

## EXECUTIVE SESSION

children will take their driver's test in a zero-emission vehicle. That would go a long way toward helping to reduce our dependence and enhance our security.

Natural gas is another energy source we depend on heavily and is another area in which we are, unfortunately, becoming increasingly reliant on foreign imports. Because natural gas is clean burning and relatively cheap, it has been the fuel of choice for new electric power generation in recent years. Sixty percent of American homes are now heated and cooled with natural gas. But while that demand has been growing, domestic supply has remained essentially flat. In 2003, we imported 15 percent of the gas we used. By 2025, that number will nearly double.

We simply cannot continue on this path, and that is why we are bringing this bill to the floor next week. We need to take bold action in the Senate. It is what the American people expect; it is what they deserve. This is exactly what we will do. We will take that action in the Senate to address these energy challenges head on.

The bill that was reported out of the Energy Committee last month was done so on a bipartisan basis, and it is a step in the right direction. It likely will be amended and improved on the floor of the Senate next week. I, again, thank Chairman DOMENICI and Senator BINGAMAN for their tremendous work and for the cooperative spirit with which they approached these issues. I hope that same bipartisan spirit will prevail on the floor and that we can get this important legislation to the President as quickly as possible.

Several of us had the opportunity to meet with the President yesterday, and this was at the very top of his list of issues that he expects us to address. Our goal is to get that legislation to his desk for his signature as soon as we possibly can.

America needs a policy that keeps our families safe, strong, and secure, a policy that keeps America moving forward.

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

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

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent the order for the quorum call be rescinded.

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

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

## NOMINATION OF WILLIAM H. PRYOR, JR., TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of Calendar No. 100, which the clerk will report.

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

The PRESIDING OFFICER. Under the previous order, the time from now until 10:30 shall be under the control of the majority leader or his designee.

The Senator from Alabama is now recognized.

Mr. SESSIONS. Mr. President, I am delighted to be able to speak on behalf of William Pryor—Judge William Pryor now—for the position of U.S. Circuit Judge for the Eleventh Circuit Court of Appeals. He is an extraordinary individual, a wonderful human being, a brilliant lawyer, a man of the highest integrity, who has won the respect and support and confidence of the people of Alabama to an extraordinary degree. Democrats, Republicans, African Americans—the whole State of Alabama knows and respects him for the courage and integrity and commitment he brings to public service.

He was appointed attorney general to fill my seat after I was elected to the Senate, and he has done a superb job as attorney general. President Bush gave him a recess appointment to the Eleventh Circuit Court of Appeals after his nomination had been blocked here now for over 2 years. So it has been a burden for me to feel the frustration that I know he and his family must endure as a result of the uncertainty of his nomination process. I could not be more pleased that he was one of the nominees who was agreed upon to get a cloture vote, a successful cloture vote and an up-or-down vote here in the Senate. That is a good decision by the 14 Senators who reached a consensus on how they would approach this process of confirmations. I could not be more pleased and proud that Judge Bill Pryor was part of the group that was agreed upon by those Members of the Senate to get an up-or-down vote.

Bill Pryor is the kind of judge America ought to have. He grew up in Mobile, AL, my hometown. He was educated in the Catholic school system. His father was a band director at McGill-Toolen High School, a venerable, large Catholic high school there. His mother taught in African-American schools. He went to law school at Tulane University where he graduated with honors, magna cum laude. He was editor-in-chief of the Tulane Law Review. I know the Presiding Officer, the Senator from Florida, is a lawyer and understands that editor-in-chief of the Law Review is the highest honor a

graduating senior can have. To be selected as that in a fine law school such as Tulane is a great achievement.

After he left law school, he clerked for Circuit Judge John Minor Wisdom, a well-known champion of civil rights in the Federal court system—at that time in the old Fifth Circuit. Now it has been divided to become the Eleventh Circuit. Judge John Minor Wisdom was a circuit court judge in the 1950s and 1960s when much of segregation was brought to an end by Federal court action. Bill Pryor was positively impacted by his experiences, working with Judge Wisdom, and is a passionate believer in equal rights and equal justice, and he has a record to demonstrate that commitment.

He practiced law with one of Alabama's fine law firms before becoming assistant attorney general when I was elected attorney general. He handled the constitutional issues in our office. He was smart, hard working, courageous, intelligent, fair and, more than anybody I know in the legal business today, was committed to the rule of law, to doing the right thing. That is his very nature. That is the way he was raised. That is what he believes in and he will stand in there and do the right thing, no matter what others might say, time and time again. His record demonstrates his overriding belief that the law is preeminent and it should be obeyed, even if he might disagree and would like to see it different. I want to show some of the things that demonstrate that.

I say this because it was alleged when his nomination came up that somehow he had strongly held beliefs, or deeply held beliefs, and those deeply held beliefs were so powerful that, yes, he might be smart, he might be a good lawyer, he might be an honest man and all of these things people said he was, but because he had strongly held beliefs and believed something and had some convictions and had some moral principles, that somehow that couldn't be trusted. Maybe he wasn't smooth enough. Maybe his beliefs were so strong this would manipulate or cause him to manipulate the law and not be a fair adjudicator of the law.

I will share some thoughts about that because I think what that overlooks is his fundamental belief and great strength as a judge and a lawyer, which is his belief in the law and the primacy of the law. He understands, fundamentally, the greatness of our country, more than most people realize, is founded upon our commitment to law. We were given a great heritage from England. We have built upon that legal heritage. As I age and see the world, I know this legal system is what makes our country great. A person can go into any court, a company can invest in any State, and expect in this country they will get a fair day in court. You don't have to bribe the judge; you don't have to bribe the jury. You can expect a fair, just result, day in, day out, and it occurs in our courtrooms all over America. It is a heritage of unparalleled

value and we must uphold that heritage. We must adhere to the ideal that law can be ascertained by a good judge and enforced consistently when litigants come before that judge. That is what we pay judges to do.

I want to say the first and foremost legal principle of Judge William Pryor is that a judge should follow the law, and he has a record to demonstrate it, even when it disagrees with his personal views.

First, on the issue of abortion, Judge Pryor has made clear he personally does not believe in abortion. He does not believe it is right. He believes it is wrong. It is not just because he is a Catholic, it is not just that his views are consistent with the Pope's or the Catholic Church of which he is a part, or many other churches and leaders in our country, but he has thought about this issue personally and deeply. He has given it serious consideration. He has made a judgment that, in his view, life and freedom and liberty in our country are diminished if the unborn are not given protection. That is a legitimate position in America, held by tens of millions of people and many leaders in this country. Certainly no one can deny that. Certainly, because someone believes the pro-life way is the best way, they should not be disqualified from being a judge.

He has concluded *Roe v. Wade* was not a principled constitutional decision. Ruth Bader Ginsburg, the ACLU lawyer who President Clinton nominated to the Supreme Court of the United States, has also raised questions about the constitutional integrity of *Roe v. Wade*. That is his view about it.

What does that mean, though, when it comes to court? Someone's personal views on those matters obviously cannot be the test of whether a person will go on the bench. Personal views are not the answer here. We cannot look at someone's religious faith or their personal views and say: I disagree with your religious values here, I disagree with your theology there, therefore you cannot be a judge in the United States of America.

Are we going to ask Muslim nominees to reject their faith before we allow them to be confirmed, or some other religious entity with views different than I may have or someone else may have? Of course not. That cannot be. The test for nominees always must be: Do they respect the law and will they follow it?

Judge Pryor's record shows he will. In August of 1997, not long after I had been elected to the Senate and he had become attorney general, Alabama passed a partial-birth abortion ban to ban partial-birth abortion—a particularly heinous act, in my view, there is strong feeling that this is not a good and decent procedure and that it ought to be eliminated.

Judge Pryor certainly opposes partial-birth abortion. But as attorney general he exercised his supervisory

power over the district attorneys of the State of Alabama, as given to him as attorney general, and on his own initiative—nobody made him do this—he wrote the district attorneys in Alabama a letter and he instructed them—gave them instructions—to utilize only a restrictive interpretation of that statute, because he concluded that portions of the statute were overbroad and unconstitutional. The pro-life forces in Alabama were angry with this pro-life attorney general because he had followed the law. He had restricted by his opinion the breadth of that statute; one even said he gutted the statute. But he did the right thing in 1997, long before he was ever considered for a Federal judgeship.

