits? Is she mainstream when she asks question after question and then takes views that 99.9 percent of the American people would oppose?

I would argue, and I do not think there is very little dispute, that Janice Rogers Brown is not a strict constructionist, is not judicially restrained, and is not mainstream.

Let us see if she is a proud and principled strict constructionist, and let us use President Bush's definition of what a strict constructionist is. It is a judge who will not legislate from the bench. Well, Janice Rogers Brown is no more of a strict constructionist than I am a starting center for the New York Knicks.

Listen to what a conservative commentator, Ramesh Ponnuru of the National Review, wrote about her:

> Republicans, and their conservative allies, have been willing to make . . . lame arguments to rescue even nominees whose jurisprudence is questionable. Janice Rogers Brown . . . has argued that there is properly an extra constitutional dimension to constitutional law. . . .

Well, I say to my conservative strict constructionist colleagues, if they are opening the door to this extra constitutional dimension, they are going to reap what they have sown. They are going to find someone sooner or later put on the court who is way to the left and says there is an extra constitutional dimension. My guess is that some of their allies on the hard right already think that has happened in, say, Justice Kennedy's decision in Lawrence. But what is good for the goose is good for the gander.

Ponnuru goes on to write:

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

Let me repeat that. Janice Rogers Brown has said that judges should be willing to invoke a higher law than the Constitution. Does she want a theocracy? Does she want a dictatorship? The Constitution is our highest law. We may have many other beliefs, and the Constitution protects our right to practice those beliefs, but for a judge to say they will invoke a higher law than the Constitution—how can any conservative stand here with a straight face and tell us that they are for Janice Rogers Brown?

Let us look at her own words. Here is what she said about California proposition 209. She decided 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.

Not what the people voted for, not strict constructionism, but her own view.

Let us go to the next choice. Is she otherwise a dependable warrior against the scourge of conservatives everywhere—judicial activism? Well, here are her own words:

> We cannot simply cloak ourselves in the doctrine of stare decisis.
>
> [I am] disinclined to perpetuate dubious law for no better reason than it exists.

Please. This is not someone who is a strict constructionist. It is somebody who is saying, with, I might say, intellectual arrogance, that her views supersede the views of the law. For those who did not go to law school or school where they learned Latin, ''stare decisis'' means decisions that have been already made by the courts, and they imply a grand tradition often going back to England and Anglo-Saxon law to the 1200s.

We cannot cloak ourselves in the doctrine of stare decisis? Again, what does Janice Rogers Brown want to be nominated for—dictator or grand exalted ruler? Please. How can a conservative who believes we are to follow the rule of law, who believes that there should be strict constructionism and is against activist judges, support someone who says, ''I am disinclined to perpetuate dubious law for no better reason than it exists''?

What arrogance. What gall. And most importantly, why would we even think—why did President Bush think and why do my colleagues think—of

putting someone on the bench who says that? Whether you are the most conservative Republican or the most moderate Republican, whether you are the most liberal Democrat or the most moderate Democrat, we don't believe this. None of us believe this. This is against our entire American tradition, from the Magna Carta, through common law, through our Constitution, through the next wonderful 200 years.

The California State Bar Judicial Nominees Commission, which gave her a ''nonqualified'' rating when she was first nominated to the court in 1996, said that the rating was in part because of complaints that she was ''insensitive to legal precedent.''

Here is what Andrew Sullivan says, another conservative writer. This is not CHUCK SCHUMER, Democrat of Brooklyn, NY. This is Andrew Sullivan, conservative writer. He said there is a very good 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. If she isn't a ''judicial activist,'' I don't know who would be.

My colleagues, whether you are here in the Senate or out in the conservative movement, you spent a 20-year battle fighting judicial activism, but all of a sudden you are saying: Never mind. If we like the views of the nominee, strict construction goes out the window, and we will put in our own variety of judicial activist.

That is not going to bode well for consistency in your arguments, but more importantly for the Republic, and for the keystone of article 3, the article 3 branch of Government, the judiciary, which is that judges interpret the law and follow the precedent of law and do not make law.

Mr. Ponnuru, the National Review writer, said:

She has said that judicial activism is not troubling per se. . . .

Here is the point of Mr. Sullivan, who was the author of this other quote. He said:

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

I couldn't say it better myself. This is somebody who has such passionate views that she has to take those views, which are so radically different—our Constitution says our way of governing is you do not do that from the bench. You do it by running for office.

My guess is if she actually ran for office—of course she ran for judge, but she was unopposed. I am sure if right now you asked the people of California, Who is Janice Rogers Brown, maybe 3 or 4 percent would know and they might not know her views.

You run for office.

What about her substantive views, are they mainstream? To call Justice Brown mainstream is a distortion of her record. No one is further from the mainstream. I cannot think of a single Clinton nominee who is as far to the left as Janice Rogers Brown is to the right. I cannot think of a single George Bush nominee, George Bush 41; I cannot think of a single Ronald Reagan nominee; I cannot think of a single nominee, in at least my lifetime, who is more out of the mainstream than Janice Rogers Brown.

But don't take my word for it. How about George Will—hardly a leftwing liberal—on the approach of this nominee? Here is what he said:

Janice Rogers Brown is out of the mainstream of conservative jurisprudence.

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

There may be some people who feel we should go back before the New Deal, where the rich and powerful got their way almost all the time. But, again, as was said by Andrew Sullivan, if she believes that, let her run for office. But here is the dirty little secret of those on the hard right who believe, as Janice Rogers Brown does, that the New Deal was wrong, the Commerce Clause should be dismantled and wages and hours laws are unconstitutional. The dirty little secret is they know they cannot win in the court of public opinion, and their plan is to impose their views on the rest of us by capturing the judiciary. Nobody—nobody personifies those views more than Janice Rogers Brown.

Let me go over a few other of her views before I conclude. She has described the New Deal as the ''triumph'' of America's ''socialist revolution.'' Does that place her in the mainstream?

She has said the Lochner case—which said basically that wage-and-hours laws passed by the States are unconstitutional—was correct. Does that place her in the mainstream, taking a case from 1906 that has been repudiated from the 1930s onward and saying that it was correctly decided?

On another occasion she said that:

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

I would like the senior citizens of America, whether they be liberal Democrats or conservative Republicans, to answer the question: Is she out of the mainstream? By getting Social Security, is she asking are they cannibalizing the young? Or Medicare? Because I don't know what other benefits senior citizens get.

Janice Rogers Brown, by this quote, seems to believe we should not have Social Security. It is probably part of the New Deal Socialist revolution. We should not have Medicare. That is part of Lyndon Johnson's furtherance of the Socialist revolution. How mainstream is that?

Again, I want to ask my moderate colleagues—not only the 7 who signed the document but the 10 or 12 others—how can you vote for her? I mean, I understand marching in lockstep. I understand we are going to have different views on a whole lot of judges. But how about once—once showing a little independence. Because I know that Janice Rogers Brown's views are not your views. She is not nominated for a district court. She is nominated for the second highest court in the land, where those views will be heard over and over and over again.

I am left with the same question. It is clear that her record shows she is not strict in her constructionism; she is not mainstream in her conservatism; and she is not quiet about her activism. Again, let me ask the question: Why is Janice Rogers Brown touted as the model of a 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 we know there is tremendous political pressure, party pressure on the moderate Senators.

We have a new chart because we have had a few new votes. Of all the votes we have had on judicial nominees, cloture and up-or-down votes, here is how the Republican side of the aisle has stacked up: 2,811 to 2. Only twice in all the votes, 2,813, has any Member of the other side voted against; once, when TRENT LOTT voted against Judge Gregory, and just last week on Justice Owen, Senator CHAFEE voted against her.

