Economic and Financial Affairs Committee; and the Deputy Chief of Mission from the People's Republic of China to the United States, Mr. Zheng Zeguang.

I ask that the Senate stand in recess for a few minutes so that Members may greet our guests and have an opportunity to thank them for coming to join us for these historic talks.

The PRESIDING OFFICER. Is there objection?

Mr. DAYTON. Mr. President, reserving the right for a minute, I note that Senator STEVENS and Senator INOUYE performed a magnificent service to our Senate and to our country by hosting our distinguished guests from China in such a superb manner. They and their staffs put on a superlative discussion over these 2 days, and Senator STEVENS recognized with his foresight the two countries will determine the future of the world. I commend Senator STEVENS and Senator INOUYE in particular for recognizing that and initiating these exchanges which are now in their second year. On behalf of the Senate and the country, we are in their debt.

Mr. STEVENS. I personally thank Senator INOUYE, who is our co-chairman, for his work on this matter. We went to China last year to meet with this delegation, and we have been honored to host them in our country.

RECESS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in recess so Members may greet our guests.

There being no objection, the Senate, at 4:04 p.m., recessed until 4:10 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

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

The PRESIDING OFFICER. The Senator from Vermont is recognized for 10 minutes.

Mr. LEAHY. Mr. President, over the course of the Senate's consideration of the nomination of Janice Rogers Brown, we have heard many compelling statements in opposition. Significantly, we have heard from both Senators from California in opposition. Their opposition, like mine, is based on Justice Brown's record.

Through bipartisan action, the Senate has deterred the misguided bid by some on the other side of the aisle for one-party rule by means of their so-called nuclear option. Thanks to the hard work of a bipartisan group of 14 Senators, we have, for now, preserved the system of checks and balances. I mention this because as we vote on the nomination of Janice Rogers Brown, I urge all Senators to take seriously the Senate's constitutionally mandated role in determining who is going to serve lifetime appointments in the Federal judiciary.

I wish all Senators, Republicans and Democrats alike, would take these matters seriously and vote their consciences and evaluate with clear eyes the fitness of this woman for this lifetime appointment. After all, some of my Republican colleagues have admitted to me privately how they would like to vote. They know that Justice Brown is a consummate judicial activist whose record shows she favors rolling back the clock 100 years on workers' and consumer rights and consistently has taken the side of corporations against average Americans.

Her record shows she does not believe in clean air and clean water protections for Americans and their communities. She does not believe in laws providing affordable housing, and she would, if she could, wipe out zoning laws that protect homeowners. Her record shows she takes an extremely narrow view of protections against sexual harassment, race discrimination, employment discrimination, and age discrimination. In fact, she has such a hostility toward such programs as Social Security that she has argued that Social Security is unconstitutional. She has said that ''[t]oday's senior citizens blithely cannibalize their grandchildren . . . ''

Why is this important? Because she would be on a court that would handle every one of these issues, and it would mean that as a judicial activist, she would rule entirely different in the cases that court decides.

We have heard a lot about her life story. If this were a vote on a Senate resolution commemorating her life story, I am sure the entire Senate would gladly support it. Instead, this is a vote about the lives of multiple millions of other Americans whose lives would be affected by this nominee's ideological activist penchants. This is, after all, a lifetime appointment on a Federal circuit court on which her ideology would be especially harmful and destructive to the people. That is why she has earned opposition of African-American leaders, law professors, and newspapers around the country. In fact, the list of African-American organizations and individuals opposing Justice Brown's nomination is one of the most troubling indications that this is another divisive, ideologically driven nomination. All 39 members of the Congressional Black Caucus oppose her nomination. The Nation's oldest and largest association of predominantly African-American lawyers and judges, the National Bar Association, and its state counterpart, the California Association of Black Lawyers, both oppose this nomination. The foremost national civil rights organization, the Leadership Conference on Civil Rights, opposes it.

The women of Delta Sigma Theta oppose this nomination.

I ask unanimous consent that letters detailing opposition, as well as a list of such letters, be printed in the RECORD.

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

LETTERS OF OPPOSITION TO THE NOMINATION OF JANICE ROGERS BROWN TO THE D.C. CIRCUIT COURT OF APPEALS

PUBLIC OFFICIALS

Congressional Black Caucus; 23 Members of the California Delegation to the United States House of Representatives: Diane E. Watson, 33rd District; Maxine Waters, 35th District; Lucille Roybal-Allard, 34th District; Bob Filner, 51st District; Tom Lantos, 12th District; George Miller, 7th District; Lynn Woolsey, 6th District; Mike Honda, 15th District; Lois Capps, 23rd District; Barbara Lee, 9th District; Hilda L. Solis, 32nd District; Loretta Sánchez, 47th District; Linda Sanchez, 39th District; Joe Baca, 43rd District; Anna Eshoo, 14th District; Pete Stark, 13th District; Juanita Millender-McDonald, 37th District; Grace F. Napolitano, 38th District; Xavier Becerra, 31st District; Nancy Pelosi, 8th District; Henry A. Waxman, 30th District; Dennis Cardoza, 18th District; Carol Moseley Braun, Paul Strauss.

CALIFORNIA ORGANIZATIONS

California Association of Black Lawyers; California State Conference of the NAACP; California Teachers' Association; Justice for All Project: Committee for Judicial Independence; Black Women Lawyers of Los Angeles; SEIU Local 99; Feminist Majority; Sierra Club, Southern California; Western Law Center for Disability Rights; Planned Parenthood Los Angeles; Stonewall Democratic Club; NAACP Legal Defense Fund; People for the American Way, California; California Women's Law Center; Universalist-Unitarian Project Freedom of Religion; National Council of Jewish Women—California; Pacific Institute for Women's Health; Equal Justice Society; California Association of Black Lawyers; California Federation of Labor, AFL–CIO; Sierra Club Environmental Law Program; National Center for Lesbian Rights; National Organization for Women, California; San Francisco La Raza Lawyers; Planned Parenthood Golden Gate; California Abortion and Reproductive Rights Action League; Disability Rights Education & Defense Fund; Chinese for Affirmative Action; National Employment Lawyers Association.

NATIONAL ORGANIZATIONS

AFCSME; AFL–CIO; American Association of University Women, National and Vermont chapters; Americans for Democratic Action; Americans United for Separation of Church and State; Committee for Judicial Independence; Delta Sigma Theta Sorority; EarthJustice; International Brotherhood of Electrical Workers; Leadership Conference on Civil Rights; League of Conservation Voters; Legal Momentum (NOW LDF); MALDEF; NAACP, National and District of Columbia Organizations; NARAL Pro-Choice America; National Abortion Federation; National Bar Association; National Black Chamber of Commerce; National Council of Jewish Women; National Employment Lawyers Association; National Family Planning & Reproductive Health Association; National Organization for Women; National Partnership for Women and Families; Natural Resource Defense Council; National Senior Citizens Law Center, on behalf of: National Committee to Preserve Social Security & Medicare; Alliance of Retired Americans; Families USA; AFSCME Retirees Program; Gray Panthers; Center for Medicare Advocacy; National Health Law Program; National Women's Law Center; National Urban League; People for the American Way; Planned Parenthood Federation of America;

Service Employees International Union; Sierra Club.

Coalition letter from the following environmental organizations: American Planning Association; American Rivers; Citizens Coal Council; Clean Water Action; Coast Alliance; Community Rights Council; Defenders of Wildlife; Earthjustice; Endangered Species Coalition; Friends of the Earth; Mineral Policy Center; National Resources Defense Council; Sierra Club; The Wilderness Society; Advocates for the West; Alabama Environmental Council; American Lands Alliance; Amigos Bravos; Buckeye Forest Council; California League of Conservation Voters; California Native Plant Society; Californians for Alternatives to Toxics; Center for Biological Diversity; Clean Air Council; Clean Water Action Council; The Committee for the Preservation of the Lake Purdy Area; Earthwins; Environmental Defense Center; Environmental Law Foundation; Friends of Hurricane Creek; Georgia Center for Law in the Public Interest; Great Rivers Environmental Law Center; Hurricane Creekkeeper; John Muir Project; Kentucky Resources Council, Inc.; Natural Heritage Institute; New Mexico Environmental Law Center; Northwest Environmental Advocates; Oilfield Waste Policy Institute; Omni Center for Peace, Justice, and Ecology; San Bruno Mountain Watch; Southern Appalachian Biodiversity Project; Valley Watch, Inc.; Washington Environmental Council; Western Land Exchange Project; Wild Alabama; Wildlaw; Coalition of African-American Labor Leaders.

LAW PROFESSORS

Stephen R. Barnett, University of California, Berkeley; Letter signed by more than 200 law professors.

NATIONAL BAR ASSOCIATION,
Washington, DC, September 10, 2003.

Re Justice Janice Rogers Brown Nominee to the U.S. Court of Appeals for the District of Columbia Circuit.

SENATE JUDICIARY COMMITTEE,
U.S. Senate,
Washington, DC.

DEAR SENATOR: The National Bar Association, this nation's oldest and largest Association of predominantly African American lawyers and judges, deems that Justice Rogers Brown is unfit to serve on the U.S. Court of Appeals of the District of Columbia.