Three years later, the Supreme Court, in the *Stenberg* case, struck down further the partial-birth abortion statutes of many States. Judge Pryor, then-attorney general, wrote the district attorneys another letter and told them the statute banning partial-birth abortions in Alabama was unconstitutional. He did not have to do that. He believed personally that abortion was wrong. He believed that partial-birth abortion was certainly wrong. But he wrote them a letter and told them not to even attempt to enforce the Alabama statute, because it had been held unconstitutional by the Supreme Court of the United States.

I don't know that attorneys general do that often. They do not have to do that. They can let the district attorneys make their own decision. But he felt that was the right thing to do and he did so. In his letter he said: "You are obligated to obey *Stenberg*." That is a clear directive to them.

When there were threats on abortion clinics, Judge Pryor held a high-profile press conference in the State warning of prosecutions for those who participated in those attacks. He said those attacks on abortion clinics—although he certainly did not favor abortion clinics—were "despicable crimes" against our fellow citizens that would not be tolerated and that he would prosecute people who did so.

There are some who said his views on church and state are incorrect. I will dispute that. I will show he has been courageous in following the law of the United States in this area, as well.

Former Gov. Fob James of Alabama, a strict constructionist, conservative, and independent Governor if there ever was one—and he appointed Judge Pryor to be the attorney general—wanted Judge Pryor to defend prayer in schools. He thought that schools had a right to have prayer. He wanted his attorney general, whom he just appointed, to defend it and go to court and to argue in court that the First Amendment says "Congress shall make no laws respecting the establishment of a religion or prohibiting the free exercise thereof." In Governor James's view, that meant Congress could not pass any such laws, but the State of Alabama could and that the Constitu-

tion did not apply to the State of Alabama with regard to those rights under the First Amendment. Many have tried to make that argument, but the Supreme Court has held otherwise.

Though Judge Pryor had just been appointed attorney general by Governor James, he had the courage and followed his duty and just said no to the Governor. He told the Governor he could not argue that the Establishment Clause did not apply to the States, because the Supreme Court had already held that it did. The Governor then had to hire his own lawyer to promote his idea of the First Amendment.

In Attorney General Pryor's brief to the Federal court, he wrote, correctly, that as attorney general, he spoke for the State of Alabama and not Governor James who had just appointed him. Judge Pryor followed the rule of law again when Judge Roy Moore asked him to make certain arguments in defense of the Ten Commandments statue that Judge Moore had placed in the Alabama Supreme Court building. Attorney General Pryor considered the request and refused to make those arguments. He did not believe they were consistent with Supreme Court precedent and did not believe that the attorney general for the State of Alabama ought to make arguments that the Supreme Court had already rejected.

When Judge Moore ultimately refused to remove that statue of the Ten Commandments, as ordered by a Federal judge, Attorney General Pryor was responsible for prosecuting Judge Moore before the Judicial Inquiry Commission. It was his duty as attorney general under the law to prosecute and present that case. He did so with fidelity to duty and effectiveness. The Commission made a decision and removed Chief Justice Moore duly elected by the people of the State of Alabama from office as chief justice.

They said he is some sort of religious extremist. It is just not so. He is committed, as you can see, to what the law says. In fact, after this controversy over the prayer in schools with the Governor, Attorney General Pryor felt it was his duty to clarify for school boards and school principals all over the State what the law actually was, so he wrote them a letter defining what could be done with student-led prayers in school and what could not be done and what had been held unconstitutional by the Supreme Court.

The Atlanta Journal-Constitution, a liberal newspaper in Atlanta, praised him for his letter and his definition of the appropriate and inappropriate expressions of religious faith in schools. And, in fact, the Clinton administration not long thereafter issued their own guidelines for schools incorporating much of what Attorney General Pryor had put in his letter.

Some have said, in attacking him, that he does not believe in racial equality; that he does not believe in voting rights; and that he is out of the mainstream with regard to those issues in

the State. Nothing could be further from the truth. For example, on the 40th anniversary of former Gov. George Wallace's infamous speech in which he said, on his inauguration, "segregation today, segregation tomorrow, segregation forever," Bill Pryor was inaugurated as attorney general. He won by 60 percent of the vote. In his inaugural speech he changed those famous words to his own philosophy. This is how he began his inaugural speech: "Equal justice under the law today, equal justice under the law tomorrow, equal justice under the law forever." That is his view. That is his belief. That is who he is. It is absolutely unfair, wrong, and even worse, really, to suggest otherwise.

One of the things that was an issue in the State raised by a State representative, an African American, Alvin Holmes, was that Alabama's Constitution still had language in it that banned interracial marriage, an old segregationist provision. It was unconstitutional, could not be enforced, but the words were still in that constitution. Mr. Holmes believed it ought to be taken out.

Attorney General Bill Pryor agreed with him. He did not think that was right. He thought that was a blot and a stain on Alabama's Constitution and it ought to be removed. He took action to do so. He mentioned it in his inaugural address as one of his priorities, and he led the fight to remove it from Alabama's Constitution. That has resulted in the steadfast support for his confirmation by State representative Alvin Holmes, who said more than any other person—White officeholder in the State—Judge Pryor stood up to remove this stain from our constitution.

He said: "I'll call anybody you want me to. I'll come to Washington to speak on his behalf. This is a good man." Alvin Holmes was arrested during the civil rights marches for standing up for freedom. No one in the State of Alabama will deny that he does not believe in equal justice and civil rights and in progress for African-American citizens.

I have another example of Bill Pryor's fairness in handling issues before the State. Republicans challenged a State redistricting plan which, in fact, is quite favorable to the Democrats. It was a gerrymandered plan that favored the Democrats. For example, five out of the seven Congressmen in Alabama are Republican. The Governor and both Senators are Republicans. But only a third of the legislature are Republicans. Part of that is the way they drew the lines. Republicans were not happy with it. They challenged it on a number of grounds. But Bill Pryor who is the attorney general for the State of Alabama. He is the lawyer for the State of Alabama. He is a Republican. He felt it was his responsibility to defend the duly enacted laws of the State legislature. He represents the State. The State passed the redistricting plan. It was his responsibility to defend

it. He did not make some of his friends, and some of my friends, happy. They did not like that.

He defended it on a number of grounds. One was a technical procedural basis of standing. He said the plaintiffs did not have standing. They went to the Eleventh Circuit Court of Appeals, on which he now sits as a result of an interim recess appointment, and they ruled against him. So the Republicans said: Boy, this is over now. We will win this thing. He said: No, the court of appeals made an error. I believe that you do not have standing to bring this suit. I believe your appeal is not, therefore, well taken. I believe I have a duty as attorney general to defend the duly enacted laws of the State of Alabama.

He appealed to the U.S. Supreme Court and won in the U.S. Supreme Court defending a legislative reapportionment plan that clearly favored Democrats and African Americans. They appreciated that. They knew he was a man of principle and integrity and decency. They have appreciated those kind of acts they have seen him carry out.

He has taken a strong lead on rights for women as well as minorities. While he has been attacked in the Senate for an argument he made regarding a technical flaw that was in the Violence Against Women Act passed by this Congress, his true record on women's issues is reflected in his history of fighting to protect women from domestic abuse.

He is a supporter of Alabama's Penelope House and participates in their yearly luncheon where they recognize the importance of partnering with law enforcement to eradicate domestic abuse. He testified before Congress in 2003, stressing the importance of the Violence Against Women Act. He championed a bill in Alabama to increase the penalties for repeat violations of protection from abuse orders by judges for ordering people to cease abusing their spouses. This is the true record of Bill Pryor. He has been a leader in the fight against domestic abuse throughout the State. He has incredibly strong support by all the women's groups who advocate that, including Judge Sue Bell Cobb on the Alabama Court of Criminal Appeals, who is a Democrat and who has fought for these women's issues for years.

What about other people in the State? How do they think of him? Judge Pryor has won the support of people such as Joe Reed, probably the most powerful political person in the State who is an African American. He is on the Democratic National Committee. He chairs the Alabama Democratic Conference. He strongly supports Judge Pryor.