If we want up-or-down votes, doesn't that imply some independence of thought? Doesn't that imply we not march in lockstep? Doesn't that imply, when somebody is so far out of the mainstream, such as Janice Rogers Brown, that there will be some opposition to her from the other side of the aisle?

Senator FRIST, last week, or a few weeks ago, spoke about leader-led filibusters of judges—whatever that means. Is the vote for Janice Rogers Brown not a leader-led rubberstamping of nominees, nominees who have not even convinced conservatives that they belong on the bench?

I continue to believe Judge Brown was the least worthy pick this President has made in the appellate courts, and that is based on her record—not her background, not her story, not her race, not her gender. We should vote for judges based on their record, and I, once again, ask my colleagues across the aisle to look at that record.

If my colleagues across the aisle ask three simple questions—Is the nominee a strict constructionist? Is the nominee a judicial activist? And is the nominee a mainstream conservative?—I don't believe many could bring themselves to vote for Janice Rogers Brown.

I could not support Judge Brown's nomination the first time. I cannot support it now. I urge my colleagues, particularly my moderate friends from the other side of the aisle, to vote against her this afternoon.

I yield the floor and suggest the absence of a quorum and I ask the time of the quorum be charged equally to each side as the quorum moves forward.

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

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

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

Mr. SESSIONS. Mr. President, I would like to share a few thoughts about the nomination of Janice Rogers Brown, one of the best nominations the President has made. She is a woman of integrity and ability, with proven skill as an appellate jurist. She has won the support and admiration of her colleagues on the California appellate courts with whom she served and has won the support of the people of California, as evidenced by her being reelected to the California Supreme Court with 76 percent of the vote.

What do we hear from my colleague, the great advocate that he is, and my friend, Senator SCHUMER? It is sad. He uses words of radicalism to declare that she is outside the mainstream. He says she is far over and out of the mainstream; her radical and regressive approach to the law is so off the charts; she expresses hostility to a host of litigants; the most out of the mainstream; a radical. Everything she believes in is what they believe—he is talking about President Bush, I suppose, and Republicans. He says she is no more a strict constructionist than he is a second baseman for the New York Yankees. This morning he said that she is no more a strict constructionist than he is a center for the New York Jets.

Saying it does not make it so. There has been a systematic effort—and I have watched with amazement—to declare this fine justice on the California Supreme Court an extremist. Get past the allegations of extremism, the charges, and the mud throwing—extremist, radical, out of the mainstream. This morning, Senator SCHUMER used words that were interesting: Did she want to be a dictator? What in her record indicates she wants to be a dictator?

Then he said this: Did she want to be a grand exalted ruler? Was that some reference to the Ku Klux Klan? This African American from my home State of Alabama left as a teenager. I am sure one reason she went to California was for discrimination and segregation that existed in rural Alabama where she grew up at that time. She is the daughter of sharecroppers. To have it suggested that somehow her ideas are consistent with the Ku Klux Klan is offensive. It ought to be offensive to Americans.

Where is the meat? What is it that shows Justice Brown is not fair, that she is incapable? I don't see it. As a matter of fact, they have examined her record in great detail, every speech she has given, everything she has done in her life, remarks she has made, opinions she has written. She is a restrained jurist, respected by her colleagues and the people before whom she practices. She is one of the most deserving nominees. I am proud of her. I am proud she came from Alabama. I am sorry she left the State of Alabama. I am proud of what she has accomplished in the State of California.

She currently serves as an associate justice on the California Supreme Court and has held that job since 1996. Prior to that, she served for 2 years as an associate on the Third District Court of Appeals.

Let me add, if she is such a radical dictator, grand exalted ruler, if that is her mentality and way of doing business, would every member of the Third District Court of Appeals with whom she served and four of her six fellow justices on the California Supreme Court write a letter to Senator HATCH, then Chairman of the Senate Judiciary Committee, saying to confirm this wonderful woman, asking that she be confirmed, and saying glowing things about her? One of the justices on the California Supreme Court who supports her is Justice Stanley Mosk, one of the most liberal justices in America, recognized in that vein throughout the country. Why would Justice Mosk and the others support Janice Rogers Brown if she is such an out-of-the-mainstream radical justice? The truth is, she is not. This has been conjured up by certain groups, left-wing attack groups who have been smearing and besmirching and sullying the reputation of excellent nominees for many years. It is not right what is being done to this lady. She is a person of sterling character. She writes beautifully. She is respected by her colleagues. She is very much appreciated by the people of California. Four judges were on the ballot when she ran for reelection, and she got the highest number of votes of any.

We have Senators from California telling us she is out of the mainstream. Maybe she believes in carrying out the duly elected death penalty statutes of California. Maybe she believes the constitutional amendment they passed, Proposition 209, ought to be enforced. Maybe she believes the Pledge of Allegiance shouldn't be struck down as unconstitutional. Maybe that is what they want. Maybe that is what they think is a mainstream judge. I don't think she is there. She is the kind of judge President Bush promised to appoint. It was an important issue in this past election. The people of America debated and discussed it and spoke clearly in the reelection of President Bush that they want judges who enforce the law and follow the law—not make the law.

They say she is out of the mainstream, but in 2002 on the California Supreme Court—surely everyone recognizes California is not a right-wing State. It is a State in which a higher percentage voted for John Kerry. But in 2002, her colleagues on the California Supreme Court asked her to write the majority opinion for the court more times than any other justice on the court. Why would they do that if she is out of the mainstream? Why would they have written letters on her behalf?

The way it works on the court, the justices meet and they discuss a case, then the justices indicate how they are going to decide the case, what their decision is, a majority gets together, and someone is asked to write the opinion for the majority. The rest of the justices sign onto the majority opinion, if they agree to it. Sometimes they will file a separate occurrence if they do not agree with everything in the opinion. In 2002, she was asked by her colleagues to write more majority opinions than any other justice on the court. That speaks well for the respect they have for her.

There has been much distortion of her record in an attempt to justify these mud-slinging charges that have been made against her. Senator SCHUMER and others have cited the High-Voltage Wire Works case, saying she dissented in this case. They claim that she dissented from it and that shows her to be a radical judge, because it dealt with affirmative action and quotas and the California constitutional amendment that was passed by the people of California to eliminate quotas in California.

Let me state the truth: She did not dissent. She anchored and wrote and authored the unanimous decision of the California Supreme Court. They asked her to write this affirmative action / California constitutional amendment / Proposition 209 opinion. Her colleagues asked her to write it. She wrote it. They all joined in. It was a unanimous opinion. It was based on California Proposition 209 that said:

> The State 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 contracting.

The case involved the city of San Jose. They had a minority contracting program that required minority contractors bidding on the city projects to either utilize a specified percentage of minority and women contractors or document efforts to include women and subcontractors in their bids.

Every judge who reviewed the case, including the trial judge, the intermediate appellate court judges where she previously sat, and the California Supreme Court Justices, agreed that the San Jose program constituted ''preferential treatment'' within the meaning of Proposition 209. They struck down the program.

And they suggest somehow she is against all affirmative action programs in America and that she does not believe in those things. She has explicitly stated otherwise. For example, in the High-Voltage Wire Works opinion she explicitly stated this: ''equal protection does not preclude race-conscious

programs.'' In other words, she is saying that there can be race-conscious programs in legislation under the equal protection clause, but they cannot be too broadly used. It is a dangerous trend. You have to watch it and be careful. This is what the Supreme Court has said about it. She also said there are many lawful ways for businesses to reach out to minorities and women. She favors that. That is mainstream law in America. I don't know what they are talking about when they suggest her opinion, joined by all the justices of the California Supreme Court, was out of the mainstream. That is beyond the pale.

It is suggested she does not believe in stare decisis, the doctrine that courts should tend to follow the previous opinions of courts. But all of us know, and I know Senator SCHUMER and anyone who believes in civil liberties knows, a court opinion is not the same thing as the Constitution of the United States. Some prior court opinions have been rendered and made the law of the land which were not consistent with the Constitution of the United States.