Justice Brown has served the California Supreme Court for seven years, providing a substantial body of work for analysis by critics and supporters alike. If appointed, Brown would follow Justice Judith Rogers, a President Clinton appointee, to become the second African American woman judge on the D.C. Circuit Court. Many people consider this appointment as preliminary grooming for a future nomination to the U.S. Supreme Court. This consideration is not without merit: Justices Antonin Scalia, Clarence Thomas, and Ruth Ginsberg all previously served on the prestigious D.C. Circuit Court.

The National Bar Association must consider, among other things, whether a judicial nominee will be a responsible voice upon which all people, particularly people in the traditionally underserved communities, for instance African Americans, other ethnic minorities and women, can depend when fundamental legal issues of race, ethnicity, or gender may profoundly impact the designated population in the areas of advancement in business, education, civil rights, and the judicial arenas arise.

A rigorous review of several of Justice Brown's opinions in the California Supreme Court undertaken by the California Association of Black Lawyers (copy attached), an affiliate of the National Bar Association, indicates a most disturbing view and what may be in store for minorities under her stewardship on the bench. In for instance Hi-Voltage Wire Works, Inc. v. City of San Jose, 24 Cal 4th 537 (2000), Justice Brown wrote the majority opinion striking down a San Jose ordinance that required the City of San Jose to solicit bids from companies owned by minority and women subcontractors. She reasoned that the plan to seek minority subcontractors violated Proposition 209, which is the 1996 voter-adopted state constitutional amendment that banned racial preferences. She further concluded that instead of affirmative action, ''equality of individual opportunity is what the constitution demands.''

In view thereof, the National Bar Association strongly urges and recommends that the Senate Judiciary Committee reject the nomination of Justice Janice Rogers Brown to the U.S. Circuit Court of Appeals for the D.C. Circuit.

Sincerely,

CLYDE E. BAILEY, Sr.,
President.

CALIFORNIA ASSOCIATION OF BLACK LAWYERS,
Mill Valley, CA, October 17, 2003.

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

Hon. PATRICK LEAHY,
Ranking Member, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS HATCH AND LEAHY: On behalf of the California Association of Black Lawyers (''CABL''), I write to express our strong opposition to the nomination of Janice Rogers Brown to the U.S. Court of Appeals for the D.C. Circuit.

CABL is the only statewide organization of African American lawyers, judges, professors and law students in the State of California. We are an affiliate of the National Bar Association (the ''NBA'') and we join the National Bar Association in its opposition to Justice Brown. (The NBA recently forwarded CABL's Official Position Paper opposing Justice Brown's nomination to you. I am enclosing a copy, for your easy reference.)

As California lawyers, we are familiar with Justice Brown and her record on the California Supreme Court. We are deeply concerned about her extremist judicial philosophy, that she has manifested in numerous opinions over the years. It is clear to us that she misuses precedent and challenges precedent, in order to achieve the result she desires. A prime example is her opinion in *Hi-Voltage Wire Works, Inc. v. City of San Jose,* the California's Supreme Court's first application of Proposition 209. According to Chief Justice Ronald George, who refused to join her opinion, Justice Brown seriously distorted the history of civil rights jurisprudence and concluded outright that the U.S. Supreme Court decisions supporting affirmative action were wrongly decided.

California has strong civil rights statutes, and many of us litigate pursuant to these statutes. Yet Justice Brown has repeatedly deviated from precedent in order to narrowly interpret these statutes and render them virtually inaccessible to victims of discrimination.

We urge you to undertake an extremely careful review of Justice Brown and her record. We hope that you will conclude, as we have done, that she is simply not within the mainstream of legal thought. She is therefore not suited for appointment to the second most important court in our nation, the D.C. Circuit.

Respectfully yours,

GILLIAN G.M. SMALL,
President.

Mr. LEAHY. Mr. President, and, of course, both the Senators from her home State have opposed her. In fact, if she is confirmed, this may be the first such Senate confirmation over the opposition of both home State Senators in the history of the Senate, something, I might say, that during President Clinton's time was inconceivable–that Republicans would even consider a nomination if one Senator from the home State opposed the nominee and, of course, under no circumstances both. Here both Senators do oppose her, and yet her nomination is going forward.

There remain 36 Republican Senators serving today who voted against the nomination of Justice Ronnie White of Missouri in 1999. Justice White is now the chief justice of the Missouri Supreme Court, having been that high court's first African-American member. Former Senator Ashcroft came to the floor and vilified Justice White as pro criminal in 1999, after action on that nomination had been delayed more than 2 years. Then, in a surprise party-line vote, Republican Senators all voted against his confirmation. In fact, that is the only party-line vote to defeat a judicial nomination that I can remember in my 31 years here.

Immediately after this party-line vote, by which Republican Senators defeated the nomination of Justice Ronnie White, many of them told us: We know he is qualified, but we had no choice because both home State Senators opposed the nomination. In order to respect the views of these home State Senators, they had to vote against a nominee who many felt was highly qualified.

Both Justice Brown's home State Senators oppose her confirmation. They have been consistent in that opposition. Republican Senators felt compelled to vote against Justice White, a nominee of President Clinton, in 1999 because of the opposition of his home State Senators. It is hard to see how they can now turn around and say: Well, but we can vote for a Republican nominee notwithstanding the same kind of opposition.

It is not just the two distinguished Senators from California who oppose her. Her views are so extreme that more than 200 law school professors around the Nation wrote to the Judiciary Committee expressing opposition.

The ''Los Angeles Times'' concludes she is a ''bad fit for a key court.'' The ''Detroit Free Press'' concluded she ''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 extreme leanings.''

I ask unanimous consent that these editorials, as well as a list of other editorials opposing the Brown nomination, be printed in the RECORD.

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

PUBLISHED OPPOSITION TO THE NOMINATION OF JANICE ROGERS BROWN, NOMINEE TO THE D.C. CIRCUIT COURT OF APPEALS

EDITORIALS

Reject Justice Brown, The Washington Post, June 7, 2005.

No on Judge Brown: D.C. Court Is Wrong Place for Her Views, The Sacramento Bee, May 20, 2005.

Brown Does It Again, Contra Costa Times, April 29, 2005.

Democrats Must Block Activist Judges, San Jose Mercury News, February 24, 2005.

The Quality of the Judiciary Is at Stake! Want Good Judges? So Does Kerry, Philadelphia Daily News, August 11, 2004.

''All Black Ain't Coal!'', The Bay State Banner (Massachusetts), November 20, 2003.

A Bad Fit for a Key Court, The Los Angeles Times, November 5, 2003.

Extreme Nominee; With Brown, Bush Deepens Partisanship Over Judges, Detroit Free Press, October 31, 2003.

Nasty Tactics, Fort Worth Star Telegram (Texas), October 31, 2003.

Fueling the Fight, The Washington Post, October 30, 2003.

Judicial Pick Not Fit for U.S. Court, The Atlanta Journal and Constitution, October 29, 2003.

Out of the Mainstream, Again, The New York Times, October 25, 2003.

A Nominee to Filibuster, Copley News Service, October 24, 2003.

Bush Adds Another Ultra-Conservative, Howard University Hilltop, October 20, 2003.

Fueling the Fire, The Washington Post, August 1, 2003.

More Conservatives for the Courts, The New York Times, July 29, 2003.

OP-EDS

If Republicans Look at Her Record, They Will Vote Brown Down, Douglas T. Kendall and Jennifer Bradley, Roll Call, June 7, 2005.

This Judge Is More Right-Wing Than Thomas, Simon Lazarus and Lauren Saunders, The Hill, June 17, 2005.

Must Filibuster Justice Brown, Cynthia Tucker, Atlanta Journal and Constitution, May 1, 2005.

Kennedy Does Justice to Approval Process, Howard Manly, Boston Herald, February 6, 2005.

The Bushes are poor Judges of Judges, Diane Roberts, St. Petersburg Times (Florida), December 13, 2003.

Judicial Nominees Show Disrespect For System Of Law, John David Blakley, The Battalion (Texas A&M University), December 2, 2003.

Looking at Justice From Both Sides Now: Opponents Decry Nominee for Same Reason She Was picked by White House: Her Record, Susan Lerner, The L.A. Daily Journal, November 28, 2003.

A Record with some Praise, Robyn Blumner, St. Petersburg Times (Florida), November 23, 2003.

Commentary, Ralph G. Neas, (President, People For the American Way), National Public Radio 'Morning Edition', November 12, 2003.

Nominee's Views Will Affect Court, DeWayne Wickham, USA TODAY, November 3, 2003.

GOP Senators: Remember Anita Hill?, Linda Campbell, The Tallahassee Democrat, November 3, 2003.

Bush's Court-Nominee 'Diversity' Is a Cynical Ploy; These Minority Members and Women Are Out of the Mainstream, Robert L. Harris, Los Angeles Times, November 12, 2003.

California Contender: A federal appeals court nominee could one day become the first black woman justice on the U.S. Supreme Court, Bob Egelko, San Francisco Chronicle, Sunday, October 26, 2003.