Another Pryor supporter is Congressman ARTUR DAVIS, an African-American Congressman and Harvard Law School graduate. Alvin Holmes, I mentioned earlier, is one of the most outspoken African-American leaders in

the legislature. Yesterday, I had him in my office, an African-American State senator who has been in the Senate for many years. I said: "Senator, do you know an African American—I asked him, did he know of a single elected public official in the State who was opposed to Judge Pryor for this appointment?" He said: "No, I don't know of a single one. They know he has given them a fair shake, sometimes even to the point of taking serious criticism for it. He has been courageous and steadfast in standing up for equal justice under the law, which is his guiding principle as a judge and as attorney general."

There is almost, in fact, universal support for Judge Pryor. Former Democratic Governor Don Siegelman, Jerry Beasley, the State's top trial lawyer, one of the top trial lawyer Democrats in America, and virtually every newspaper in the State supports Judge Pryor. The very liberal Anniston Star newspaper, which supports the filibuster of judges here by Democrats, a fine newspaper, but they have been very much a Democratic newspaper—they have supported the filibustering of judges, which I certainly do not agree with—but they support Judge Pryor. They say he ought to be confirmed. "He is the kind of person we ought to have on the bench," the Anniston Star said. They know his record of independence and courage. They know he is the kind of person we need on the bench.

So in closing, I want to say that I believe Judge Pryor has demonstrated time and again the kind of courage and commitment to principle that are the very values we need judges to possess. We do not want people on the bench who do not have any beliefs. We do not want people who do not have any values.

As LAMAR ALEXANDER, our colleague, once said, "Judge Pryor has shown courage in a Southern State unlike anyone he has ever seen before." He said it has almost looked like political suicide, some of the things he has done. But regardless of the cost, he has always done the right thing. That is what makes him an ideal candidate for the Eleventh Circuit.

He is brilliant. He loves the law. He studies it. He cares about it. He wants to see it be better and better and better. He will give his life to that, and you can take it to the bank. He will treat everybody before him fairly.

I thank the Chair, yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I thought it would be important to share

in more detail some of the broad bipartisan support that exists in the State of Alabama by those who know Judge Pryor. These are Democratic leaders, people who are African Americans, who have been involved in the State for many years, who are sensitive to good judgment and good leadership. I want to share some of the comments some of these people have written on behalf of Judge Pryor.

First, Congressman ARTUR DAVIS of the 7th Congressional District wrote this letter. Congressman DAVIS is a Harvard Law graduate and a very fine young Congressman. He said this:

I understand that the President may be considering Attorney General Bill Pryor for a seat on the Eleventh Circuit. I have the utmost respect for my friend Attorney General Pryor and I believe if he is selected, Alabama will be proud of his service.

Alabama House of Representatives member Alvin Holmes wrote this:

As one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Luther King's SCLC [Southern Christian Leadership Conference], as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

Is that a credible voice? I submit to you it is.

The Honorable Sue Bell Cobb, a judge on the Alabama Court of Criminal Appeals for quite a number of years, who has been involved in the Children's First Program in Alabama, who has been involved in women's issues in Alabama over a number of years, and who has had occasion to work with Attorney General Bill Pryor, wrote this:

I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. . . . Bill Pryor is an outstanding attorney general and is one of the most righteous elected officials in this state. He possesses two of the most important attributes of a judge: unquestionable integrity and a strong internal moral compass. . . .

High praise, I submit. She goes on:

Bill Pryor is exceedingly bright, a lawyer's lawyer. He is as dedicated to the "Rule of Law" as anyone I know. I have never known another attorney general. I guess that includes this one standing before you "who loved being the 'people's lawyer' more than Bill Pryor. Though we may disagree on an issue, I am always confident that the position is a product of complete intellectual honesty. He loves the mental challenge presented by a complex case, yet he never fails to remember that each case impacts people's lives.

I share with you another statement by Joe Reed, an African American, a leader in the State for 30 or more years, probably the preeminent African-American leader in the State over the last 35 years. He chairs the Alabama Democratic Conference. He is a member of the Democratic National Committee. He is a vice chairman of the Alabama Education Association. Dr. Joe Reed has always understood the importance of Federal courts. He has understood that the civil rights and liberties of African-American citizens were enhanced and provided in large part by actions of Federal courts. There is no mistaking in his mind on this question. This is what he said:

[Attorney General Pryor] is a person, in my opinion, who will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him. As Attorney General for Alabama during the past six (6) years, he has been fair to all people. . . . For your information, I am a member of the Democratic National Committee and, of course, Mr. PRYOR is [a] Republican, but these are only party labels. I am persuaded that in Mr. PRYOR's eyes, Justice has only one label—justice!

Mr. President, those are just some of the comments we have received from prominent Alabama leaders of a different party, a different race, who care about justice in America, who have a record of fighting for it, and who believe Judge Pryor shares their values in that regard.

Mr. President, I thank the Presiding Officer and yield the floor. I see my colleague from Georgia has arrived. We appreciate and look forward to hearing from him.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, first, if the Senator from Alabama will remain for a minute, I took the occasion, last week or 2 weeks ago, to spend a rather extensive time on the floor, on 2 days, talking about Janice Rogers Brown of Alabama, whose appointment was confirmed by this Senate. I had the pleasure to meet Justice Brown and meant every word I said.

But I rise today to talk about Judge Pryor because of my tremendous personal admiration for a man whom I have not met but know so much about because of the way he has conducted himself as a human being and as an attorney general.

I know he succeeded the distinguished Senator from Alabama as attorney general; is that not correct?

Mr. SESSIONS. Correct.

Mr. ISAKSON. So he obviously had a good role model to follow. Senator SESSIONS' leadership, obviously, contributed greatly to Judge Pryor's distinguished service.

But the reason I rise on the floor of the Senate for a second and confirm the reason I am so positively going to cast my vote for his confirmation to the Eleventh Circuit is because he has a magna cum laude degree in law from Tulane University, but he has a master's degree in common sense. He has a Ph.D. in courage.

If you study Judge Pryor's record, over and over again, he continues to lead himself to decisions based on the fundamental principle, belief, that in all cases you do what is right.

I listened to nearly all of the speech of the distinguished Senator from Alabama. He recited so many examples of where a statement that Judge Pryor might have made in the past did not guide him to a decision when it differed with the law, that he always followed the law to its fullest extent, not to interpret it as he saw fit but to execute it as he knew it was intended.

I am not a lawyer. I am a real estate guy and a politician. Obviously, we deal a lot in words but not nearly the discipline of the specifics of the law. I am a citizen of the United States, a father, and a businessman. I care deeply about the men and women who will sit on the bench of our highest courts. If we can have a man with common sense and a commitment to right and doing what is right, then we have provided a great service to the people.

I also rise as an extension of a great Georgian who has submitted a letter, on behalf of Judge Pryor, from which I would like to quote.

I also ask unanimous consent that the entire letter be printed in the RECORD.

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

DEPARTMENT OF LAW,  
Atlanta, GA, March 31, 2003.

Hon. RICHARD SHELBY,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

Hon. JEFF SESSIONS,  
U.S. Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATORS: I have had the great pleasure of knowing and working with Bill Pryor over the past five years. Through the National Association of Attorneys General, Bill and I have worked together on matters of mutual concern to Georgia and Alabama. During that time, Bill has distinguished himself time and again with the legal acumen that he brings to issues of national or regional concern as well as with his commitment to furthering the prospects of good and responsive government.

During his tenure as Attorney General, Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama. He joined the efforts of Attorneys General around the country in fighting the rising tide of identity theft, pushing through legislation in the Alabama legislature making identity theft a felony in Alabama. Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking in date rape drugs.

Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well-connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well-founded. He has worked with industry groups and the Better Business Bureau to crack down on unscrupulous contractors who victimized many of Alabama's more vulnerable citizens.

From the time that he clerked with the late Judge Wisdom of the 5th Circuit to the

present, though, the most critical asset that Bill Pryor has brought to the practice of law is his zeal to do what he thinks is right. He has always done what he thought was best for the people of Alabama. Recognizing a wrong that had gone on far too long, he took the opportunity of his inaugural address to call on an end to the ban on inter-racial marriages in Alabama law. Concerned about at-risk kids in Alabama schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.