What about Plessy v. Ferguson? Justice Harlan dissented from that opinion, which said separate but equal was constitutional. Justice Harlan believed that separate but equal was unconstitutional. Were the judges who later reversed Plessy v. Ferguson activists? I don't think so. I think they were acting consistent with a clearer understanding of the equal protection clause and the due process clause of the Constitution of the United States than the Court in Plessy. Why attack her on that basis? It is not legitimate.

The twelve judges on the California Third District Court of Appeals wrote on her behalf. They said:

> Justice Brown has served California well. She has written many important decisions establishing and reaffirming important points of law. Her opinions reflect her belief in the doctrine of stare decisis.

So the 12 judges who wrote on her behalf say she is a believer in stare decisis. Yet we have one or two Senators standing up and saying she does not believe in that. Not so. In fact, she has a proven record of following and showing respect for precedent.

For example, in Kasler v. Lockyer, Justice Brown, in a California opinion, wrote the majority opinion for the court upholding an assault weapons ban. She followed a prior decision by the California Supreme Court even though she believed that prior decision was wrongly decided and had dissented in it. But when it came back up, and the case had been decided, she deferred to the California Supreme Court's decision even though that wasn't her personal view. Doesn't that show she is properly respectful of precedent?

Sometimes it is important that cases be challenged and judges overrule a prior decision. Sometimes, even if you think it is wrong, it is better to let it stand just to provide stability in the law. Judges have to make that call frequently.

Senator SCHUMER says Justice Brown is an extremist and ''President Clinton would never have nominated someone like this.'' But he has probably forgotten Judge Paez, who was nominated to the Ninth Circuit Court of Appeals by President Clinton. This is what a real activist is. This speaks to what an activist judge is. This is what Judge Paez, who we confirmed, says about his judicial philosophy: It includes ''an appreciation of the courts to act when they must, when the issue has been generated as a result of the failure of the political process to resolve a certain political question'' because in such instances, Judge Paez says, ''there's no choice but for the courts to resolve the question that perhaps ideally and preferably should be resolved through the legislative process.''

I see the Presiding Officer, Senator VITTER, listened to that phrase. That is what activism is. It is a belief that a judge can act even though the legislature does not. It is a belief that if the legislature does not act, the judge has a right to act. That is a stated judicial philosophy of activism. Janice Rogers Brown never said anything like that, nothing close to that.

So I repeat again, this is a nominee with a sterling record. She has served on the Third District Court of Appeals in California. She served in the attorney general's office of the State of California where she wrote appellate briefs to the appellate courts and argued cases involving criminal justice to defend convictions in the State. She now serves on the Supreme Court of California. She was reelected by an overwhelming vote, the highest vote of any judge on the ballot. We have received a letter on her behalf from all of the court of appeals justices who have served with her on the court of appeals, and four of the six justices on the California Supreme Court, including the liberal icon, Justice Stanley Mosk.

I think this is a nominee who is worthy of confirmation. I am disappointed and hurt by some of the mischaracterizations of her record and her philosophy. I believe if Senators review this nominee's record, they will see she will make an outstanding justice. I am pleased she is a native of my State, and I wish her every success.

Mr. President, I yield the floor.

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

Mr. HATCH. Mr. President, I thank my colleague from Massachusetts for allowing me to go out of turn. I will be fairly short.

Mr. President, we have been debating the circuit court nominations of Justice Janice Rogers Brown and too many other nominees for way too long. Justice Brown was first nominated to the DC Circuit Court of Appeals in July of 2003.

Over the years, I have grown accustomed to the talking points of Brown's liberal opposition. I think I have them committed to memory now. Some liberal elitists charge she is extreme. Some liberal elitists charge she is out of the mainstream. Some liberal elitists charge she is a radical conservative.

This same broken record has been spun now for too many years, and with too many nominees. Here is what is left out of this tired song and dance.

Justice Janice Rogers Brown is a proven jurist. Her credentials and her character are beyond reproach. She is a lifetime public servant committed to the extension of civil rights and equal justice under law, and there can be no doubt that these deep commitments grew in part out of a childhood that witnessed the true evil of Jim Crow segregation.

She came up the hard way. She served for 2 years as an associate justice on California's Third District Court of Appeals prior to being appointed to the California Supreme Court.

What has her record been there? To listen to the interest groups, you would think she has led a one-woman crusade to destroy the civil rights of all Californians. Given Justice Brown's background, I have to say this is an astonishing charge.

In order to once again dispel the false charge that Justice Janice Rogers Brown is extreme, consider the following facts.

In 2002, Justice Brown's colleagues on the California Supreme Court turned to her more than any other justice to write the majority opinion for the court. Is this out of the mainstream?

When Justice Brown was retained with 76 percent of the vote in her last election, were the people of California installing a radical revolutionary on the bench? Were there any mainstream Californians who voted for her? That is a pretty impressive majority. After all, the junior Senator from California, who has spoken vociferously against Justice Brown, and many of the other of the President's circuit court nominees, one of Justice Brown's most vocal critics, once, I might say, won reelection with only 53 percent of the vote.

Truth be told, there is nothing radical about Janice Rogers Brown. She refuses to supplant her moral views for the law she is charged with interpreting as a judge. Maybe the refusal to engage in activist decisionmaking is radical at some predominantly liberal law schools, but it is fully within the mainstream of American jurisprudence.

We have heard a lot about the background of Janice Rogers Brown in this debate. I have been at the forefront of discussing her rise from the Jim Crow South to her appointment as the first African-American woman to serve on the California Supreme Court. We talk about her background because her story demonstrates that while America is not perfect, its commitment to the preservation and extension of civil rights is without parallel in the history of the world.

Let me also add that no party has a monopoly on the promotion of diversity. Yet, unfortunately, some of those who frequently speak about the need for diversity on the bench have a rather limited definition of diversity. As we saw with several other recent nominees, apparently some believe only liberal minorities are sufficiently diverse for high Federal office, especially the Federal courts.

In the end, it is hard to avoid the conclusions of Justice Brown's colleagues. I have here a letter written to me in my former capacity as chairman of the Judiciary Committee from a bipartisan group of Justice Brown's colleagues, including all of her former colleagues on the California Court of Appeals and Third Appellate District, as well as four current members of the California Supreme Court.

Let me take a second or two and read you their assessment of Justice Brown.

Dear Mr. Chairman:

We are members of and present and former colleagues of Justice Janice Rogers Brown on the California Supreme Court and California Court of Appeals for the Third Appellate District. Although we span the spectrum of ideologies, we endorse her for appointment to the U.S. Court of Appeals for the D.C. Circuit.

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 very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of majority opinions on the California Supreme Court.

Although losing Justice Brown would remove an important voice from the Supreme Court of California, she would be a tremendous addition to the D.C. Circuit. Justice Brown would bring to the court a rare blend of collegiality, modesty, and intellectual stimulation. Her judicial opinions are consistently thoughtful and eloquent. She interacts collegially with her colleagues and maintains appropriate judicial temperament in dealing with colleagues, court personnel and counsel.

Mr. President, I ask unanimous consent that the entire letter be printed in the RECORD.

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

MCDONOUGH HOLLAND & ALLEN PC
ATTORNEYS AT LAW,
October 16, 2003.

Re Nomination of Justice Janice Rogers Brown to the U.S. Court of Appeals for the D.C. Circuit

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We are members of and present and former colleagues of Justice Janice Rogers Brown on the California Supreme Court and California Court of Appeal for the Third Appellate District. Although we span the spectrum of ideologies, we endorse her for appointment to the U.S. Court of Appeals for the D.C. Circuit.

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 very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of majority opinions on the California Supreme Court.