Judicial Throwback, Douglas T. Kendall and Timothy J. Dowling, The Washington Post, September 19, 2003.

LETTERS TO THE EDITOR

What Op Ed Forgot To Tell Us, Eric Kane, Boston Globe, May 13, 2005.

Candidates' Past Rulings Show Danger, Nancy Goodban, The Modesto Bee (CA), May 11, 2005.

Senate Democrats' Filibuster Not Racist, Scott DeLeve, The Daily Mississippian, December 11, 2003.

Congressional Black Caucus; An Open Letter on Why Five Judicial Nominees Must Be Rejected, Ethnic NewsWatch, November 20, 2003.

Bush Judges Deserve To Be Filibustered, Muriel Messer, The Journal Standard (Illinois), November 13, 2003.

Justice Brown's Manifesto, T.J. Pierce, The San Francisco Chronicle, November 8, 2003.

Judging Ms. Flowers, Arline Jolles Lotman, Philadelphia Daily News, November 7, 2003.

Plantation Politics, Jerome Redding, St. Louis Post-Dispatch (Missouri), November 3, 2003.

Jerome J. Shestack, former ABA President, The New York Times, November 1, 2003.

[From the Los Angeles Times, Nov. 5, 2003.]

A BAD FIT FOR A KEY COURT

The U.S. Court of Appeals for the District of Columbia Circuit is the triple-A farm team for the Supreme Court. Three of the high court's current members—Antonin Scalia, Clarence Thomas and Ruth Bader Ginsburg—came from the D.C. circuit. So did onetime Chief Justices Warren Burger and Fred Vinson, among others.

Presidents also give special attention to the D.C. court's appointments because it often hears high-profile challenges to presidential and congressional actions, defining the government's authority. This year the D.C. Circuit Court upheld the indefinite detention of potential terrorists at Guantanamo, Cuba. In past years, it expanded police search and seizure powers and upheld the 1971 campaign spending law and environmental and workplace safety Laws. Before it now is a challenge by California and other states to the administration's view that the Clean Air Act does not allow regulation of carbon dioxide and other greenhouse gases.

That President Bush may view California Supreme Court Justice Janice Rogers Brown as a future U.S. Supreme Court justice could explain why he nominated her to the D.C. court, 3,000 miles from her San Francisco base. But during her seven years on California's high court, Brown has shown doctrinaire and peculiar views that make her a troubling choice for this appeals court.

Judges are supposed to consider disputes with an open mind, weighing facts against the law and precedent. Conscientious judges sometimes find that their decisions conflict with their personal beliefs. However, 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.

'Where government advances,' she told a college audience, 'freedom is imperiled, community impoverished, religion marginalized and civilization itself jeopardized'—a startling view for someone who would be charged with reviewing government actions. Brown has spoken disapprovingly of what she called the U.S. Supreme Court's 'hypervigilance' with respect to such 'judicially proclaimed fundamental rights' as privacy, calling them 'highly suspect, incoherent and constitutionally invalid.'

These views may have prompted Brown's bitter dissents in cases in which her colleagues upheld regulatory actions such as local zoning and land-use laws. They seem to have fueled her skepticism toward employment discrimination claims, cases involving the rights of people with disabilities and the meaning of consent in rape.

Brown's dogmatism and a style bordering on vituperation earned her only a 'qualified' rather than 'well qualified' rating from the American Bar Assn. Some committee members found her unfit for the appeals court.

The Senate Judiciary Committee could vote on Brown's nomination Thursday. There's little question that Brown is an intellectually sharp and hard-working jurist, but that is not enough. Her own words are unrelentingly hostile to government's role in regulatory matters and protection of individual rights. These are the very things on which she would rule most often. Brown is a bad fit for the District of Columbia appeals court.

JUDICIAL PICK NOT FIT FOR U.S. COURT,

[From the Atlanta Journal and Constitution, Oct. 29, 2003]

President Bush has once again nominated a right-wing judge for one of the nation's most influential appellate courts. Worse yet, Janice Rogers Brown, a California Supreme Court justice, is not qualified for the U.S. Court of Appeals for the D.C. Circuit.

Despite Bush's penchant for politics over professional qualifications in judicial appointments, Democrats are not blameless in the current standoff. They filibustered the nomination of Hispanic conservative Miguel Estrada for the same appellate court vacancy. Estrada, who finally withdrew from consideration, had unquestioned scholarly and legal qualifications for a federal judgeship.

Rather than select another highly qualified conservative for the key appellate bench, the president took the low road, choosing a judge who previously received an 'unqualified' rating from the California bar's evaluation commission and last month got a mixed rating of 'qualified/unqualified' from the American Bar Association. By contrast, Estrada received a unanimous ABA rating of 'well qualified.'

Brown's views, as espoused in speeches to ultraconservative groups, are far out of the mainstream of accepted legal principles. For example, she has disputed whether the Bill of Rights, as incorporated in the U.S. Constitution, should have been applied to the states.

While the African-American jurist claims her tendency to 'stir the pot' wouldn't affect her rulings, such a radical view causes the public to wonder if she will respect basic individual liberties guaranteed in the Bill of Rights.

Brown meets the GOP's litmus test of being anti-affirmative action and anti-abortion, but that is a sorry measure of judicial excellence. Bush knows that Brown will fall victim to a Democratic filibuster. Apparently, this president would rather have a campaign issue than a qualified federal judiciary.

[From the New York Times, Oct. 25, 2003]

OUT OF THE MAINSTREAM, AGAIN

Of the many unworthy judicial nominees President Bush has put forward, Janice Rogers Brown is among the very worst. As an archconservative justice on the California Supreme Court, she has declared war on the mainstream legal values that most Americans hold dear. And she has let ideology be her guide in deciding cases. At her confirmation hearing this week, Justice Brown only ratified her critics' worst fears. Both Republican and Democratic senators should oppose her confirmation.

Justice Brown, who has been nominated to the United States Court of Appeals for the District of Columbia Circuit, has made it clear in her public pronouncements how extreme her views are. She has attacked the New Deal, which gave us Social Security and other programs now central to American life, as ''the triumph of our socialist revolution.'' And she has praised the infamous Lochner line of cases, in which the Supreme Court, from 1905 to 1937, struck down worker health and safety laws as infringing on the rights of business.

Justice Brown's record as a judge is also cause for alarm. She regularly stakes out extreme positions, often dissenting alone. In one case, her court ordered a rental car company to stop its supervisor from calling Hispanic employees by racial epithets. Justice Brown dissented, arguing that doing so violated the company's free speech rights.

Last year, her court upheld a $10,000 award for emotional distress to a black woman who had been refused an apartment because of her race. Justice Brown, the sole dissenter, argued that the agency involved had no power to award the damages.

In an important civil rights case, the chief justice of her court criticized Justice Brown for ''presenting an unfair and inaccurate caricature'' of affirmative action. The American Bar Association, all but a rubber stamp for the administration's nominees, has given Justice Brown a mediocre rating of qualified/not qualified, which means a majority of the evaluation committee found her qualified, a minority found her not qualified, and no one found her well qualified.

The Bush administration has packaged Justice Brown, an African-American born in segregated Alabama, as an American success story. The 39-member Congressional Black Caucus, however, has come out against her confirmation.

President Bush, who promised as a candidate to be a ''uniter, not a divider,'' has selected the most divisive judicial nominees in modern times. The Senate should help the president keep his campaign promise by insisting on a more unifying alternative than Justice Brown.

Mr. LEAHY. Mr. President, I have voted to confirm hundreds of nominees with whom I differ. I vote for them when I think they will be fair and impartial. I voted for hundreds of President Bush's nominees, as I did his father, President Reagan, and President Ford, all Presidents with whom I have been proud to serve. But I voted against those, whether Republican or Democratic nominees, if I disagreed with them, if I felt they could not be impartial.

I believe Judge Brown has proven herself to be a results-oriented, agenda-driven judge whose respect for precedent and rules of judicial interpretation change depending upon the subject before her and the results she wants to reach. She is the definition of an activist judge, the sort of person President Bush said he would not nominate.

Whether it is protection of the elderly, workers and consumers, privacy rights, free speech, civil liberties, and many more issues, she has inserted her radical views into her judicial opinions time and again.

She repeatedly and consistently has advocated turning back the clock 100 years to return to an era where worker protection laws were found unconstitutional.

It is no small irony this President, who spoke of being a uniter, has used his position to renominate Justice Brown and others after they failed to get consent of the Senate.

These provocative nominees have divided the Senate and the American people, and they brought us to the edge of a nuclear winter in the Senate.

This confrontational approach and divisiveness have continued, despite the confirmation of 209 out of his 218 jurdicial nominees.

I oppose giving Justice Brown this lifetime promotion to the second highest court in our land because the American people deserve judges who will interpret the law fairly and objectively. Janice Rogers Brown is a committed judicial activist who has a record of using her position as a member of a court to put her views above the law and above the interests of working men and women and families across the Nation.

We must not enable her to bring her ''jurisprudence of convenience'' to one of the most important Federal courts in the Nation.