These are just a few of the qualities that I believe will make Bill Pryor an excellent candidate for a slot on the 11th Circuit Court of Appeals. My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Sincerely,

THURBERT E. BAKER.

Mr. ISAKSON. The attorney general of the State of Georgia is my dear friend, Thurbert Baker. He is a Democrat, an African American, and a close friend with whom I served in the Georgia House of Representatives. On March 31, 2003, Thurbert Baker wrote to Senator RICHARD SHELBY and Senator JEFF SESSIONS his personal feelings about the nomination of Judge Pryor. I want to read a few excerpts from that letter.

During his tenure as Attorney General, Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama. He joined the efforts of Attorneys General around the country in fighting the rising tide of identity theft, pushing through legislation in the Alabama legislature making identity theft a felony in Alabama. Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking and in date rape drugs.

The importance of that quote is how consistent that is with what our attorney general, Thurbert Baker, has done in Georgia; in particular, in his fights on white-collar crime, on trafficking, on drugs, and his confirmation of Judge Pryor's commitment to the same.

I continue to quote:

Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well-connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well-founded. He has worked with industry groups and the Better Business Bureau to crack down on unscrupulous contractors who victimized many of Alabama's more vulnerable citizens.

The operative words in that quote refer to the courage I mentioned earlier; Judge Pryor, as attorney general, courageously and without fear took on anyone, regardless of stature and political standing, in order to see to it the people of Alabama were protected, their rights were protected and right itself was done and any wrong, regardless of the perpetrator, was prosecuted.

I continue to quote:

From the time he clerked with the late Judge Wisdom of the 5th Circuit to the

present, though, the most critical asset that Bill Pryor has brought to the practice of law is his zeal to do what [is the right thing to do]. He has always done what he thought was best for the people of Alabama. Recognizing a wrong that has gone too far [and too long], he took the opportunity in his inaugural address to call on an end to the ban on inter-racial marriage in the State of Alabama. Concerned about at-risk kids in schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.

As a member of the legislature in Georgia, one who worked on kids' programs, I know so much about the value of mentoring and the programs established such as Mentor Alabama that fundamentally change lives. For a man whose job it is to prosecute the law on behalf of the people of Alabama, to illustrate his desire for the future by, at the same time, developing a mentoring program so that the youth of Alabama would go on the right track in life—not the wrong—shows his absolute commitment to right, his absolute commitment to his fellow man, his absolute commitment to those who have been less fortunate.

I close with one last quote from this letter:

My only regret is that I will no longer have Bill as a fellow Attorney General, fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Bill Pryor has been waiting for this day for some time. I am grateful to Senators who allowed the cloture vote to take place and voted in favor of giving a chance for Judge Pryor to receive an up-or-down vote on his confirmation to his nomination to the Eleventh Circuit Court of Appeals. I am confident that later today when we cast our vote—and I will cast mine in favor of Judge Pryor—the majority of this Senate will confirm a man whose record is impeccable, whose commitment is to doing what is right, whose belief is in the people of this country, in the fundamental foundations of the law and its strict interpretation and application. I commend to all Members of the Senate Judge Bill Pryor of Alabama for his confirmation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, is the Senate in morning business?

The PRESIDING OFFICER. The Senate is on the nomination of William Pryor. The majority controls the time until 11:30 a.m.

Mr. DOMENICI. Mr. President, I yield myself 5 minutes.

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

Mr. DOMENICI. Mr. President, I rise today to address the nomination of William H. Pryor, Jr., to be a U.S. circuit judge for the Eleventh Circuit.

Many of my colleagues know that I am Catholic by religion and belief. As such, I have watched the debate over Judge Pryor, an acknowledged devout Catholic, with much interest.

I start by saying, and I want to be very clear about this point, that I do not believe any of my colleagues are anti-Catholic. However, I am becoming increasingly concerned about the apparent creation of some kind of religious litmus test for nominees. I would like to provide a sample of some of the questions posed to Judge Pryor during his confirmation process that I think justify my concern that a nominee's religion is becoming some kind of a central part of the confirmation process.

It concerns me when, in the Judiciary Committee, statements such as these are made:

Judge Pryor's beliefs are so well known, so deeply held, that it is very hard to believe, very hard to believe, that they are not going to deeply influence the way he comes about saying, "I will follow the law."

Another:

I think the very legitimate issue in question with your nomination is whether you have an agenda, that many of the positions which you have taken reflect not just an advocacy but a very deeply held view and a philosophy.

Third:

Virtually in every area you have extraordinarily strong views which continue and come out in a number of different ways. Your comments about Roe make one believe, could he really, suddenly, move away from those comments and be a judge?

It concerns me that these questions continued despite the fact that Judge Pryor's record in Alabama as attorney general shows that he can and has separated his personal beliefs from his professional obligations.

As Alabama's attorney general, Judge Pryor argued that there should be no school-sponsored, government-sponsored religious activity, but genuinely student-initiated religious expression was protected by the First Amendment. I believe he expressly stated the view that the Supreme Court has held in that regard, regardless of his beliefs.

Second, he issued an opinion stating that Alabama's partial-birth abortion law was unconstitutional and could not be enforced. I believe he followed the law.

Third, he personally prosecuted charges against Alabama's Justice Moore for refusing to obey a court order to remove the Ten Commandments from a display in the Alabama State courthouse.

The quotes I have referenced and the fact that some Democrats have persisted with this line of questioning despite clear evidence that Judge Pryor is committed to both religious freedom and separation of church and state concern me not because I am accusing anyone on the other side of being anti-

Catholic or anti-religion; rather, statements such as these make me fear that we are creating some kind of a religious litmus test for nominees. A nominee's religious beliefs have no connection to fitness to serve on the Federal bench.

It seems to me that such questions suggest that anybody who is an Orthodox Jew, deep-seated Christian, Protestant, Muslim, or devout Catholic should be rigorously questioned about their religious beliefs. But I believe their beliefs should not in any way affect them becoming Federal judges. These type of questions effectively say to people in the United States: Perhaps if you have deeply held religious beliefs, you cannot serve on the Supreme Court, you cannot serve in the Federal judiciary.

I believe we should rid the record of any such inferences, and I am just trying to do that today.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. I ask for 1 additional minute.

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

Mr. DOMENICI. Mr. President, this is an alarming prospect. The Senate should consider the nominee on his professional record, not on his personal beliefs. I believe this distinguished nominee should be confirmed.

I yield the floor. I thank the Senate for listening.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GREGG. Mr. President, what is the regular order?

The PRESIDING OFFICER. The minority controls the time until noon, but the Senator may be recognized.

Mr. GREGG. I ask unanimous consent that I be allowed to speak as in morning business for 10 minutes, and if some member of the minority appears I will be happy to yield to allow them to proceed under their time.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered. The Senator is recognized.

(The remarks of Mr. GREGG and Mr. SESSIONS are printed in today's RECORD under "Morning Business.")

Mr. GREGG. I thank the Senator from Alabama. I obviously enjoy working with him because he is a voice of reason around here.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, what is the order of business?

The PRESIDING OFFICER. The minority controls the time until noon.

Mr. SESSIONS. Mr. President, it is a few minutes to 12. I ask unanimous consent that I be able to speak in morning business. If any of my colleagues from the other side come to the floor, I will be pleased to yield to them.

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

Mr. SESSIONS. Mr. President, we have spent over 2 years on the Bill Pryor nomination for the Eleventh Circuit Court of Appeals. He is an extraordinary man and an extraordinary jurist, now that he is holding that seat as a recess appointment. But a number of allegations have been made against him that I think caused some in this body to form an impression of him early on that was not correct.

One of the most prominent was an allegation that he was insensitive to the disabled. People For the American Way, who issued their attack sheet report—and I hope our colleagues will begin to look far more critically at their work than they have in the past—stated it this way:

Of particular concern are Pryor's views on the limits on Congress' authority to enact laws protecting individual and other rights, and how he would seek to implement those laws if confirmed. Pryor is one of the architects of this movement and has been a leading activist in these damaging efforts. He personally has been involved in key Supreme Court cases that, by narrow 5 to 4 majorities, have hobbled Congress's ability to protect Americans' rights against discrimination and injury based on disability, race, or age.