Although losing Justice Brown would remove an important voice from the Supreme Court of California, she would be a tremendous addition to the D.C. Circuit. Justice Brown would bring to the court a rare blend of collegiality, modesty, and intellectual stimulation. Her judicial opinions are consistently thoughtful and eloquent. She interacts collegially with her colleagues and maintains appropriate judicial temperament in dealing with colleagues, court personnel and counsel.

If Justice Brown is placed on the D.C. Circuit, she will serve with distinction and will bring credit to the U.S. Senate that confirms her. We strongly urge that the Senate take all necessary steps to approve her appointment as expeditiously as possible.

Joining me in this letter are Justices Marvin R. Baxter, Ming W. Chin and Carlos R. Moreno of the California Supreme Court and Presiding Justice Arthur G. Scotland and Justices Rodney Davis, Harry E. Hull, Jr., Daniel M. Kolkey, Fred K. Morrison, George W. Nicholson, Vance W. Ray and Ronald B. Robie of the California Court of Appeal, Third Appellate District.

I am informed that Justice Joyce L. Kennard of the California Supreme Court has already written a letter in support of Justice Brown's nomination.

Chief Justice Ronald M. George and Justice Kathryn M. Werdegar of the California Supreme Court are not opposed to Justice Brown's appointment but it is their long standing policy not to write or join in letters of support for judicial nominees.

Thank you for your consideration of this letter.

Very truly yours,
ROBERT K. PUGLIA,
Retired Presiding Justice, Court of Appeal, Third Appellate District.

Mr. HATCH. Let me put in the RECORD a couple comments by Ellis Horvitz and Regis Lane. Ellis Horvitz, a Democrat, one of the deans of the Appellate Bar in California, has written in support of Justice Brown, noting:

In my opinion, Justice Brown possesses those qualities an appellate justice 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.

Mr. President, I ask unanimous consent that the entire letter be printed in the RECORD.

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

HORVITZ & LEVY LLP,
Encino, CA, September 29, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Re Justice Janice Rodgers Brown nomination.

DEAR CHAIRMAN HATCH: This letter is sent in support of President Bush's nomination of Justice Janice Rodgers Brown to the District of Columbia Court of Appeal.

Let me first introduce myself. I have been practicing law in California for more than fifty years, almost all of that time as a civil appellate specialist. Our firm of more than thirty lawyers specializes in civil appeals. We appear regularly in the California Court of Appeal and in the California Supreme Court.

I have followed Justice Brown's career since she was appointed to the California Supreme Court. Our firm has appeared before her on many occasions. I have appeared before her on several occasions. We have also studied her opinions, majority, (concurring and dissenting), in many civil cases.

In my opinion, Justice Brown posses those qualities an appellate justice 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.

I hope your Committee will approve her nomination expeditiously. The President has made an excellent choice.

Very truly yours,
ELLIS J. HORVITZ.

Mr. HATCH. Regis Lane, the executive director of Minorities in Law Enforcement, a coalition of minority law enforcement officers in California, wrote:

We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community and dedication to public service. . . .

In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the South. Justice Brown's views that all individuals who desire the American dream, regardless of their race or creed, can and should succeed in this country are consistent with MILE's mission to ensure brighter futures for disadvantaged youth of color.

Mr. President, I ask unanimous consent that the entire letter be printed in the RECORD.

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

MINORITIES IN LAW ENFORCEMENT,
Sacramento, CA.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Executive Board and members of the Minorities In Law Enforcement organization (MILE), we recommend that you confirm President George W. Bush's nomination of California Supreme Court Associate Justice Janice Rogers Brown to the United States Circuit Court of Appeals for the District of Columbia. MILE is a coalition of ethnic minority law enforcement officers in California dedicated to ensuring brighter futures for disadvantaged youth and ensuring that no child is left behind.

We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community and dedication to public service. Justice Brown's powerful and exhilarating display of jurisprudence exhibited in the written legal opinions she has issued as a California Supreme Court justice, is respected by all, regardless of race, political affiliation, or religious background. Justice Brown is a fair and just person with impeccable honesty, which is the standard by which justice is carried out.

In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the south. Justice Brown's views that all individuals who desire the American dream, regardless of their race or creed, can and should succeed in this country are consistent with MILE's mission to ensure brighter futures for disadvantaged youth of color.

It is with great honor and pleasure that MILE and our members urge you to confirm President Bush's nomination of California Supreme Court Associate Justice Janice Rogers Brown to the United States Circuit Court of Appeals for the District of Columbia.

Respectfully submitted,

REGIS LANE,
Executive Director.

Mr. HATCH. Well, she is not, as represented, a radical revolutionary bent on undoing the American dream. Who are you going to believe? I say you should believe those who served with her on the bench in California, and that is over a period of years.

Because of the astonishing failure to give Justice Brown an up-or-down vote, I have had ample time to review her record, and it is clear to me, without any doubt, that those who worked with her every day on these courts have it right. She is a model jurist. You cannot have anybody who has been in court as long as she has that somebody cannot pluck cases out of the air and distort them or find some fault with them. I am sure I can find fault with some of her cases. But the point is, this is a woman who does what is right.

Justice Brown would be a welcome addition to the DC Circuit Court of Appeals. I look forward to finally closing the debate on this nomination, bringing her nomination to a vote, and seeing her on the Federal bench.

Now, let me close by saying that voting for cloture is the right thing to do on the nomination of Justice Janice Rogers Brown and the rest of the President's judicial nominees. Allowing an up-or-down vote on these nominees will return us to the Senate's 214-year tradition. So I ask my colleagues to vote yea on cloture, and hopefully we can have an up-or-down vote in a short time after that.

Mr. President, again, I thank my colleague and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand it, there is 7 minutes remaining.

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Mr. President, I yield myself all 7 minutes, and I ask if the Chair will be kind enough to let me know when there is 1 minute left.

The PRESIDING OFFICER. The Chair will so notify.

Mr. KENNEDY. Mr. President, I think it is important for those watching the debate to understand this decision is not a decision about the life history of Janice Rogers Brown. What we are voting on in this particular decision is, on the DC Circuit Court, whether the nominee is going to speak for the struggling middle class of Americans, whether they are going to speak for minorities who have been trying to be a part of the American dream, whether they are going to speak for the rights and liberties of working families, particularly those who are covered by the Occupational Safety and Health Act who work hard every day and have had their lives threatened with inadequate kinds of protection, whether that voice is going to be standing up for children whose lives are going to be affected by the Clean Air Act, or whether they are going to stand up for the children whose lives will be affected by the Clean Water Act.

So many of the important decisions that we have addressed in the Senate over the last 30 years, in order to make this a fairer country, a more just Nation, to advance the cause of economic progress and social justice, ultimately come to the DC Circuit. In many instances, the DC Circuit is the final arbiter of these issues. That is why this is so important. Any judge is important, but I think, for most of us, we raise the level when we consider who is going to serve on the Supreme Court, since that will be a defining aspect of the laws of this country, and a defining voice in terms of the rights and liberties of this Nation as defined in the Constitution of the United States.

It seems to me it is fair enough to ask someone who wants a job on the DC Circuit whether they have a core commitment to these fundamental acts of fairness and justice and basic liberty, and if there are indications during their service on the court that this jurist has demonstrated a hostility toward these basic principles.

That is really the basic issue. I am going to have more time this afternoon to get into the particulars, but it is enormously important that the American people understand that this is not just another circuit court, as important as that is. This is the very specialized DC Circuit Court that has special responsibilities in interpreting the laws, many cases of which never go to the Supreme Court, and, therefore, we should take a careful view of this nominee. When we take a careful view of the nominee, we find that this nominee fails the standard by which we ought to judge advancement to the second most important and powerful court in the land, and that is the DC Circuit Court.