Over the course of the Senate's consideration of the nomination of Janice Rogers Brown to be a judge on the United States Court of Appeals for the D.C. Circuit, I have publicly explained why I cannot support it. My opposition is based on Justice Brown's extensive record, which raises unavoidable concerns about her pursuit from the bench of her extremist judicial philosophy and therefore about her fitness for this lifetime appointment. Justice Brown failed to gain the consent of the Senate last year. As I explained in April when voting against her confirmation in the Senate Judiciary Committee, not only has Justice Brown failed to resolve any of my concerns since her hearing in late 2003, but Justice Brown's opinions issued since that time reinforce and deepen the troubling patterns in her record.

Through bipartisan action, the Senate has deterred the misguided bid by some on the other side of the aisle for one-party rule by means of their nuclear option. Thanks to the hard work of a bipartisan group of 14 Senators, we have, for now, preserved the system of checks and balances, designed by the Founders, that are so integral to the function of the Senate and to its role. As we turn now to the nomination of Janice Rogers Brown, I urge all Senators to take seriously the Senate's constitutionally mandated role as a partner with the executive branch in determining who will serve lifetime appointments in the federal judiciary. I urge all Senators, Republicans and Democrats alike, to take these matters seriously and vote their consciences. Republican Senators and Democratic Senators alike will need to evaluate, with clear eyes, the fitness of Justice Brown for this lifetime judicial appointment before casting a difficult vote on this problematic and highly controversial nominee. My opposition to Justice Brown's nomination is based, as it has always been, on her record.

Justice Brown is a consummate judicial activist whose record shows that she favors rolling back the clock 100 years on workers' and consumers' rights and taking the side of corporations against average Americans. Her record shows she does not believe in clean air and clean water protections for Americans and their communities, she does not believe in laws providing affordable housing, and that she would, if she could, wipe out zoning laws that protect homeowners by keeping porn shops and factories from moving in next door. Her record shows she takes an extremely narrow view of protections against sexual harassment, race discrimination, employment discrimination, and, most of all, age discrimination. In fact, Justice Brown has a hostility toward such programs as Social Security that is so great that she has argued that Social Security is unconstitutional, and has said that ''[t]oday's senior citizens blithely cannibalize their grandchildren. . . .''

We have heard a great deal from Justice Brown's supporters about her life accomplishments. It is an impressive story, and Justice Brown's accomplishments in the face of so much adversity are commendable. But we cannot base our votes on the confirmation of a lifetime appointee to a Federal court on biography alone. If this were a vote on a Senate resolution commemorating her life story, I am sure the entire Senate would gladly support it. But instead, this is a vote about the lives of multiple millions of other Americans whose lives would be affected by this nominee's ideological penchants.

I hope that, as debate Justice Brown's nomination, we will not—as we did 2½ years ago—hear the whispering of unfounded smears against those who oppose this nomination. I have spoken recently about my disappointment in the White House and Republican partisans for fanning the flames of bigotry and refusing to tamp down unfounded claims that amount to religious McCarthyism. I urged the White House, Republican leaders, and moderate Republicans to join me in condemning the injection of such smears into the consideration of nominations. The failure to do so risks subverting this constitutional process and the independence of our federal courts.

The unfounded charges of bigotry are belied by the numbers of major African-American leaders, newspapers and law professors across the country who also oppose this nomination based on Justice Brown's record of extremism. The list of the African-American organizations and individuals who oppose Justice Brown's nomination is a clear indication that this is another divisive, ideologically driven nomination. The 39 members of the Congressional Black Caucus oppose Justice Brown's nomination, including the respected congressional delegate from the District of

Columbia, ELEANOR HOLMES NORTON, and Representatives CHARLES RANGEL, ELIJAH CUMMINGS and JOHN CONYERS, and the chair of the Congressional Black Caucus, Representative MEL WATT. The nation's oldest and largest association of predominantly African-American lawyers and judges—the National Bar Association—and its State counterpart—the California Association of Black Lawyers—both oppose this nomination. The foremost national civil rights organization, the Leadership Conference on Civil Rights, opposes this nomination. The women of Delta Sigma Theta oppose this nomination. Dr. Dorothy Height, Dr. Joseph Lowery and Julian Bond, historic leaders in the fight for equal rights, have spoken out against this nomination.

The baseless smears that we have heard are irresponsible, harmful and demonstrably false. Democrats have voted to confirm each of the other 15 African-American judges nominated by President Bush and brought to the Senate for a vote, including all four of the other African-Americans confirmed to appellate courts. Democrats have fought hard to integrate the Fourth Circuit, working with Senator WARNER through the confirmation of Judge Roger Gregory, and with Senator EDWARDS on the confirmation of Judge Allyson Duncan. And it was Democratic Members who were outraged at the Republicans' partyline vote against Justice Ronnie White and Republican pocket filibusters of Judge Beatty, Judge Wynn, Kathleen McCree Lewis, and so many outstanding African-Americans judges and lawyers blocked during the Clinton years.

Let us not see that shameful card dealt from the deck of unfounded charges that some stalwarts of this President's most extreme nominees have come more and more to rely upon. Let us stick to the merits. As so many have explained in such detail over the last few days, those who oppose her do so because they retain serious doubts about her nomination and see her as an ideologue or a judicial activist.

The basis for my opposition is the extremism of Justice Brown's record. That, too, is the reason both of her home State Senators oppose her. As we have heard in the Judiciary Committee and here on the Senate Floor, both Senators from California, who arguably know this nominee and her record better than most, strongly oppose Justice Brown's confirmation. There was a time in the Senate, not that long ago, when opposition by a nominee's home State Senators, no matter how late in the day it was announced, was enough to halt a nomination. I remember how that tradition was adhered to scrupulously by Republican Senators 5½ years ago when the Senate voted on the confirmation of Ronnie White to be a judge in Missouri. Even though one of his home State Senators had warmly endorsed him at his hearing, an eleventh hour reversal by that Senator led to every Republican Senator voting against Justice White. Thirty-six of those Senators are still serving in the Senate today, and if the approval of a nominee's home State Senator is as important today as it was in 1999, then the Senate will reject this nomination. The former Chairman of the Judiciary Committee came to the Senate after the defeat of Justice White's nomination to explain explicitly the importance of home State opposition in that unprecedented party-line vote.

As I have detailed, Justice Brown's home State Senators are not the only ones who oppose her. Her views, both in speeches and in opinions issued from the bench, are so extreme that more than 200 law school professors from around the country wrote to the Committee, prior to her hearing, expressing their opposition.

The Senate is faced with several extreme nominees who have clear records of trying to rewrite the law from the bench. In Justice Brown's hearing before the Committee, then-Chairman HATCH began the hearing by referring to President Bush's description of his judicial nomination standard: ''Every judge I appoint will be a person who clearly understands the role of the judge is to interpret the law, not to legislate from the bench. My judicial nominees will know the difference.'' Regretfully, Justice Brown, a practitioner of a results-oriented brand of judicial activism so radical she is frequently the lone dissenter from a 6–1 Republican majority court, represents the antithesis of the President's purported standard. In re-nominating Justice Brown after she failed to gain consent of the Senate, the President has, again, selected a judicial nominee who deeply divides the American people and the Senate.

After Justice Brown's record was examined in the hearing on her nomination, editorial pages across the country came to the same conclusion. Justice Brown's home State newspaper, The Los Angeles Times, concluded she is a ''bad fit for a key court,'' after finding that ''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.'' The Detroit Free Press concluded: ''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.'' The Atlanta Journal and Constitution concluded that Janice Rogers Brown is ''not qualified for the U.S. Court of Appeals for the D.C. Circuit.'' The Washington Post found that Justice Brown is ''one of the most unapologetically ideological nominees of either party in many years.'' And The New York Times concluded that, based on Justice Brown's record as a judge, she has ''let ideology be her guide in deciding cases.'' I would ask that these editorials expressing opposition, as well as a list of all of the editorials opposing the Brown nomination be entered in the RECORD.

Justice Brown has a lengthy record of opinions, of speeches and of writings. She has very strong opinions, and there is little mystery about her views, even though she sought to moderate them when she appeared before the Judiciary Committee. I come to my decision, after reviewing Justice Brown's record—her judicial opinions, her speeches and writings—and considering her testimony and oral and written answers provided to the Senate Judiciary Committee.

My opposition is not about whether Justice Brown would vote like me if she were a member of the United States Senate. I have voted to confirm probably hundreds of nominees with whom I differ. Nor is this about one dissent or one speech. This is about Justice Brown's approach to the law, an approach which she has consistently used to promote her own ideological agenda that is out of the mainstream. Her hostility both to Supreme Court precedent and to the intent of the legislature does not entitle her to a lifetime appointment to this highly important appellate court.

As I have said—and as remains true today—Janice Rogers Brown's approach to the law can be best described as a ''jurisprudence of convenience.'' Justice Brown has proven herself to be a results-oriented, agenda-driven judge whose respect for precedent and rules of judicial interpretation change and shift depending on the subject matter before her and the results she wants to reach.

Hers is a record of sharp-elbowed ideological activism.