That is part of their report and part of their complaint. At the time he was originally nominated, a number of people from the disabled community were told Judge Pryor is against them and that they should come. They came and spoke out against him. But truly I do not think they understood what the complaint was all about.

Let me share with you what happened. One of the State universities in Alabama was involved in a lawsuit about disability rights. The case was University of Alabama at Birmingham v. Garrett. It goes up for litigation. The Attorney General of the State of Alabama was Bill Pryor. It is his duty as a lawyer to defend his client. As an entity of the State, the university is a client of the State of Alabama, so he did so. One of the defenses he raised, and raised brilliantly, dealt with this act, the ADA. Only 3 percent of the people in Alabama work for the State of Alabama. So the defense he raised impacted only State employees, that is 3 percent of the people, although repeatedly announcements were made that he was gutting the ADA. That is the first point.

Second, what the attorney general of Alabama argued was that, yes, if a per-

son were to be dismissed or otherwise not handled fairly as a result of a disability, they could sue the State under the Americans with Disabilities Act, they could get an injunction, a court order to ensure that they were treated fairly by the State of Alabama, they could get back wages if they had been terminated—but that provision of the act that allowed individuals to sue for money damages against corporations—and 97 percent of the people work for private employers and corporations and not State governments—that provision could not be enforceable because a State has sovereign immunity protection against suits for money damages. States can only be sued on grounds that they agree to be sued on, because the power to sue is the power to destroy. That is constitutional history. And States do not allow themselves to be sued except under certain circumstances, and he argued that the Congress could not abrogate that historic constitutional principle of sovereign immunity by passing a statute—without giving any thought to the issue. Anyway, they passed it focusing mainly on private employers, not States. He appealed that to the U.S. Supreme Court and won the case in the U.S. Supreme Court.

Now they say what he was doing was an indication that he is insensitive to people who are disabled. I raise that issue because it is not fair to him, and it demeans our entire process.

I see the Senator from Tennessee is in the Senate, Senator ALEXANDER. I know he is interested in this nomination. I am pleased to yield to the Senator from Tennessee.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Alabama. I am delighted to have a chance to join him in support of Judge Pryor. I will take a few minutes on that, and when I finish, I will ask unanimous consent to speak for up to 5 minutes as in morning business on another matter.

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

Mr. ALEXANDER. Mr. President, none of us, if we end up in court, want to go before a judge who has already decided the case before we get there. There is an old story from the Tennessee mountains about the lawyers who showed up in court and the judge says: "Fellas, this shouldn't take long. I had a phone call last night, and I know most of the facts. Just give me a little bit on the law." I don't think those litigants felt very good about their appearance before that judge.

We do not want judges who decide the case before they hear the argument, either because they got a phone call the night before or because they bring some personal or political agenda to the case. We want judges who are fair. We want judges who are independent. We want judges who are intelligent, who have good character, who



know the law, and who are willing to apply it in a fearless way.

As Governor of Tennessee, I appointed about 50 judges. I appointed men and women, Democrats and Republicans. I appointed the first African-American Supreme Court justice, the first African-American chancellor in our State who happened to be a Democrat. I never asked how they felt about abortion. I never asked them how they were going to decide cases. I tried to assess their reputation for intelligence and fairness, their demeanor, and whether they would treat those who appeared before them with respect. That turned out to be a pretty good formula.

If we are looking for a member of the U.S. appellate court who has demonstrated before he takes the bench that he can make decisions independent of his personal views, then Judge William Pryor ought to be exhibit A, No. 1. As has been pointed out many times, Judge Pryor has been very honest with the committee and all who question him. He is pro-life. He opposes partial-birth abortion. But as attorney general of Alabama in August of 1997, on his own initiative, he wrote the district attorneys general of Alabama and instructed them to use a restrictive interpretation of the partial-birth abortion bill in Alabama, gutting the statute, some said, in Alabama. Three years later, General Pryor, after further Supreme Court cases, wrote the Alabama district attorneys telling them that the Alabama partial-birth abortion law was unconstitutional. He was pro-life, but the law said it was unconstitutional. He followed the law.

When there were threats of attacks against abortion clinics in Alabama, the attorney general could have waited for something to happen. He did not. He held high-profile press conferences to condemn what he called "despicable acts." He warned there would be prosecutions if those acts actually occurred.

William Pryor told the committee he is a religious man. He, obviously, is a deeply religious person. But he told the Governor, who had just appointed him attorney general of Alabama, to get himself another lawyer when the Governor wanted him to argue a prayer-in-the-schools case that General Pryor thought compelled him to take a position contrary to the U.S. Supreme Court's interpretation of the Constitution.

He prosecuted the chief justice of the Alabama Supreme Court for his refusal to take actions to remove the Ten Commandments, not because he does not believe in the Ten Commandments, which he does, but because he believes in the law, and his job was to enforce the law.

He has proven his sensitivity toward civil rights, which for those who have grown up in the South is even more important. In his inaugural address, he pledged to remove the ban on interracial marriage and led the fight to

pass a constitutional amendment to do it. One might say, Of course he should have done that. Well, go down to Alabama and make that your first announcement in a new public position at that time in our Nation's history. It took courage and it took principle to do it. He did it.

He is a Republican, but he appealed the Alabama reapportionment plan to the U.S. Supreme Court, to the dismay of the Republican Party, and he won it for the Democrat Party.

It is fair to say that Judge William Pryor has compiled for himself at a relatively young age a record that would make it virtually impossible for him to win a Republican primary in Alabama but a record that ought to make him a perfect candidate for the U.S. court of appeals.

Of course, there is always the question with these men and women who come before the Senate of whether they are qualified. We can look at the facts. William Pryor is a magna cum laude graduate of Tulane law school, one of the great law schools of our country. He was editor and chief of the Tulane Law Journal.

My favorite example of his competence is that he was a law clerk to the Honorable John Minor Wisdom, perhaps the greatest appellate court judge of the last 50 years, whose 100th birthday would have been May 21. I know about his birthday because I knew the judge very well. I was his law clerk, too. I hasten to add that I didn't quite qualify to be a law clerk in 1965 and 1966. He already had a smart graduate from Harvard. But he said: I need two, and I will hire you as a messenger. If you work for \$300 a month, I will treat you like a law clerk.

Judge Wisdom is the one who ordered James Meredith to be admitted to Ole Miss, and he, with Judge Tuttle and Judge Rives, presided over desegregation of the South. He hired as his law clerks some of the most distinguished men and women now in the private practice of law anywhere in the America. I know many of them.

Judge Pryor was in New Orleans on May 21 to celebrate Judge Wisdom's 100th birthday, along with about 40 other law clerks, even though Judge Wisdom himself is not still living. I know the respect Judge Wisdom had for Judge Pryor's competence. He has demonstrated his independence, he has demonstrated his intelligence, and he has demonstrated he will be an extraordinary judge.

I was disappointed at what I heard when the Presiding Officer and I came to the Senate a little over 2½ years ago. I was preparing to make my maiden address on American history and civics, and we found ourselves in this terrible debate about Miguel Estrada. I was astonished by it, to tell the truth. I found myself feeling the same way about discussions of Judge Pickering in Mississippi, a man whose reputation I knew. When I studied that reputation, I found a man out front in the civil

rights debate of the 1960s and 1970s, putting his children in public schools in Mississippi in the 1960s when everyone else was sending them to what they called segregation academies, and testifying against the grand wizard of the Ku Klux Klan in the mid-1960s when that was a dangerous thing to do.

I heard some of my colleagues questioning his commitment to civil rights. Where were they in 1965, 1966, and 1967? What was going on?

I was very disappointed when I heard these comments about Judge Pickering. And he withdrew. I heard the comments about Miguel Estrada, a tremendous American success story. And he withdrew. So I pledged, then and there, I would never filibuster any President's judicial nominee, period. I might vote against them, but I will always see they came to a vote.

I am glad to see—and the Presiding Officer had something to do with it—that the logjam has been broken. Maybe we can get back to business as usual in the Senate where the President, after consulting with us, sends us good nominees, we look them over and take as long as we want to talk about them, and then we vote on them. I am glad we have a chance to vote on Judge Pryor.