That is true on the issue of civil rights. No one can seriously contend that the overwhelming opposition to her nomination from the African-American community is motivated by bias against Blacks. She is opposed by respected civil rights leaders, including Julian Bond, Chairman of the NAACP; by Dorothy Height, President Emeritus of the National Council of Negro Women, a leader in the battle for equality for women and African Americans over her lifetime, an outstanding and distinguished American who happens to be Black but has struggled to make this a fairer and more just country—for Black women in particular—for all Americans. She is universally admired and respected by Republicans and Democrats. She believes that we would make a major mistake by promoting this nominee to the DC circuit.

She is opposed by the Reverend Joseph Lowery, President Emeritus of the Southern Christian Leadership Conference, who was there with Dr. Martin Luther King, Jr., during the most difficult and trying times in the late 1950s and the early 1960s. I believe, unless I am wrong, he was there at the time of Dr. King's death. He is one of the giants in awakening America to be America by knocking down walls of discrimination. Joseph Lowery believes we should not promote this individual. He has been a leader in the civil rights movement and has worked tirelessly for many years to make civil rights a reality for all Americans.

She is opposed by the Congressional Black Caucus, the Leadership Conference on Civil Rights, and many others concerned with the rights of minorities.

The PRESIDING OFFICER. The Senator from Massachusetts has 1 minute remaining.

Mr. KENNEDY. Mr. President, I will have the opportunity to go into the reasons these individuals and organizations take exception to this nominee. It isn't just those I have mentioned but other important leaders who have a keen awareness and understanding of the record and history of the decisions of this jurist. I do not believe she has demonstrated the kind of core commitment to constitutional values which are so essential on such a major and important court. She fails that test. She should not be promoted. There are other distinguished jurists across the country of all different races, religions, and ethnic backgrounds who have demonstrated a core commitment to these values over a long time and are in the mainstream of judicial thinking. We ought to have such a nominee. This nominee does not meet that criteria and, therefore, should not be accepted.

The PRESIDING OFFICER. The time of the minority has expired. Who yields time?

The Senator from South Carolina.

Mr. DEMINT. Mr. President, it is often said that politicians are out of touch with the average citizen. In fact, media outlets have been reporting that

Congress's approval ratings are at record lows. I am not one to put much stock in one poll or another, but I do believe Americans are frustrated with politics here in our Nation's Capital. Americans are dealing with record gas prices, yet Congress can't find the time to debate and pass an energy bill that was proposed years ago. Americans see weekly reports about scandals and backroom deals at the United Nations, yet we can't find the time to vote yes or no on the President's nominee to the United Nations. And a strong majority of Americans who just elected President Bush to a second term now cannot understand why his judicial nominees can't get a timely up-or-down vote.

A perfect example of the frustration the American people have with Congress can be found in the nomination of Justice Janice Rogers Brown. Justice Brown is the daughter of a sharecropper who grew up in rural Alabama and attended segregated schools. She went on to become the first African-American woman to serve on the California Supreme Court after being overwhelmingly elected by more than three-quarters of California voters. Despite this extraordinary success story, Democrats have used filibusters for more than a year and a half to deny Justice Brown a simple and fair vote.

I am pleased that a few of my colleagues on the other side choose to allow a vote on Justice Brown. Now I hope we can give her actual record a fair assessment instead of relying on the heated rhetoric of the past year and a half.

Justice Brown recently stated:

> It may sound odd to describe a judge as both passionate and restrained, but it is precisely this apparent paradox—passionate devotion to the rule of law and humility in the judicial role—that allows freedom to prevail in a democratic Republic.

This paradox is a good description of our Nation's leading jurists, including, in my opinion, Justice Brown. I believe men and women of intellectual and judicial passion are necessary to the continued strength of our legal system. Those jurists whose names still ring through history—Marshall, Holmes, Cardozo—suffered no shortage of passion. Yet, as Justice Brown reminds us, such passion would corrupt the very system it sustains were it not tempered by restraint and humility.

The tension between passion and restraint has been a feature of our legal system since its beginning. In fact, it was enshrined in the Constitution itself. The Founders created the framework for a Federal judiciary that would be unaffected by the political storms raging at any given time. Thanks to their lifetime appointment, Federal jurists are free to interpret and apply the laws of this land without fear of political repercussions. At first glance, such an arrangement places a great deal of power in the hands of a select few who attain the Federal bench. The Founders, however, were mindful of such concerns. They placed two popularly elected institutions at the gates of the Federal bench so that admission would be denied to those who would use their judicial power to override Congress's exclusive power to create the law. They invested the President with the power to nominate individuals worthy of the Federal bench. They endowed Congress's deliberative body, this very Senate, with the responsibility to review the President's nominees and consent to the confirmation of only those with properly restrained judicial passions.

When in the past a President has nominated an individual of unchecked passion, it has fallen to the Senate to deny his or her confirmation. This is how our constitutional system has functioned for over 200 years. Unfortunately, the nomination and appointment of Federal jurists has recently become a game of political dodge ball, with Democrats throwing heated rhetoric at nominees, hoping to take them out of the game.

As the deliberation over judicial nominees has boiled over, the term ''judicial activist'' has surfaced as the preferred slur used by critics harboring political animosity toward a particular nominee, regardless of whether that nominee is objectively qualified for the job. In my mind, the term ''judicial activist'' signifies one who has or would use the bench as a platform for promoting their own agenda and personal opinions. Such a person is in need of the restraint identified by Justice Brown and is, therefore, unsuited for the Federal bench. The nomination of a judicial activist is a nomination that deserves the opposition of every Member of this body, regardless of the political connection between the nominee and any particular Member. According to the Constitution, we as Senators stand here to guard the Federal bench from the confirmation of any judicial activist who would seek to infringe upon our constitutional role.

I believe Justice Brown has proven she is not an activist judge. Her critics have labeled her such simply because she has deeply held personal beliefs that are not shared by many Democrats. This is precisely the type of partisan game that is causing Americans to become disinterested and disillusioned with politics in Washington. Americans fairly elected President Bush, and his nominations deserve a fair debate and a fair vote.

People sitting at home watching the nomination process on TV see that it has gotten out of control. If we allow the President's judicial nominees to continue to be blocked and delayed because they have deeply held beliefs, many good judges will be disqualified, and many more will refuse to be considered. A person with strong beliefs and personal convictions should not be barred from being a judge. In fact, I would rather have an honest liberal serve as a judge than one who has been neutered by fear of public opinion. We need judges who have demonstrated integrity in how they live their lives as well as consistency in how they interpret the law.

Justice Brown has demonstrated this kind of integrity. I believe she should be confirmed immediately. Some Democrats may enjoy calling Justice Brown an activist for the media sound bite it creates, but calling the Earth flat does not make it so. There is overwhelming evidence that during her time on the California Supreme Court, Justice Brown has exercised her judicial authority with restraint and humility. While she would likely describe herself as a person who believes in small government and limited regulations, she regularly votes against her personal beliefs when justice and legal precedent require her to do so.

For example, Justice Brown has voted consistently to uphold economic, environmental, consumer, and labor regulations. She joined in an opinion upholding the Safe Drinking Water and Toxic Enforcement Act of 1986 and interpreted the act to allow the plaintiffs to proceed with their case. She upheld the right of a plaintiff to sue for exposure to toxic chemicals using the Government's environmental regulations. She joined in an opinion validating State regulations regarding overtime pay. She upheld California's very stringent standards for identifying and labeling milk and milk products, thereby ensuring that the government has a role in protecting the safety of children.

It is fundamental to the judicial structure to have judges who respect the Constitution and judicial precedent. Justice Brown believes that the role of courts and the rule of law are deeply rooted in the Constitution.

In a recent column, law professor Jonathan Turley, a self-described prochoice social liberal, points out that ''Brown's legal opinions show a willingness to vote against conservative views . . . when justice demands it.''