While Justice Brown's approach to the law has been inconsistent—she has taken whatever approach she needs to in order to get to a result she desires—the results which she has worked toward have been very consistent, throughout her public record. At her hearing, Justice Brown attempted to separate her speeches from her role as a judge. However, on issue after issue—the protection of the elderly, workers and consumers; equal protection; the takings clause; privacy rights; free speech; civil liberties; remedies; the use of peremptory challenges, and many more—Justice Brown has inserted her radical views into her judicial opinions time and time again. In fact, Justice Brown's comments to groups across the country over the last 10 years repeated the same themes—sometimes even the same words—as she has written in her bench opinions.

In *Santa Monica Beach* v. *Superior Court of L.A. County*, Justice Brown wrote of the demise of the Lochner era, claiming ''the 'revolution of 1937' ended the era of economic substantive due process but it did not dampen the court's penchant for rewriting the Constitution.'' Similarly, in a speech to the Federalist Society, she said of the year 1937: it ''marks the triumph of our own socialist revolution.''

In San Remo Hotel v. City and County of San Francisco, Justice Brown wrote, ''[t]urning a democracy into a kleptocracy does not enhance the stature of the thieves; it only diminishes the legitimacy of the government.'' Similarly, two years earlier, she told an audience at the Institute for Justice: ''If we can invoke no ultimate limits on the power of government, a democracy is inevitably transformed into a kleptocracy—a license to steal, a warrant for oppression.''

As Berkeley Law School Professor Stephen Barnett pointed out about Justice Brown's ''apparent claim that these are 'just speeches' that exist in an entirely different world from her judicial opinions,'' ''that defense not only is implausible but trivializes the judicial role.'' I agree with Professor Barnett on this and understand his determination to oppose her nomination. Justice Brown's provocative speeches are disturbing in their own right, and they are made more so by their reprise in her opinions.

During her hearing, Justice Brown told the Committee that she will ''follow the law.'' However, her opinions from the bench speak much louder than her words to the Committee. In such a judicial dissent she wrote, ''We cannot simply cloak ourselves in the doctrine of stare decisis.''

Justice Brown's disregard for precedent in her opinions in order to expand the rights of corporations and wealthy property owners, at the expense of workers and individuals who have been the victims of discrimination, stands among the clearest illustrations of Justice Brown's results-oriented jurisprudence. In several dissents, Justice Brown called for overturning an exception to at-will employment that has been long recognized by the California Supreme Court, and was created to protect workers from discrimination. She has repeatedly argued for overturning precedent to provide more leeway for corporations against attempts to stop the sale of cigarettes to minors, prevent consumer fraud, and prevent the exclusion of women and homosexuals.

Justice Brown has also been inconsistent in the application of rules of judicial interpretation—again depending on the result that she wants to reach in order to fulfill her extremist ideological agenda.

These legal trends—her disregard for precedent, her inconsistency in judicial interpretation, and her tendency to inject her personal opinions into her judicial opinions—lead to no other conclusion but that Janice Rogers Brown is—in the true sense of the words—a judicial activist.

When it is needed to reach a conclusion that meets her own ideological beliefs, Justice Brown stresses the need for deference to the legislature and the electorate. However, when the laws—as passed by legislators and voters—are different than laws she believes are necessary, she has shown no deference, presses her own agenda and advocates for judicial activism.

One stark example comes in an opinion she wrote where in order to support her view that judges should be able to limit damages in employment discrimination cases, she concluded that ''creativity'' was a permissible judicial practice and that all judges ''make law.''

Justice Brown's approach to the law has led to many opinions which are highly troubling. She repeatedly and consistently has advocated turning back the clock 100 years to return to an era where worker protection laws were found unconstitutional. She has attacked the New Deal, an era which created Social Security, fair labor standards and child labor laws, by calling it ''fundamentally incompatible with the vision that undergirded this country's founding.'' Justice Brown's antipathy to the New Deal and Social Security is so strong, that she stated, in *Santa Monica Beach* v. *Superior Court of L.A. County*, 19 Cal. 4th 952 (1999), that ''1937 [the year in which much of President Roosevelt's New Deal legislation took effect] . . . marks the triumph of our own socialist revolution . . .''

Justice Brown's hostility toward Social Security is part of larger hostility toward the needs and the rights of senior citizens. In a 2000 speech to a right-wing group, Justice Brown claimed 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 them to extract.'' Justice Brown has injected this hostility into her opinions. In *Stevenson* v. *Superior Court of Los Angeles County*, 16 Cal. 4th 880 (1997), Justice Brown was the only member of the court to find that age discrimination victims cannot sue under common law because, as she stated in that case, she does not believe age discrimination stigmatizes senior citizens.

And she has repeatedly opposed protections against discrimination of individuals—in their jobs and in their homes. Justice Brown's claims that her words do not mean what they say are simply unconvincing.

Another troubling aspect of Justice Brown's nomination is the court for which she has been nominated. She is being considered for a position on the premier administrative law court in the nation—a court that is charged with overseeing the actions of federal agencies that are responsible for worker protections, environmental standards, consumer safeguards, and civil rights protections.

I am concerned about her ability to be a fair arbitrator on this court. Justice Brown has made no secret of her disdain for government's role in upholding protections against the abuse of the powerless, those who struggle in our society, and our environment. She has said, ''. . . where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies.''

How can someone who has demonstrated her activism be entrusted to make fair and neutral decisions when faced with the responsibility of interpreting the powers of the federal government and the breadth of regulatory statutes? Justice Brown responded to this question at her hearing by calling on us to review her record as a judge to see that she does not ''hate government.'' Well, I did review her record. And, what I found was disturbing: She has used her position on and off the bench to argue for the dismantling of government from the inside out.

Since the Senate last considered Justice Brown's nomination, her troubling jurisprudence has not changed. As demonstrated by her recent opinions, Justice Brown has continued to be a results-oriented judge with little consistency in judicial interpretation who gives great deference to her own agenda rather than to precedent, to the intent of the legislature, or to the Constitution.

In the last 18 months, since Justice Brown appeared before the Judiciary Committee:

She has expressly ignored Supreme Court precedent in seeking judicial repeal of a State antidiscrimination statute giving drug benefits to women, despite her own finding that the statute met the Supreme Court's test.

She has denigrated the constitutional right to privacy and bodily integrity as mere ''sympathy'' by the majority.

She has shown deference to the intent of employers rather than to precedent, to the detriment of the retirement benefits of long-term workers.

She has sought to replace the legislature's judgment regarding the value of expert testimony related to ''Battered Women's Syndrome'' with her own judgment that domestic violence is ''simply a label, now codified,'' which would make it more difficult to prosecute domestic violence.

She has sought to overturn a long line of precedent that African-American women are considered a ''cognizable group'' for the purpose of assessing where a prosecuting attorney has violated equal protection in the use of peremptory challenges.

She has demonstrated her hostility to common law by overturning California's century-old second-degree felony murder rule.

She has sought to make it more difficult for a worker to pursue a sexual harassment claim against her employer by strictly enforcing release language in a separate worker's compensation settlement, even though this result would, according to the majority, ''create a trap for the unwary worker.''

Justice Brown's record since her hearing—and since she was last rejected by the Senate—has only brought into sharper focus the radicalism of her opinions and only deepened my concern about her extremism.

Indeed, in the last several days the United States Supreme Court decision

in a regulatory takings case demonstrates anew just how far out of the mainstream she is. In this case, a strong majority of the Supreme Court rejected the approach that Justice Brown has endorsed in her efforts to expand the takings clause of the Constitution to thwart local government regulation for health, safety, controlled growth and economic development.

America would look like and be a very different place if Justice Brown had her way. She would do away with many of the core protections Americans count on to keep their jobs and communities safe and their retirements secure. There would be few if any laws protecting Americans from race discrimination, employment discrimination or age discrimination, or protecting a woman's right to choose. Corporate speech would be protected, but not the first amendment rights of employees to criticize an employer's practices. Corporations would be protected against suits for stock fraud and for illegally selling cigarettes to minors, but private employers would not be required to provide contraceptive drug benefits for women.

Justice Brown's America would mean a return to the widely and justifiably discredited Lochner era, an era named after a Supreme Court decision so widely-derided that even Robert Bork called its judicial activism an ''abomination.'' A return to the Lochner era would mean a return to a time without protections against child labor. It would mean a return to a time without zoning protections to prevent porn shops and factories and rat-infested slaughterhouses from moving in next door to Americans' homes; a time without consumer protection and laws providing for affordable housing; a time without worker safety laws and without fair labor standards; and a time without laws protecting clean air and clean water. And it would mean a return to a time without Social Security.

It is no small irony that this President, who spoke of being a uniter, has used his position to re-nominate Justice Brown and others after they failed to gain consent of the Senate. These provocative nominees have divided the Senate and the American people and brought the Senate to the edge of a ''nuclear winter.'' His divisiveness has continued, despite the confirmation of 209 out of his 218 judicial nominees. It is no small irony that this President, who spoke with disdain of ''judicial activism,'' has nominated several of the most consummate judicial activists ever chosen by any President. None of the President's nominees is more in the mold of a judicial activist than this nominee.