We do not want judges whose views are decided by a political agenda or by a phone call that comes in the night before. Judge Wisdom had absolute confidence in William Pryor when he appointed him as his law clerk. He was proud of his service as attorney general of Alabama. He is not here today to say what he thinks of him, but I am glad that I am here today to say I will be proud to cast my vote for William Pryor for U.S. circuit judge.

Mr. President, I received permission to speak on another subject as if in morning business, and I would like to proceed to that.

(The remarks of Mr. ALEXANDER pertaining to the introduction of S. 1208 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. ALEXANDER. Mr. President, I thank the Senator from Alabama for his time, and I join him in my enthusiasm for the nominee for the U.S. court of appeals from his home State, William Pryor.

Mr. SESSIONS. Mr. President, I thank the Senator from Tennessee for his very important remarks on the Pryor nomination. He is wise in analyzing the realities of being an attorney general in America and the difficult choices and political pressures that are on attorneys general.

He is absolutely correct that Attorney General Bill Pryor has demonstrated he has the courage to do the right thing regardless of short-term complaints that might arise. That is so fundamentally obvious to people who get a fair look at it and I am amazed it has not been clear to some of our colleagues.

I thank the Senator from Tennessee for sharing his thoughts.

Mr. President, I ask unanimous consent that the distinguished majority whip and I be allowed to engage in a colloquy.

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

Mr. MCCONNELL. Mr. President, I say to my friend from Alabama, I understand that Judge Pryor has been criticized because he has sincerely held beliefs against abortion and has also criticized the ruling in *Roe v. Wade*?

Mr. SESSIONS. That is correct. He answered questions about that, clearly and directly.

Mr. MCCONNELL. But it is also true, is it not, I say to my friend from Alabama, that Judge Pryor swore under oath—under oath—at his hearing that he would faithfully apply the law, and included in that, of course, is Supreme Court precedent?

Mr. SESSIONS. As a matter of fact, he was asked explicitly about that in the Judiciary hearings. I am a member of that committee, and the phrase he used, I say to you, Senator MCCONNELL, was “Senator, you can take it to the bank.” And he is the kind of man who, when he says it, he means it.

Mr. MCCONNELL. Well, he has had an opportunity to demonstrate that, has he not, I say to my friend from Alabama, with respect to the laws regulating abortion? He has been in a position to demonstrate that he is willing to set aside his personally held views and apply the law as it is, has he not?

Mr. SESSIONS. He really has. I think that is so important for us here as we consider a nominee. Surely, we can’t vote for or against a nominee on whether they agree with us on any number of a host of moral and religious issues. But these are the facts on it. Although he is a pro-life individual—in 1997, Alabama banned partial-birth abortion by State statute. As attorney general, Judge Pryor was aware that parts of that statute had gone too far under the current state of the law, so he issued a letter, a directive, to the district attorneys throughout the State of Alabama telling them that they could only construe that statute narrowly because it would violate, otherwise, the Constitution as defined by the U.S. Supreme Court.

As a matter of fact, the ACLU praised him at that time in 1997 for his directive. And, as a matter of fact, one of the pro-life leaders said he gutted the statute.

Then, I say to you, Senator MCCONNELL, a few years later, in 2000, when the Supreme Court ruled on the *Stenberg* case, in which they really overruled many State statutes involving the partial-birth abortion law, Attorney General Pryor recognized and advised the district attorneys that statute was not sound and called on the State legislature to craft a statute consistent with the Supreme Court. And when he wrote the State officials, he said that they “are obligated to obey [the *Stenberg* decision].”

Mr. MCCONNELL. The attorney general of Alabama is an elected position; is it not?

Mr. SESSIONS. It is an elected position.

Mr. MCCONNELL. So Judge Pryor did not have the protection of a lifetime appointment or even a lengthy term. Here is an official in Alabama basically telling a bunch of Alabama local officials they ought to comply with a Supreme Court decision that was overwhelmingly unpopular in Alabama; is that correct?

Mr. SESSIONS. That is exactly correct, I say to the Senator, absolutely correct. People in Alabama, I think as most Americans, believe that partial-birth abortion, at any rate, is a particularly gruesome procedure, and he had a lot of pressure on him to declare otherwise. In fact, he was criticized by friends who thought he had not been supportive of their view.

Mr. MCCONNELL. It would have been very politically convenient for him to do that; would it not?

Mr. SESSIONS. Absolutely. I think the point is that he understands the importance of adhering to the rule of law even though it may disagree with positions you feel strongly about.

Mr. MCCONNELL. With regard to his criticism of *Roe v. Wade*, I ask my friend from Alabama, is it not also the case that some very prominent liberals in this country, who probably no doubt liked the outcome of *Roe v. Wade*, were, nevertheless, highly critical of the Supreme Court’s reasoning and rationale for issuing that particular judgment?

Mr. SESSIONS. That is correct.

Mr. MCCONNELL. So there is nothing particularly unusual or unique about a good lawyer, or certainly a lawyer in a prominent position like attorney general, at the time, Bill Pryor, critiquing the decision, wholly aside from what their personal views were, because a number of prominent liberals, I think, have done the same thing; have they not?

Mr. SESSIONS. That is exactly right. And the attorney general is an elected person in Alabama. He has a right to comment on decisions of the Supreme Court. I think attorneys general and lawyers and laymen all over the country do that on a daily basis. The question is, Will you follow it even if you do not agree?

Mr. MCCONNELL. In fact, Supreme Court Justice Ruth Bader Ginsburg criticized the Supreme Court’s approach in the *Roe* case. I bet many of our colleagues would be surprised to learn that she described *Roe* as a “breathhtaking” decision whose “[h]eavy-handed judicial intervention was difficult to justify.” That is Ruth Bader Ginsburg, who, no doubt, liked the outcome in *Roe*, but found the decision, as she put it, “breathhtaking” and a “[h]eavy-handed judicial intervention [that] was difficult to justify.”

So here was someone whose personal views were probably opposite of Judge

Pryor’s, but who reached the same conclusion as Judge Pryor did about the rationale for the decision, the basis of the decision.

Mr. SESSIONS. I think that is a very good point, I say to you, Senator MCCONNELL. I know that, for example, Justice Ginsburg was an ACLU, American Civil Liberties Union, lawyer. Yet she was troubled by the reasoning and rationale in some of the matters in *Roe v. Wade*. And she did not mince words about it in terms of the public policy result in *Roe*, nor did she condemn people who criticized *Roe*. She fully understood it was legitimate to discuss that important Supreme Court case. In fact, she wrote:

I appreciate the intense divisions of opinion on the moral question and recognize that abortion today cannot fairly be described as nothing more than birth control delayed.

So I think she was expressing real sympathy and respect for those who may disagree with the decision, even as she expressed concern with the decision.

Mr. MCCONNELL. I ask my friend from Alabama if he is aware that liberal constitutional scholar and current Harvard law professor, Laurence Tribe—often quoted by Members on the other side as the authority on many issues of constitutional law—described *Roe* as a “verbal smokescreen,” and noted that “the substantive judgment on which it rests is nowhere to be found.” This is Laurence Tribe commenting on *Roe v. Wade*. Even though, no doubt, he likes the result of *Roe v. Wade*, he is nevertheless criticizing the rationale for it.

Mr. SESSIONS. Well, the Senator is exactly correct. Conservatives and liberals alike have raised questions about different aspects of *Roe v. Wade*. It is perfectly natural that they would do so, I think.

Mr. MCCONNELL. I believe liberal law professor Cass Sunstein from the University of Chicago—who was reported to have advised our Democratic colleagues on the need to “change the ground rules” on judicial nominations, which led us into the impasse we were in last Congress—noted that there are “notorious difficulties” with *Roe v. Wade*. Is my friend from Alabama familiar with that, as well?

Mr. SESSIONS. Yes, I am.

Mr. MCCONNELL. I could go on with a list of liberal scholars and commentators who criticized *Roe* very directly, but I think my friend from Alabama and I hope all of our colleagues get the drift.

I do have just one more question for the Senator from Alabama. Does he remember President Bush’s nomination of Michael McConnell to the Tenth Circuit?

Mr. SESSIONS. Yes, I do. I believe he was confirmed by unanimous consent.

Mr. MCCONNELL. Unanimous consent. Out here on the Senate floor, passed on a voice vote.

Mr. SESSIONS. Yes.