In a letter to the Senate Judiciary Committee, 12 bipartisan judges who served on the bench with Justice Brown said the following:

> We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of the majority opinions on the California Supreme Court.

Arguments that Justice Brown is a judicial activist amount to nothing more than empty rhetoric. She is a jurist of great intelligence and achievement, with views about interpreting the law that are sensible and reliable.

After many hours of debate, the main criticisms I have heard of Justice Brown have nothing to do with her judicial decisions but with her personal beliefs that have been expressed in speeches and comments outside the courtroom. This Senate should not confirm or reject judges based on their personal beliefs. We should confirm

Justice Brown based on the fact that her judicial performance has been documented by colleagues and critics alike and because she understands that her job is to interpret the law, not to invent the law.

Americans are tired and frustrated with Congress spending its time on partisan games. They want the Senate to give the President's judicial nominees a timely up-or-down vote.

Justice Brown's nomination has been pending for more than a year and a half without any evidence that she lacks integrity, intellect, or experience. There has been plenty of time for debate, and now it is time to vote.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BURR. Mr. President, I rise today in support of Janice Rogers Brown to the DC Appellate Court. I also rise today as a proud North Carolinian of those who served in this Chamber before me. In the heat of debate, Senator SCHUMER from New York suggested that Senator Helms, our former Member from North Carolina, was a racist; that, in fact, he objected to the nomination of Roger Gregory to the appellate court, the Fourth Circuit Court in Richmond, because he was a minority.

It is unfair to characterize that of Senator Helms. I am personally offended by the comments of Senator SCHUMER, and so are North Carolinians.

At the time of Roger Gregory's nomination to the Fourth Circuit Court in Richmond, the Fourth Circuit Court had the largest makeup of minorities of any appellate court in the country. The seat for which Roger Gregory was nominated was intended to be filled by a North Carolinian. There is only one problem—Roger Gregory was from Virginia, and he was so thought of that he was even introduced by Senator George Allen in his first speech on the Senate floor.

Roger Gregory was not from North Carolina, he was from Virginia. Senator Helms argued that North Carolina was underrepresented on the Fourth Circuit Court and that if any nominee was necessary for the Fourth Circuit Court, he or she should come from North Carolina. Senator Helms opposed Roger Gregory because Senator Helms had nominated Terrance Boyle, and that nomination had been blocked for several years at that time by Democrats. Terrance Boyle was originally nominated by George H. W. Bush, 41, long before Roger Gregory was nominated.

I might add, Terrance Boyle still is a judicial nominee judge for the Fourth Circuit Court. He has never made it through this process.

Former Judiciary Chairman HATCH, who spoke earlier, maintained at the time that judicial nominees favored by each party should have to move forward together and that political games should not be played with judicial nominees. Senator Helms agreed there should be no movement on other judges until Judge Boyle received the attention of this body, the Senate.

How did it end up? President Clinton, bypassing Congress, made a recess appointment of Roger Gregory, and it was seen as a swipe to Senator Helms.

I am not here today to suggest Roger Gregory was not a good pick. I am here to tell you we have an obligation on this floor to speak factually. History does not prove that Senator Helms' objection was over anything other than to receive the attention of his nominee to the Fourth Circuit Court, to allow North Carolina, which was underrepresented, to be represented fully on the Fourth Circuit Court.

Today I am proud to suggest that we should all support Janice Rogers Brown. We should have her confirmed, not because she is minority, but because she is qualified, because she meets the threshold of what America expects out of the judges who sit on the bench.

I am confident this body will do the right thing on cloture, and I am confident she will serve on the DC Circuit Court.

I thank the President, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, recently 14 of our colleagues brought to us a bipartisan plan to avoid what I thought was the majority leader's shortsighted bid for one-party rule. As part of the plan to avert the nuclear option, which would have changed more than 200 years of Senate tradition and precedent, rules protecting minority rights and checks and balances, those Senators have agreed to vote for cloture on this controversial and divisive renomination. I have no doubt they will follow through on their commitment, but in all likelihood, it is going to result in the appointment for life of a judge for Court of Appeals for the DC Circuit whose disturbing view of the Constitution would set back life for American workers and consumers more than 100 years and remove protections for people and their communities we now take for granted. The preservation of our system of checks and balances in connection with the appointment of lifetimers to the Federal judiciary requires that all Senators, both Republicans and Democrats, take seriously the Senate's constitutionally mandated role as a partner in making these determinations.

So again I urge all Senators of both parties to take these matters seriously and vote their conscience. Senators need to evaluate with clear eyes the fitness of Justice Janice Rogers Brown for the lifetime appointment. My opposition to her, as it has always been, has been based on her long and troubling record. I will be speaking about this more in the future, but apparently she will be treated far more fairly than President Clinton's nominees to the court.

The Senate has already considered one of the three controversial nominees mentioned in part IA of the Memorandum of Understanding our colleagues brought us. We are now beginning consideration of the second, and I expect the third will follow shortly. What I do not expect is any repeat by Democrats of the extraordinary obstruction by Republicans of President Clinton's judicial nominees. For example, I do not expect any of the tactics used by Republicans during the extensive delay in Senate consideration of the Richard Paez nomination. Judge Paez waited more than 4 years before we were able to get a vote on his confirmation, and even then Republicans mounted an extraordinary motion after the filibuster of his nomination was broken to indefinitely postpone the vote—a last-ditch, unprecedented effort that was ultimately unsuccessful.

More than 60 of President Clinton's moderate and qualified judicial nominations were subjected to a Republican pocket filibuster, including nominees to the DC Circuit. First we were told by the Republicans that we do not need more judges added, but that changed dramatically once they had a Republican President in power. But they also blocked by committee filibusters highly qualified people for that circuit. Allen Snyder, for example, who was nominated by President Clinton, was a former clerk to Chief Justice Rehnquist—no wide-eyed liberal, he—and he was a widely respected and highly regarded partner at the law firm of Hogan & Hartson. He was filibustered by pocket filibuster by the Republicans and not allowed to come to a vote. Elena Kagan was pocket filibustered by the Republicans, not allowed to have a vote for the DC Circuit. Her qualifications: She is now a dean of the most prestigious law school in this country, Harvard Law School. They were each nominated to vacancies on the DC Circuit. They were not allowed to have either a committee vote or Senate consideration.

The bipartisan coalition of Senators who joined together last month to avert an unnecessary showdown in the Senate over the White House-inspired effort to invoke the nuclear option was right to include in the agreement the following provision:

We believe that under Article II, Section 2, of the United States Constitution, the word

''Advice'' speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

I agree with their fundamental point. I have served here with six Presidents. Five of them did consult on major judicial nominations. They consulted with members of both parties. That included President Ford, President Carter, President Reagan, former President Bush, and President Clinton. In this case, there was no meaningful consultation with the nomination of Janice Rogers Brown. Maybe that is one reason neither of her home State Senators support her. In the past, Republicans always said if home State Senators do not support a nominee, we cannot go forward. All of these rules changed with a different President. There was no consultation with these Senators in this case.

But I am hoping things may be better. I was pleased to see President Bush respond to a question in a news conference last week. He has agreed to consult with the Senate about his nomination should a vacancy arise in the Supreme Court. I see that as a positive development, and I am hoping that now that he has been reelected, he may take the opportunity to be a uniter and not a divider on these issues. Certainly I, as one on this side of the aisle, will be happy to work with him in that regard. If he does, as the other five Presidents I have served with have done, I believe it would be a good sign for the country but especially for our Federal judiciary.

In advance of any vacancy on the Supreme Court, I would urge the President to follow through on his commitment to consult with the Senate. In the next few weeks, the U.S. Supreme Court will complete its current term. Speculation will soon accelerate, again, about the potential for a Supreme Court vacancy this summer. In advance of any such vacancy, I urge the President to follow through on his commitment to consult with the Senate. As I said, previous Presidents of both parties have set constructive and successful examples by engaging in meaningful consultation with the Senate, including both Republicans and Democrats, no matter who was in the majority or the minority, before deciding on nominees. It would be shortsighted to ignore such an established and successful precedent.