I oppose giving Justice Brown this lifetime promotion to the second highest court in our land because the American people deserve judges who will interpret the law fairly and objectively. Janice Rogers Brown is a committed judicial activist who has a consistent record of using her position as a member of the court to put her views above the law and above the interests of working men and women and families across the Nation. We should not enable her to bring her ''jurisprudence of convenience'' to one of the most important Federal courts in the Nation.

The PRESIDING OFFICER. The Senator from Pennsylvania controls the next 10 minutes.

Mr. SPECTER. Mr. President, as the debate winds down on the nomination of California State Supreme Court Justice Janice Rogers Brown, I suggest to my colleagues that this debate is really not about Justice Brown at all, but it is about the escalating battle which has been going on between the two parties since the last 2 years of President Reagan's administration and continuing up to the present time.

I was on the Judiciary Committee in the last 2 years of the Reagan administration, having served since I was elected in 1980 on that committee, and there was a limited list to be confirmed after the Democrats took control of the Senate in the 1986 election, for 1987 and 1988.

Then the policy was continued during the 4 years of President George Herbert Walker Bush. I recall pending Third Circuit nominees who were not going to be considered because we were not going to confirm any more of the President's nominees.

Then the situation was exacerbated to a new level during the years of President Clinton, when some 60 judges were bottled up. I opposed that practice at the time as a Republican on the Judiciary Committee and supported Judge Berzon, Judge Paez, and others, and urged that we not have party payback.

Then the matter was exacerbated to new levels with the unprecedented use of systematic filibusters, the first time in the history of the country that has been done.

Then the President responded with an interim appointment, the first interim appointment in the history of the Senate on a Senate rejection, albeit by the filibuster route.

Then we came to the critical issue of how we were going to handle the future with the heavy debate on the so-called constitutional or nuclear option. And finally, we worked our way through on individual judges, without reviewing all of that history.

What this nomination is all about is party payback time. That is what it is. In the 25 years I have been on the Judiciary Committee, I have seen the committee routinely confirm circuit judges who were no better qualified and, in many cases, not as well qualified as Justice Brown.

We had two very celebrated cases where two nominees for circuit court went through with relative ease, and then their records were subjected to very intense scrutiny during nomination hearings for the Supreme Court of the United States. But the practice has been to confirm the circuit judges.

The argument is made that circuit judges play a critical role, and will make law because their cases will not be reviewed by the U.S. Supreme Court, which grants certiorari in so few cases. But the fact is that no one judge can do that on the circuit. The judges sit in panels of three. So if one judge is way out of line, does something egregious, there has to be a second judge concurring. And if there is concurrence on something that is out of line, the circuit courts have the court en banc to correct it. And then there is always the appeal or petition to the Supreme Court of the United States.

One thing that has troubled me is the unwillingness of Senators to concede that both sides have been wrong—to make the explicit concession that their side has been wrong at least in part.

I have scoured the RECORD and noted a comment made by the leader of the Democrats, Senator REID, who said this on May 19:

> Let's not dwell on what went on in the 4 years of President Bush's administration. I am sure there is plenty of blame to go around. As we look back, I am not sure—and it is difficult to say this and I say it—I am not sure either was handled properly. I have known it wasn't right to simply bury 69 nominations. And in hindsight, maybe we could have done these 10 a little differently.

It seems to me that we really ought to be able to admit the wrongs on both sides—to have a clean slate, to start over and try to have Senators vote their individual consciences on matters such as filibusters. In talking to my colleagues who are Democrats, I heard many say they did not like the systematic filibusters; it was not the right thing to do. But there is a party straitjacket on, so it is done. Similarly, in the Republican cloakroom and Republican caucus, many of my colleagues voiced objections to the so-called constitutional or nuclear option. But there again, party loyalty has come into play.

We have admitted our mistakes in the past, historical mistakes, egregious mistakes on race, women's suffrage and women's rights, the rights of criminal defendants, and many, many things. It would not be too much for both sides to say we have both been wrong and let's move ahead. But there has been payback and payback, and the American people are sick and tired of the rankling.

When you put aside those factors, I suggest that State Supreme Court Justice Janice Rogers Brown stacks up fine against the long litany of circuit judges who have been confirmed by the Senate. We know the details. I spoke at length on this nomination on Monday of this week, before the floor became congested with many Senators who wanted to speak, and spoke at that time in my capacity as chairman of the committee. Now I have been allotted 10 minutes to speak as we wind down this debate.

Her record is really exemplary. She was born in Alabama in 1949 to sharecroppers. She had an excellent record

in college and in law school. She went back to get a master's degree from the University of Virginia after she was on the State supreme court in California.

She has been pilloried for statements that have been made in speeches. As is well known, not to be unduly repetitious—I made a comment about this on Monday—if everybody in public life, including Senators, were held to everything they have said, none of us would be elected, confirmed, appointed, or asked to do anything in the public sphere. If somebody put a microscope on the countless tracks of statements I have made in the CONGRESSIONAL RECORD—a court reporter is taking this down, and it will be in the CONGRESSIONAL RECORD forever—if I were to be suggested for some important job, it is not hard to find something someone has said at some time that would be a disqualifier.

The proof is in the pudding on her cases. She has handled a lot of cases, and I went through those cases in great detail.

It is true that she has made undiplomatic statements, but she is not in the State Department. In speeches, she has talked about limiting Government, but when her cases were reviewed and analyzed, she has upheld the authority of the Government in many lines which I detailed in a speech the day before yesterday. Similarly, she has upheld individual rights.

On the merits, this is a nominee who, in my view, is worthy of confirmation to the Court of Appeals.

On Monday, I made a brief reference to an opinion by Supreme Court Justice Oliver Wendell Holmes about 80 years ago where he talks about the importance of individualization, free thinking, and free speech, and has one of the most poignant phrases in any Supreme Court opinion: that ''time has upset many fighting faiths.'' Time has upset many fighting faiths, and in the free interplay of ideas, we come to the best values and the best ideas in the marketplace.

If you have a nominee who exercises some independence and individuality in her speeches but has solid judicial opinions and a solid professional record, solid work in the State government, that is the test as to whether she ought to be confirmed. If it were not party payback time, this ferocious debate would not be undertaken. That is why I am going to vote to confirm State supreme court justice Janice Rogers Brown.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Nevada.

Mr. REID. Mr. President, yesterday the Senate invoked cloture on the nomination now before this body. That came about as a result of a bipartisan agreement that was reached several weeks ago. The agreement, though, did not proclaim in any way that Justice Brown would be confirmed. The agreement does not obligate any Senator to vote for this or any other nominee. Nor did the agreement establish Janice Rogers Brown as the benchmark for what is acceptable, as far as judicial nominees go.

Whether one is from the left or the right, this nominee should be rejected. We should reject any nominee who twists the law to advance his or her own ideological bent. We should reject any nominee who does not believe in or abide by precedent, and we should reject any nominee who holds deep hostility to Government, such deep hostility that it renders them blind to what the law mandates.

Janice Rogers Brown does not fail on just one of these standards, she fails on all three. She is an exceptional candidate, there is no question—but in a negative sense. She twists the law and does it routinely. She does not follow precedent. She has a hostility to Government I have never seen in a judge at any time during my years as a lawyer and as a member of a legislative body.

Under these standards, of course, her nomination should fail resoundingly. In speeches and opinions, Janice Rogers Brown has repeatedly assailed protections for the elderly, for workers, for the environment, for victims of racial discrimination. If confirmed today, she will be a newly empowered person to destroy those protections. Why? Because the D.C. Circuit, where she is intending to go, is the second most powerful court in our land. It has special jurisdiction over protections for the environment, for consumers, for workers, for women, for the elderly. Putting her on the D.C. Circuit Court of Appeals is truly like putting the fox in to guard the henhouse.

The concerns about this woman have not been developed in the last 6 months. Deep concerns over her objectivity and fairness, or lack thereof, have followed her through her whole career. In 1996, when Justice Brown was up for her current job—that is a member of the Supreme Court of the State of California—she was rated unqualified by a 23-member commission that was set up by the State of California to review people going to the court. Twenty out of 23 said she was unqualified to be a member of the California Supreme Court. The commission specifically found that as a lower court judge, Brown exhibited:

> a tendency to interject her political and philosophical views into her opinions.

Press reports at the time indicated that commission members had received complaints that she was insensitive to established legal precedent, lacked compassion, lacked intellectual tolerance for opposing views, and misapplied legal standards.

These are not the words coming from Democratic Senators. This is from a commission set up to review candidates the Governor was going to appoint in the State of California. They found her unqualified, not by a narrow margin—overwhelmingly. Twenty out of the 23 said she was unqualified.

I will say one thing, in the 10 years since they did their work, the State commission has been proven to be visionary, to have had foresight, because she has definitively proven them right. She has established a record as a habitual lone dissenter who lacks an open mind. I heard one of the Senators over here on the majority side say there have been other dissents. She dissented alone 31 times. In a Republican supreme court—6 of the 7 members are Republicans—she has dissented alone 31 times.

Justice Brown's record is the record of a judge who would discard the foundation of our basic legal system, precedent, in order to elevate her own extreme views over the law.