Mr. MCCONNELL. Although I am not on the Judiciary Committee now, I was



at the time of the McConnell nomination. I recall that Judge McConnell was then a law professor who had criticized Roe frequently and at great length; is that correct?

Mr. SESSIONS. That is correct.

Mr. MCCONNELL. But just like Judge Pryor, he swore to uphold Supreme Court precedent; did he not?

Mr. SESSIONS. He did.

Mr. MCCONNELL. So I want to make sure I have this correct. Both Judge Pryor and Judge McConnell criticized Roe v. Wade, both swore under oath they would follow Supreme Court precedents, including those they may personally disagree with, but unlike Judge McConnell, who was a law professor at the time of his nomination and did not have the opportunity as an academic to enforce the law, Judge Pryor has been a public official who has had the chance, on repeated occasions, to put his money where his mouth was, and he has consistently followed the law?

Our Democratic colleagues confirmed Judge McConnell by unanimous consent but are vigorously objecting to Judge Pryor; is that the case?

Mr. SESSIONS. That is the case.

Mr. MCCONNELL. I am puzzled. On this record, our friends' objections to Judge Pryor seem inconsistent and arbitrary.

I thank the Senator from Alabama for his time and remind our colleagues that we have confirmed Democratic nominees who have had deep personal objections to Supreme Court precedent. I recall we confirmed Janet Reno 98 to 0, even though her personal views on the death penalty were at odds with Supreme Court precedent. We ought not have a double standard. We should applaud Judge Pryor for his forthrightness and his commitment to the rule of law, and we ought to confirm this distinguished nominee.

I also want to say to my friend from Alabama, I know he probably knows Judge Pryor better than anybody else in the Senate and has had a greater opportunity to evaluate his integrity, his intellect, and has really seen him in action. I think our colleagues ought to listen to the junior Senator from Alabama because he really knows Bill Pryor and can attest to the fact that Bill Pryor took actions much like Judge Pickering did in the 1960s, to which Senator ALEXANDER was referring, that took extraordinary courage given the climate of public opinion in the State of Alabama.

Mr. SESSIONS. I thank the Senator.

The PRESIDING OFFICER. The 30-minute segment has expired.

The Senator from Illinois.

Mr. DURBIN. Mr. President, today the Senate is considering the nomination of William Pryor for the U.S. Court of Appeals for the Eleventh Circuit. This is a nomination which I have considered many times in the Senate Judiciary Committee and outside the regular business of Congress. Senator JEFF SESSIONS and I occasionally get

up early in the morning and go to the Senate gym. And on several occasions he has raised with me his heartfelt support for William Pryor. I have expressed to him my reservations and concerns about Mr. Pryor, and he has tried to assure me, in different ways, that the public image of this man is much different than who he really is. I struggle with this because I do count Senator SESSIONS as a friend despite our many political differences. I would like to give him the benefit of the doubt on this nominee who is so important to him personally.

Unfortunately, the debate that leads up to today's consideration on the floor has raised a myriad of questions that need to be resolved, questions which go to the heart of this nomination.

Mr. Pryor was recess-appointed by President Bush when both he and Judge Pickering of Mississippi were not approved by the Senate. It was historic. It was a decision by the President to use his recess appointment power to put Mr. Pryor on the bench, despite the Senate's decision on his nomination. I agree with Senator KENNEDY that Mr. Pryor's recess appointment, which occurred during a brief recess of Congress, could easily be unconstitutional. It was certainly confrontational. Recess appointments lack the permanence and independence contemplated by the Framers of the Constitution. To confirm Mr. Pryor now would validate the President's regrettable decision to defy the Senate.

I am afraid that many aspects of the debate, relative to the Pryor nomination, mark a low point in Congress. Many of Mr. Pryor's supporters allege that those of us who questioned his nomination or opposed him did so because of his religious beliefs. The same ugly allegation was raised more broadly at the recent Justice Sunday event which took place in a church in Kentucky and featured remarks by Majority Leader WILLIAM FRIST. The allegation that any Member of the Senate is opposing this nomination because of the nominee's religious beliefs is just wrong. In fact, it is not only wrong, it is outrageous.

Article 6 of the Constitution, which we keep at hand here on the floor, makes it clear that it is unconstitutional to use any form of religious test for a person who is seeking an office of public trust. To suggest that those of us who oppose Mr. Pryor—or any of the President's judicial nominees—are violating this article of the Constitution is out of line.

I am troubled, too, by the logic of this position. It appears that Mr. Pryor's supporters believe that if he can answer any of our questions about public policy, if the position he takes is based on his religious belief, then at that point we can't pursue the question, that it is a matter of his personal conscience. But think about that for a moment. I am a member of the Catholic Church. Some Catholics do not support the death penalty. The late Pope

John Paul II himself strongly opposed capital punishment. Some Christian Scientists do not support many aspects of medical treatment. Some Quakers do not support war. Some people because of their religious beliefs have strong views on the role of women in society, strong views on divorce, on sexual orientation. I can't believe it is the position of Mr. Pryor's advocates that Senators could not raise legitimate concerns about positions on public issues if there is any nexus to a nominee's religious belief.

Think of all of the areas where we would, frankly, be unable to even ask a question because the person could say: I am sorry. That is my religious belief, and you can't ask about that.

The reality is that certain important issues at the center of legal and legislative activity are public issues and religious issues. To suggest the Senate cannot ask a nominee questions about these public issues would prohibit us from fulfilling our constitutional obligation. It is not Mr. Pryor's religious affiliation that is troubling. It is his history of putting his own personal beliefs ahead of the Constitution. He is a staunch judicial activist. Maybe he doesn't reach the level of Janice Rogers Brown, who was approved yesterday—the most radical nominee sent to us by the Bush White House—but, sadly, some of his public comments are close.

William Pryor believes it is the job of a Federal judge to carry out the political agenda of the President. How else could you interpret his comment about the Bush v. Gore case in 2000, when he said:

I'm probably the only one who wanted it 5-4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.

These are the words of William Pryor. Does that suggest to you that he is looking for a nonpartisan judiciary? Sadly, it suggests the opposite. He is looking for a bench filled with partisans of his stripe, and he used that case as a lesson to the White House: Be careful, if you pick someone who is independent, they may just rule against you on a political issue. Those are hardly the kind of words you want coming from the mouth of a man who wants to ascend to the second highest court in America.

On another occasion, Mr. Pryor stated:

[O]ur real last hope for federalism is the election of Gov. George W. Bush as president of the United States, who has said his favorite justices are Antonin Scalia and Clarence Thomas.

Although the ACLU would argue that it is unconstitutional for me, as a public official, to do this in a government building, let alone at a football game, I will end my prayer for the next administration: Please God, no more Souters.

He was referring again to Justice Souter on the Supreme Court. I asked

Mr. Pryor, a Federalist Society member, whether he agrees with the mission statement of the Federalist Society, where he pays his dues and attends meetings. It reads:

Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.

I have asked this question of almost every Federalist Society member nominated by President Bush, and there have been quite a few. Mr. Pryor is the only person who gave me a one-word answer: "Yes."

I appreciate his honesty, but I am troubled by his beliefs. Mr. Pryor is just over 40 years old. If confirmed, he will have the chance to put this philosophy into practice well into the 21st century with a lifetime appointment.

It is not just law and politics that Mr. Pryor has problems keeping separate. He has problems with the separation of church and State. I am concerned about his blurring of a very important line when it comes to the conduct of government vis-a-vis religion. He is so ideological about this issue that he has confessed:

I became a lawyer because I wanted to fight the ACLU.

The ACLU is one of the main defenders of the separation of church and State. I asked Mr. Pryor if he would be willing to recuse himself in cases involving the ACLU because he has made his views very clear that he cannot be objective. He said no. But he pledged:

As a judge, I would fairly evaluate any case brought before me in which the ACLU was involved.

It is hard to believe that he could follow that pledge. This is a man who, by his own admission, became a lawyer so that he could "fight the ACLU." Now he tells us he will be objective on their cases.

Many of you remember Alabama Chief Justice Roy Moore and his midnight installation a few years ago of a 6,000-pound granite Ten Commandments monument in the middle of the Alabama State courthouse. Mr. Pryor and his supporters like to point out that Mr. Pryor criticized Chief Justice Moore for defying a Federal court order to remove the monument. What they don't like to talk about nearly as much or nearly as openly is the fact that Mr. Pryor was an early supporter of Chief Justice Roy Moore. He represented Moore vigorously in the litigation of this issue.