It would be wise for the President to follow the precedent set by distinguished Presidents of both parties, and I stand ready to work with him in that regard. I stand ready to work with the President to help select a nominee to the Supreme Court who can unite Americans. I know that the Democratic leader is likewise ready to be helpful. After all, Senator REID and I joined in an April 11 letter to the President offering our help in facilitating his identification, selection, and nomination of lower court judges to the 28 vacancies without a nominee that then existed throughout the Federal judiciary. Regrettably, the President did not respond to our previous offer, and the vacancies without a nominee have since grown to 30.

Some Presidents, including most recently President Clinton, found consultation with the Senate in advance of a nomination most beneficial in helping pave the way for a smooth and successful process. President Reagan, on the other hand, disregarded the advice offered by Senate Democratic leaders and chose a controversial, divisive nominee who was ultimately rejected by the full Senate.

In his book ''Square Peg,'' Senator HATCH tells how, in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. In his book, Senator HATCH recounts that he warned President Clinton away from a nominee whose confirmation he believed ''would not be easy.'' Senator HATCH goes on to describe how he suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed ''with relative ease.'' Indeed, 96 Senators voted in favor of Justice Ginsburg's confirmation, and only 3 Senators voted against; Justice Breyer received 87 affirmative votes, and only 9 Senators voted against.

In its report on the Supreme Court appointment process, the Congressional Research Service of the Library of Congress has long noted:

It is common practice for Presidents, as a matter of courtesy, to consult with Senate party leaders as well as with members of the Senate Judiciary Committee before choosing a nominee.

What I am suggesting has been standard and accepted practice. Thorough bipartisan consultation would not only make the choice a better one, it would also reassure the Senate and the American people that the process of selecting a Supreme Court Justice has not become politicized. The Supreme Court often serves as a final arbiter and protector of our individual rights and freedoms. Decisions regarding nominees are too important to all Americans to be unnecessarily embroiled in partisan politics.

Though the landscape ahead is sown with the potential for controversy and contention over vacancies that may arise on the Supreme Court, confrontation is unnecessary and consensus should be our goal. I would hope that the President's objective will not be to send the Senate nominees so polarizing that their confirmations are eked out in narrow margins. This would come at a steep and gratuitous price that the entire Nation would have to pay in needless division. It would serve the country better to choose a qualified consensus candidate who can be broadly supported by the public and by the Senate.

The process begins with the President. He is the only participant in the process who can nominate candidates to fill Supreme Court vacancies. If there is a vacancy, the decisions made in the White House will determine whether the nominee chosen will unite the Nation or will divide the Nation. The power to avoid political warfare with regard to the Supreme Court is in the hands of the President. No one in the Senate is spoiling for a fight. Only one person will decide whether this will be a divisive or unifying process and nomination. If consensus is a goal, bipartisan consultation will help achieve it. I believe that is what the American people want and what they deserve.

Over the last several years I have stressed the need for consultation and moderation as two guiding principles for selecting judicial nominees. I have been largely disappointed up to this point, but if there is a vacancy on the Supreme Court of the United States, I hope that the President will live up to his pledge to consult with Senators of both parties to identify consensus nominees who will unite us instead of divide us. There is no need to pit Republicans against Democrats or to divide the American people.

This is a difficult time for our country and we face many challenges. Providing adequate health care for all Americans, improving the economic prospects of Americans, defending against threats, the proliferation of nuclear weapons, the continuing upheaval and American military presence in Iraq, are all fundamental matters on which we need to improve. It is my hope that we can work together on many issues important to the American people, including our maintaining a fair and independent judiciary. I am confident that a smooth nomination and confirmation process can be developed on a bipartisan basis if we work together. The American people we represent and serve are entitled to no less.

The decisions of the Supreme Court have a lasting effect on the meaning of the Constitution and statutes intended by Congress to protect the rights of all Americans, such as the right to equal protection of the laws and the right to privacy, as well as the best opportunity to have clean air and clean water ourselves and in future generations. This is the forum where Federal regulations protecting workers' rights will be upheld or overturned, where reproductive rights will be retained or lost and where intrusive Government action will be allowed or curtailed. This is the Court to which thousands of individuals will appeal in matters affecting their health, their lives, their liberty, and their financial well-being.

If the President chooses a Supreme Court nominee because of that nominee's ideology or record of activism in the hopes that he or she will deliver predetermined political victories, the President will have done so with full knowledge that he is starting a confirmation confrontation. The Supreme Court should not be an arm of the Republican Party, nor should it be a wing of the Democratic Party. If the right-wing activists who were disappointed that the nuclear option was averted convince the President to choose a divisive nominee in order to tilt the ideological balance on the Supreme Court, they will not prevail without a difficult Senate battle. And if they do, what will they have wrought? While they would celebrate the ideological takeover of the Supreme Court, the American people will be the losers: The legitimacy of the judiciary will have suffered a damaging blow from which it may not soon recover. Such a contest would itself confirm that the Supreme Court is just another setting for partisan contests and partisan outcomes. People will perceive the Federal courts as places in which ''the fix is in.''

Our Constitution establishes an independent Federal judiciary to be a bulwark of individual liberty against incursions or expansions of power by the political branches. The independence of our Federal courts has been called by Chief Justice Rehnquist the crown jewel of our justice system, but that independence is at grave risk when a President seeks to pack the courts with activists from either side of the political spectrum. One of the most serious mistakes a President can make is the partisan engineering to take over the Supreme Court. Even if successful, such an effort would lead to decision-making based on politics and forever diminish public confidence in our justice system.

I urge, respectfully but emphatically, that the President in advance of any nomination consult with Senators from both parties and seek consensus. The American people will cheer if the President chooses someone who unifies the Nation. This is not the time and a vacancy on this Supreme Court is not the setting in which to accentuate the political and ideological division within our country. In our lifetimes, there has never been a greater need for a unifying pick for the Supreme Court. The independence of the Federal judiciary is critical to our American concept of justice for all. We should expect and accept nothing less. We all want Justices who exhibit the kind of fidelity to the law that we all respect. We want them to have a strong commitment to our shared constitutional values of individual liberties and equal protection. We expect them to have had a demonstrated record of commitment to equal rights. There are many conservatives who can meet these critieria and who are not rigid ideologues.

Two years ago, I was invited to address the National Press Club on this topic and noted that the Supreme Court confirmation process does not have to be a political Armageddon. I continue to believe that and I urge the President to take the course that would better serve the American people and the Supreme Court. I was encouraged by the President's recent statement indicating he will consult with leaders in the Senate on both sides of the aisle in advance of a nomination. That should allow him to bring forward a consensus nominee able to unite all Americans and who could be confirmed by the Senate with 95 to 100 votes. At a time when too many partisans seem fixated on devising strategies to force the Senate to confirm the most extreme candidate with the least number of votes possible, I have been urging cooperation and consultation to bring the country together. There is no more important opportunity than this to lead the Nation in a direction of cooperation and unity. I hope this President heeds the lesson of history set by his predecessors who chose the good of the country over the good of a political party.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, in a few moments, we will vote to conclude debate on the nomination of Janice Rogers Brown to serve on the Court of Appeals for the DC Circuit. I do want to thank the chairman and ranking member for getting us to this point. It has taken awhile for us to reach this point, and I am pleased that in an orderly process and regular order, we are on the way to getting an up-or-down vote for Janice Rogers Brown.