When I was going to law school, they taught us a lot of Latin terms. One of the Latin terms they have in the law we learned as new law students is something called stare decisis. What do those words mean? They are Latin words that mean ''to stand by decided matter.'' It stands for certainty. Janice Rogers Brown is a judge; she is not a legislator. She has no right to do the things she does. I am dumbfounded that we are going to have Republican Senators who have decried for decades about activism—she is the epitome of an activist judge. She does not follow precedent. She is not a legislator, she is a judge.

This is not HARRY REID coming up with some new theory. In Federalist Paper 78, the brilliant Alexander Hamilton wrote, explaining the importance of a judiciary bound by precedent:

> To avoid arbitrary discretion in the courts it is indispensable that they should be bound by strict rules and precedent.

Yet we are going to have people on the other side of the aisle walk over here and vote for this woman. She stands for everything I have heard my Republican colleagues rail against for years. The fact that you are a so-called conservative does not make your activism any better. I believe in stare decisis. When the Court over here across the street renders a decision based on precedent, I support that. I don't like judges to be legislators and that is what she is.

I think it would be hard to find a Senator, if the truth came out, with everyone being candid, who would not agree with Hamilton's view. But with Brown we have a nominee who doesn't believe in precedent. She not only doesn't believe in it, she doesn't abide by it. Here are a few examples.

In the case called People v. McKay, she argued against existing precedent by saying:

> If our hands are tied it behooves us to gnaw through the ropes.

To gnaw through the ropes of precedent? Why did Alexander Hamilton want judges bound by precedent? Because you need stability in the law. You can't have judges acting as legislators. That is what people complain about. I thought most of the complaints about this problem, in fact, came from this side of the aisle.

In Kasky v. Nike, she argued for overturning precedent because it ''did not take into account realities of the modern world.''

That is what we hear. We hear that the Federalist Society and all these other so-called conservative groups who want the Constitution to be interpreted based on the words of that Constitution, not her ''realities of the modern world.''

In People v. Williams, she summarized her views stating she is ''disinclined to perpetuate dubious law for no better reason than that it exists.''

How could a judge say that? But she does. These are the words of a judicial activist.

I said yesterday, when somebody asked me:

If you like judicial activism, she is a doozy.

I wanted to make sure I didn't insult her. I went and looked up in the dictionary what a doozy is. Doozy is ''extraordinary.'' She is an extraordinary activist, not even a mainstream activist. She is the most activist judge, in my many years in the courts and in the legislature, I have ever seen.

She has a deep disdain for Government. Don't take my word it. Listen to what she says, for example, about Government.

Where government moves in, community retreats, civil society disintegrates, our ability to control our own destinies atrophies.

We have a world out there that is looking to America for guidance. Why are they looking to us? It is our ability to govern, our Government. We are the envy of the rest of the world, with our constitutional form of Government. What does she think of it? Not much.

She also says the result of Government is:

Families under siege; war on the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit.

What world is she living in? She also says the result of Government is:

a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

I don't recognize that government she describes. Is a government which strives to provide children with a better education one which leads to war in the streets? Is a government which works to provide health care to people one which results in families under siege? Is a government which protects beautiful landmarks of our land one which leads to an unapologetic expropriation of property?

I don't think mainstream Americans would agree to this, mainstream Democrats, Republicans, Independents. These views are not those of a person who should be awarded tremendous power in our federal court system.

Take one area of the D.C. Circuit's special jurisdiction, hearing appeals from the National Labor Relations Board. These cases involve employee rights to unionize to achieve better health care, better wages, and a decent standard of living. In Nevada, our culinary union, which represents almost 60,000 people who work in our leisure-time industry, has so effectively represented the position of these tens of thousands of employees that such jobs are the best jobs for maids, cooks, waitresses, waiters, and car valets of any place in the world. Over the years, farsighted casino owners have worked with this union because they know that in the hospitality industry, staff can make or break an enterprise. Our labor laws encourage businesses to work with laborers so both sides benefit.

In 1905, a case was decided by the U.S. Supreme Court called Lochner. It invalidated worker protection laws—things such as how many hours you could work, do you get paid overtime, basic safety measures in the workplace. In Lochner, the U.S. Supreme Court said, No, you can't do that. So for 32 years that was the law of the land.

In a unique situation, the Supreme Court said: Times have changed. We are going to change that. They did that in 1937. Lochner is a case that we look back at, not with as much dread as the Dred Scott case, but it is pretty bad. In that case, the Lochner case, they invalidated the New York labor statute that limited the number of hours employees could work.

Over the passionate dissent, and I heard the distinguished chairman of the Judiciary Committee, the distinguished Senator SPECTER from Pennsylvania talk about Oliver Wendell Holmes—Oliver Wendell Holmes dissented in the Lochner case and his dissent was one of the most beautifully written opinions in our history. For decades, Lochner stood as a hard-hearted barrier to worker protections enjoyed by Americans today. Its reversal by the Supreme Court was one of the most pivotal moments in our Nation's history.

Where does Janice Rogers Brown come in here? She laments that the case was overturned. She wants to return to the way it used to be. She said of Holmes' famous dissent in Lochner—in this case he was simply wrong. She said the Lochner dissent has troubled me and has annoyed me for a long time.

She has compared the demise of Lochner and the worker protections that followed in its wake as a socialist revolution.

She seeks to return to Lochner, and if confirmed, she will have power to effect those changes she wants. Why should we have a 40-hour workweek, according to Janice Rogers Brown? Why should we have workers compensation law, worker safety laws? Why should people have to be paid by their employers overtime? They should not be, according to Janice Rogers Brown.

She has attempted to distinguish between her legal opinions and her speeches, which she said are designed to stir the pot. But she can't. But that is not true. It is simply not true. She is being disingenuous. Her speeches are carried forward in her opinions. The inflammatory rhetoric in her speeches carries over into her opinions as if copied on the old copying machines.

For example, in a speech at the Institute of Justice, she said:

If we can invoke no ultimate limits on the power of government, a democracy is inevitably transformed into a Kleptocracy—a license to steal, a warrant for oppression.

She wrote an opinion in the San Remo Hotel v. City and County of San Francisco case where she said the same thing, almost identical words:

Turning a democracy into Kleptocracy does not enhance the stature of thieves; it only diminishes the legitimacy of government.

In another speech, she assailed senior citizens with this verbiage:

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

In a case involving discrimination against a senior citizen, Stevenson v. Superior, she said the same thing—in a dissent, of course—that California's public policy against age discrimination cannot benefit the public. She said that such age discrimination:

is not . . . Like race and sex discrimination. It does not mark its victims with a stigma of inferiority and second class citizenship; it is an unavoidable consequence of that universal level of time.

She is saying you get old, you take the consequence, and if you get a little gray hair and you have worked there 30 years, they can dump you just because your hair is gray.

I am not making this up. Setting her speeches aside, and these few opinions, her judicial opinions are enough to disqualify her for the job.

There is another case, Aguilar vs. Avis Rent A Car. I cannot in good taste on the Senate floor repeat what this Hispanic employee, Aguilar, was being called in the workplace. I cannot repeat it. They are the most vile words we have in English. I cannot do that. I have them. I cannot do that. Vile. What did she say? There was a race discrimination suit against an employee who had repeatedly been subjected to racial slurs. She argued the slurs were protected by the first amendment. While the majority soundly rejected this defense, she, in her single dissent, endorsed these people being able to say that. I am not making this up. She argued that even an illegal racial discriminatory speech in the workplace—discrimination prohibited by title VII of our Civil Rights Act—is protected by the first amendment. She believes racial slurs in the workplace are acceptable in America. This is a woman who is going to the second highest court in the land?

Take another case, Konig v. Fair Employment and Housing Commission.

There—again in a dissent, what else—she argued that an African-American police officer who had been discriminated against should not be awarded damages for this illegal conduct perpetrated against her.

In her world, discrimination is without an effective remedy, and wrongdoers are rewarded.

While she displays hostility toward victims of discrimination—willing to twist the law to deny relief—she exhibits the opposite view when it comes to corporations. Corporations can do no wrong.

In Kasky v. Nike, the plaintiff sued Nike, alleging Nike had engaged in false and misleading advertising in a false campaign to deny it had mistreated its overseas workers. The majority held that these false statements were not protected by the Constitution. Again, in dissent, Justice Brown argued they are protected.

Under Justice Brown's reasoning of this case, corporate lies should be protected and public protections rejected. That was her opinion.

As the Enron wrongdoers finally head to trial 4 years after they destroyed the retirement security of its employees and devastated investors, do we want a judge who believes that corporate lies are protected by the Constitution?

Justice Brown also believes that the takings clause of the Constitution should be transformed into a weapon to tear government down. For example, in the San Remo case, a hotel owner challenged a city permitting requirement. In dissent—again—she argued this scheme was a taking of property requiring compensation under the Constitution. Her assertion that a permit fee was a taking requiring compensation is totally at odds with longstanding U.S. Supreme Court precedent. That does not matter to her. Her radical view would mandate compensation for everything. That is her point. She does not want government and her view is a way to achieve that end.