It has been nearly 2 years since President Bush first nominated Justice Brown as a Federal judge. During those 2 years, she has been thoroughly debated, exhaustively investigated in committee and on the Senate floor. She has endured more than 5 hours of committee hearings, answered more than 180 questions, submitted 33 pages of responses to an additional 120 written questions, has set aside weeks at a time to personally meet with individual Senators, has waited patiently while the Judiciary Committee debated and voted on her nomination. On the Senate floor, we have debated her nomination for over 50 hours. That is more time than the Senate debated any one of the current Supreme Court Justices, but still as of yet she has not received an up-or-down vote on her nomination on the floor, not one. Why? Because of an orchestrated campaign of obstruction that has denied her that up-or-down vote until now. So she has been waiting for far too long for a simple up-or-down vote on the Senate floor. As a matter of principle, as a matter of fairness, as a matter of our constitutional duties as Senators to give up-or-down votes, it is time to bring the debate to a close and to vote.

Fairness is not just about the process of a vote. It is about treating a good, decent, hard-working American with the respect and the dignity she deserves.

Justice Brown is an inspiration. All of us have heard her story, how she was born the daughter of an Alabama sharecropper and educated in segregated schools; how she worked her way through college and law school; how she has dedicated her life to public service and to others, having spent all but 2 years of her 26-year legal career as a public servant; how she is the first African-American woman to serve as an associate justice on the California Supreme Court, the State's highest court. We have heard about her exemplary qualifications and credentials, including her 8 years of experience on the California appellate bench. We have heard about her impressive record and her commitment to judicial restraint and the rule of law. We have heard the bipartisan praises of Justice Brown from those who know her best: her current and former colleagues on the California Supreme Court and California Court of Appeals. They agree that Janice Rogers Brown is a superb judge and have said she is a jurist who applies the law without favor, without bias, and with an even hand.

We have heard the people of California speaking with their votes. As a justice on the California Supreme Court, she was retained by 76 percent of the electorate, the highest vote percentage of all justices on the ballot. If 76 percent of the people of California voted for Janice Rogers Brown, how can she be considered out of the mainstream, as some of our colleagues on the other side of the aisle have suggested? Are 76 percent of the California voters out of the mainstream? Janice Rogers Brown is in the mainstream.

The overwhelming support of the people of California and the support of her colleagues proves her nomination transcends partisan labels and ideology. Janice Rogers Brown is a distinguished mainstream jurist. She deserves to be treated fairly. She has been investigated and debated thoroughly. Now she deserves the courtesy of a vote. Vote yes or no. Vote to confirm or reject, but let us vote.

I remain optimistic the Senate is moving in a new direction on judicial nominees, rejecting the partisan obstructionism of the past and embracing the principle that all judicial nominees deserve a fair up-or-down vote. I urge my colleagues to join me in bringing debate on this nomination to a close and ensuring that Judge Brown will get an up-or-down vote.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. Under the previous order, the hour of 12 noon having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of Senate, do hereby move to

bring to a close debate on Executive Calendar No. 72, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia.

Bill Frist, Arlen Specter, Trent Lott, Lamar Alexander, Jon Kyl, Jim Talent, Wayne Allard, Richard G. Lugar, John Ensign, C.S. Bond, Norm Coleman, Saxby Chambliss, James Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of Senate that debate on Executive Calendar No. 72, the nomination of Janice R. Brown, of California, to be the U.S. circuit judge for the District of Columbia Circuit, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS), the Senator from Wisconsin (Mr. KOHL), and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

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

The yeas and nays resulted—yeas 65, nays 32, as follows:

[Rollcall Vote No. 130 Ex.]

YEAS—65

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

NAYS—32

Akaka	Dorgan	Mikulski
Baucus	Durbin	Murray
Bayh	Feingold	Obama
Biden	Feinstein	Reed
Bingaman	Harkin	Reid
Boxer	Johnson	Rockefeller
Cantwell	Kennedy	Sarbanes
Clinton	Kerry	Schumer
Corzine	Leahy	Stabenow
Dayton	Levin	Wyden
Dodd	Lincoln	

NOT VOTING—3

Jeffords	Kohl	Lautenberg

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 32. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Republican whip.

ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate stand in recess until 2:15 today and that the time during the recess count under the provisions of rule XXII; provided further that the vote on the confirmation of the Brown nomination occur at 5 p.m. tomorrow, Wednesday, with all time until then equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THUNE).

EXECUTIVE SESSION

NOMINATION OF JANICE ROGERS BROWN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

The PRESIDING OFFICER. The Senator from North Carolina.

NATIONAL HUNGER AWARENESS DAY

Mrs. DOLE. Mr. President, for the past two years I have come to the Senate floor on National Hunger Awareness Day to talk about the battle against hunger, both here in America and around the world. In fact, I reserved my maiden speech for this topic—one of my top priorities as a U.S. Senator. I have stated over and over again that the battle against hunger is one that can't be won in a matter of months or even a few years but it is a victory that we can claim if we continue to make the issue a priority.

As Washington Post columnist David Broder said about hunger, ''America has some problems that seem to defy solution. This one does not. It just needs caring people and a caring government, working together.'' I could not agree more.

Last year on Hunger Awareness Day, Senators SMITH, DURBIN, LINCOLN, and I launched the Senate Hunger Caucus, with the express purpose of providing a bi-partisan forum for Senators and staff to engage each other on national and international hunger and food insecurity issues. By hosting briefings and disseminating information, the caucus has been striving to bring awareness to these issues, while at the same time finding ways to collaborate on legislation. I want to thank 34 of my colleagues for joining the Senate Hunger Caucus and their staffs for their diligent work. In addition, I am excited to see our friends in the House of Representatives start their own Hunger Caucus and I look forward to working with them as both houses of Congress continue to find solutions to eliminating hunger.

It is truly astounding how so many of our fellow citizens go hungry or are living on the edge of hunger each and every day. Thirteen million of these hungry Americans are deemed to be children.

As we know, when children are hungry they do not learn. This is a travesty that can and should be prevented. Currently over 90,000 schools and 28 million children participate each school day in the School Lunch Program. The children of families whose income levels are below 130 percent of poverty are eligible for free school meals and those families whose income levels are between 130 percent of poverty and 185 percent of poverty are eligible for reduced price meals.

Unfortunately, many State and local school boards have informed me that parents are finding it difficult to pay the reduced fee, and for some families the fee is an insurmountable barrier to participation. That is why I am a strong supporter of legislation to eliminate the reduced price fee and harmonize the free income guideline with the WIC income guideline. I am proud to say that a pilot program to eliminate the reduced price fee in up to five states was included in last year's reauthorization of Child Nutrition and WIC. I have encouraged the Appropriations Committee to include funding for this pilot program, and I look forward to working with them on this very important issue which touches so many families going through difficult times.

In my home State of North Carolina, more than 900,000 of our 8.2 million residents are dealing with hunger, according to the most recent numbers from the U.S. Department of Agriculture. Our State has faced significant economic hardship over the last few years as once thriving towns have been hit hard by the closing of textile mills and furniture factories. And this story is not unlike so many others across the country.

Many Americans who have lost their manufacturing jobs have been fortunate enough to find new employment in the changing climate of today's workforce. Simply being able to hold down job doesn't necessarily guarantee your family three square meals a day. But there are organizations who are addressing this need as a mission field.

Groups like the Society of St. Andrew, the only comprehensive program in North Carolina that gleans available produce from farms, and then sorts, packages, processes, transports and delivers excess food to feed the hungry. In 2004, the Society gleaned more than 4.2 million pounds of food—or 12.8 million servings. Incredibly—it only costs one penny a serving to glean and deliver this food to those in need. And all of this work is done by the hands of the 9,200 volunteers and a tiny staff.

Gleaning is a practice we should utilize much more extensively today. It's astounding that the most recent figures available indicate that approximately 96 billion pounds of good, nutritious food—including that at the farm and retail level—is left over or thrown