If you disapprove of zoning laws which keep strip clubs and factories from opening next door to your house, or an adult bookstore, if you dislike the environmental process which saved the bald eagle, our golden eagle, if you oppose the communication laws which protect our children from indecent programming, then Janice Rogers Brown is your kind of a judge. She does not believe in these protections and wants to twist the Constitution to abolish them.

I said she was a doozy as an activist, and I think I have proven my case. Her views, in my word and I think the word of the American people, are absurd. They are without any basis in the law. They should not be given voice on the DC Circuit.

I say to my colleagues, to the American people, if you believe in America—and I know we do—where workers are entitled to a fair wage for a fair day's work, where racial slurs are not condoned, where discrimination is not tolerated, where corporations are not given license to lie, where senior citizens are valued and honored, where we have protections for the air we breathe, the food we eat, the water we drink, and these are embraced instead of evaded, if you believe in these things, no one in good conscience can approve this nomination. The record is too clear, too disturbing, too expansive.

The influence of this court, the DC Circuit Court, is too important, too fundamental to the rights Americans hold dear. If there were ever a nominee whom my colleagues, Republicans and Democrats, should reject, this is it.

This bipartisan rejection would do more to change the tenor of the debate on judicial nominations than any step we could take. It would send a signal to President Bush that while we may confirm the conservative nominee—and we have confirmed 209 so far—the Senate will not approve results-oriented activist ideologues to our Federal courts. It would breathe new life into the ''advice'' part of the advice and consent clause of our Constitution, encouraging partnership between the President and the Congress.

The American people want to see us—Democrats and Republicans—working together to improve the retirement security, their health care, their children's education. Because of the time we have spent on judges for weeks and weeks, we will never catch up. We have the Energy bill to do. We have the armed services bill we have to do. We have TANF. We hope to do something on estate tax. It goes on and on. It is all catchup time. Why? Because of five judges and the President did not get his way. And it will be catchup time for a long time because of it.

The people want to see us work together. They want to see the President bring forward fair judicial nominees who will not bring an ideological agenda to this body, whether liberal or conservative, to these lifetime positions. The American people should demand, the Senate should demand, that a nominee possess a fair, open mind, and an instinctual understanding that the job of a judge is not to make law but to interpret our laws. It is this very basic standard that this nominee so utterly and completely fails to meet.

I urge my colleagues to reject this very bad nomination.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in a few moments, we will vote on the confirmation of Justice Janice Rogers Brown to serve on the U.S. Court of Appeals for the DC Circuit. Justice Brown is a highly qualified nominee. She is kind. She is smart. She is thoughtful. She has endured a protracted and often bitter nominations process with grace and dignity. I look forward to her confirmation to the Federal bench in just a few short minutes.

It has been a long road to get to this point. Justice Brown was nominated by the President of the United States in July 2003. She has endured 184 questions and nearly 5 hours of debate in the Judiciary Committee hearing, two committee votes—both of which were favorable to Justice Brown's nomination—and one failed cloture vote despite majority support among the Members of the Senate. She also answered over 120 written questions and sat down for countless meetings with individual Senators. In all, we have debated Justice Brown for over 50 hours on the Senate floor.

Now, after 2 years, Senators will finally be able to fulfill their constitutional duty of advice and consent on the President's nominee. Janice Rogers Brown will finally get an up-or-down vote. She will finally get the courtesy and the respect she deserves.

During this 2-year process, Senators on the other side of the aisle have leveled harsh and I believe unfair attacks against Justice Brown. A careful review of her record, however, shows Justice Brown has an unwavering commitment to judicial restraint and the rule of law.

Opponents have called Justice Brown an extremist. But we have heard the bipartisan praises of Justice Brown from those who know her best—her former and current colleagues on the California Supreme Court and California Court of Appeals. They agree that Janice Rogers Brown is a ''superb judge'' and have said that ''she is a jurist who applies the law without favor, without bias, and with an even hand.''

Opponents have called Justice Brown ''out of the mainstream.'' Yet, as a justice on the California Supreme Court, California voters reelected her with 76 percent of the vote, the highest vote percentage of all the justices on the ballot. Can 76 percent of Californians be out of the mainstream? Senators denying Janice Rogers Brown the fairness of an up-or-down vote is what has been out of the mainstream.

Justice Brown's life is an inspiring story of the American dream. It is an extraordinary journey from a sharecropper's field in segregated Greenville, AL, to the California Supreme Court, and to the D.C. Circuit Court of Appeals. Thanks to hard work and persistence and a strong intellect, Justice Brown has risen to the top of the legal profession.

A true public servant, she has dedicated her life to serving others. For 24 years, she has served in various prominent positions in California State government. In 1996, she became the first African-American woman to serve as an associate justice on the California Supreme Court, the State's highest court.

Janice Rogers Brown is a distinguished, respected, and mainstream jurist. I am proud that today, after almost 2 years, the Senate will finally give Janice Rogers Brown the vote she has waited so long to receive.

With the confirmation last week of Justice Owen and the upcoming vote

on Justice Brown, the Senate continues to make progress, placing principle before partisan politics and results before rhetoric. I hope we can continue working together to do our constitutional duty as Senators and give other judicial nominees the fair up-or-down votes they deserve.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

All time is expired.

The question is, Will the Senate advise and consent to the nomination of Janice R. Brown, of California, to be United States District Court Judge for the District of Columbia Circuit? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS), is necessarily absent.

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 131 Ex.]

YEAS—56

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

NAYS—43

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Corzine	Leahy	Stabenow
Dayton	Levin	Wyden
Dodd	Lieberman	
Dorgan	Lincoln	

NOT VOTING—1

Jeffords

The nomination was confirmed.

The PRESIDING OFFICER. The majority leader is recognized.

NOMINATION OF WILLIAM H. PRYOR TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH DISTRICT—Resumed

Mr. FRIST. Mr. President, we have just voted to confirm Justice Janice Rogers Brown to the D.C. Circuit Court of Appeals. We are making progress. We are securing up-or-down votes on previously blocked nominees. We will now turn to another judge who has been considered in the past, Judge William H. Pryor.

For the information of our colleagues, we are going to go immediately to the cloture vote. If cloture is invoked on the Pryor nomination, it is my expectation that we will be able to lock in a time certain for the final up-or-down vote on that nomination. That would be for tomorrow. The Democratic leader and I have consulted back and forth, and we will lock in a vote for 4 p.m. tomorrow, if cloture is invoked through the next vote.

Following that vote, tomorrow we will consider the Sixth Circuit nominations and hopefully not use all of the allocated time to which we previously agreed. We will be doing that after the vote tomorrow, and we will be voting on those nominations, as well, tomorrow—late afternoon, hopefully, maybe early evening.

President Bush nominated Judge Pryor on April 9, 2003, to serve on the Eleventh Circuit Court of Appeals.

While the individual nominees may change, the debate continues to be centered on a simple and unequivocal principle.

It is based on fairness, and it is grounded in the Constitution of our great Nation.

It is the principle that every judicial nominee that comes to this floor deserves an up or down vote.

Judge Pryor is also a qualified nominee. He deserves a fair vote, and it is our duty to cast one.

Judge Pryor has broad legal experience as a public servant, as a practicing attorney, and as a law professor.

Judge Pryor has served with distinction on the appellate bench since he was recess appointed last year. Many of his opinions have been supported by judges appointed by both Democrats and Republicans.

He enjoys bipartisan support inside and outside the Senate chamber.

Yet he has had to wait more than 2 years for a fair, simple, and courteous up or down vote on the Senate floor.

It is time to close debate and vote on this nominee, up or down, yes or no, confirm or reject.

I will continue to work to ensure that Judge Pryor and every other judicial nominee get an up-or-down vote on the floor of the U.S. Senate.

We are working on a process to start the Energy bill next week, as well as to consider the Griffith nomination on Monday and will announce more on that schedule tomorrow. But Members should expect a vote Monday evening.

That pretty much outlines, I believe, the schedule for tonight and tomorrow.

Mr. REID. Mr. President, it is my understanding the vote Monday will be around 6 o'clock rather than our normal 5:30 p.m. time.

Mr. FRIST. That is correct. The vote will be at approximately 6 o'clock instead of the usual 5 o'clock on Monday.

The PRESIDING OFFICER. Under the previous order, the clerk will report Executive Calendar No. 100.

The legislative clerk read the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 100, William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit.

Bill Frist, Craig Thomas, Richard Burr, Pat Roberts, Mitch McConnell, Jeff Sessions, Wayne Allard, Jon Kyl, Richard G. Lugar, Jim DeMint, David Vitter, Richard C. Shelby, Lindsey Graham, John Ensign, Pete Domenici, Bob Bennett, George Allen.

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

The question is, Is it the sense of the Senate that debate on the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit, shall be brought to a close? The yeas and nays are mandatory under the rules. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

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

The yeas and nays resulted—yeas 67, nays 32, as follows:

[Rollcall Vote No. 132 Ex.]

YEAS—67

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

NAYS—32

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

NOT VOTING—1

Jeffords

The PRESIDING OFFICER. On this vote, the yeas are 67, the nays are 32.