The Eleventh Circuit ruled that the display was patently unconstitutional, and a district court subsequently issued an injunction to have the monument removed. Had Mr. Pryor continued to side with Moore and refused to comply with this injunction, he would have exposed the State of Alabama to substantial monetary sanctions and possible criminal liability. This is what Mr. Pryor and his supporters offer as proof that he understands and respects the venerated, historic, and traditional wall between church and State.

Mr. Pryor's advocates call him a "profile in courage" for enforcing the Eleventh Circuit decision that the monument must be removed from the Alabama State courthouse. I call it doing your job.

Let me provide another example of his insensitivity. At Mr. Pryor's confirmation hearing, Senator FEINSTEIN asked him to explain his statement that "[t]he challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective." He ducked the question.

If you are going to serve this Nation and its Constitution, you have to have some sensitivity to the diversity of religious belief in America. Many of us are Christians. But to impose a so-called Christian perspective on everything is to, frankly, take a position which many of different religious faiths would find offensive and intrusive by their Government.

Our Founders may have been mostly Christian, but America today is a nation of religious diversity and this diversity is protected by the Constitution. Judge Pryor has difficulty in grasping this concept.

On the issue of federalism, Mr. Pryor has been a predictable, reliable voice for those who seek to limit the people's rights in the name of States' rights. It is an old ploy in America. As the Alabama Attorney General, he filed brief after brief with the U.S. Supreme Court arguing that Congress has virtually no power to protect State employees who are victims of discrimination. Under his leadership, Alabama was the only State in the Nation to challenge the constitutionality of parts of the Violence Against Women Act. Thirty-six States filed briefs urging this important law be upheld in its entirety, while William Pryor, attorney general of Alabama, was the only one who used his position to try to tear down the Violence Against Women Act.

Mr. Pryor also filed a brief in the Supreme Court case *Nevada v. Hibbs*. In it, he argued that Congress has no power to ensure that State employees have the right to take unpaid leave from work under the Family Medical Leave Act. Think about it. Mr. Pryor, as Alabama attorney general, said Congress had no power to enforce a Federal law.

The Supreme Court rejected his argument and said: Mr. Pryor, this time you have gone too far.

On the issue of women's rights, he clearly opposes a woman's right to choose. He once called *Roe v. Wade* "the worst abomination of constitutional law in our history." At Mr. Pryor's hearing, Senator SPECTER asked him if he stood by his statement. He said he did. He went on to say that *Roe v. Wade* is "unsupported by the test and structure of the Constitution" and "has led to the slaughter of millions of innocent unborn children."

We are not talking about a nominee who made an overheated statement 30

years ago as a college student. Mr. Pryor said this at his own confirmation hearing.

Understand the constitutional principle that underlies *Roe v. Wade*. I know abortion is an issue that is very divisive. People feel very strongly one way or the other. But most people concede that underlying that *Roe v. Wade* decision is the right to privacy, a right which was enshrined in the Supreme Court case of *Griswold v. Connecticut* 40 years ago this week.

The State of Connecticut, urged by religious groups, had banned the sale of contraceptives and family planning to anyone in the State of Connecticut. If you purchased any family planning—a birth control pill, for example—it was a violation of the law, and the pharmacist who filled that prescription could be arrested and prosecuted.

Think about it. Only 40 years ago that was the case. There was a group who believed that their religious beliefs were so compelling about birth control that they installed it as a State law.

The law was challenged. It came before the Supreme Court. The Supreme Court came down with what has now become a time-honored decision that said, no, built into this Constitution there may not be the word "privacy," but the concept of privacy. There are certain things that we, as individuals, should be protected to make decisions about—the intimacy of marriage, the privacy of our personal life.

What I hear in the language of Mr. Pryor, and many others of his point of view, is really questioning this fundamental concept of protecting individual, personal privacy. It is their belief, many of them, that the Government should rule on these decisions.

On the issue of voting rights, Mr. Pryor has urged Congress to take steps that would undermine the right of African Americans to vote. While testifying before the Judiciary Committee in 1997, he urged Congress to "consider seriously . . . the repeal or amendment of section 5 of the Voting Rights Act." This is a key provision that guarantees the right of African Americans and other racial minorities to achieve equal opportunity in voting.

Section 5 requires certain States to obtain preapproval before changing their voting rights standards, such as redistricting or the location of polling places. It is clearly a vestige of America in transition from racial division and discrimination to a more open, equal policy.

Mr. Pryor, as attorney general of Alabama, raised questions as to whether or not the Federal Government should continue to try to meet that standard. I strongly disagree with that sentiment. He called section 5 "an affront to federalism and an expensive burden that has far outlived its usefulness."

I say to Mr. Pryor and others who are white Americans that we cannot possibly understand how much this means,

what it means to an individual to have the right to vote, particularly a person of color, a minority in America, and section 5 is there to guarantee it.

As attorney general of Alabama, Mr. Pryor testified that it had outlived its usefulness. I disagree with his sentiment. Thankfully, so did the Supreme Court and most Members of Congress.

There are so many other issues. Tobacco is another one. When it comes to tobacco, Mr. Pryor has been one of the Nation's foremost opponents of a critical public health issue—compensation for the harms caused by tobacco companies. He has ridiculed lawsuits against tobacco companies saying:

This form of litigation is madness. It is a threat to human liberty, and it needs to stop.

Remember, those are the lawsuits against tobacco companies that had openly deceived Americans into believing their product was safe, leading to addictions, disease, and death. And when lawsuits were brought by attorneys general across America against the tobacco companies, they settled, knowing they would lose in court, and paid billions of dollars, confessing, in the process, their own wrongdoing.

Despite that, Attorney General Pryor, in Alabama, said this was a threat to human liberty to bring these lawsuits against tobacco companies. What was he thinking?

His fellow State attorneys general have been highly critical of him for his comments on these tobacco lawsuits. Former Mississippi Attorney General Michael Moore said:

Bill Pryor was probably the biggest defender of tobacco companies of anyone I know. He did a better job of defending the tobacco companies than their own defense attorneys.

Former Arizona Attorney General Grant Woods, a Republican, said this of Mr. Pryor:

He's been attorney general for about 5 minutes, and already he's acted more poorly than any other attorney general.

These are his colleagues commenting on his view of the law and his personal philosophy.

Gun control is another issue where Mr. Pryor has demonstrated disregard, if not downright hostility, to even reasonable firearm restrictions.

In *United States v. Emerson*, he filed an amicus brief with the Supreme Court, arguing the man who was the subject of a domestic violence restraining order should be allowed to possess a firearm.

I can tell you, from my life experience and legal experience, that is a very bad position to take. We know that if someone has a restraining order against them because they are going to commit domestic violence, the last thing we want to give them is a gun. That is what the case is about. Mr. Pryor in that case said, no, they have a right to have a firearm, even if they have a domestic abuse restraining order against them.

He called the Government's position a "sweeping and arbitrary infringe-

ment on the second amendment right to keep and bear arms."

I will stand here and defend to the end the right of an individual to own a firearm legally in America, to use it for legitimate purposes—for self-defense, for hunting, for sport—but to think Mr. Pryor believes the second amendment right is so absolute that we should give guns to men who batter their wives, I just do not understand it. It does not show common sense, let alone an understanding of the law.

Incidentally, he was the only attorney general in the United States of America who took that position.

Mr. Pryor once called those who exercised their legal rights against gun dealers and manufacturers "leftist bounty hunters." The list goes on and on.

On environmental protection, Mr. Pryor was the only State attorney general in the country to file a brief with the U.S. Supreme Court arguing that the Constitution does not give Congress the authority to protect waters that provide a habitat for migratory birds.

In another case, he was the only State attorney general to file a brief urging the Supreme Court to declare unconstitutional Federal efforts to protect wildlife on private lands under the Endangered Species Act.

He has written that his "favorite victory of the 2000 term" was the Supreme Court ruling in *Alexander v. Sandoval*, an infamous decision that made it more difficult to bring environmental justice cases under title VI of the Civil Rights Act.

Judge Pryor has served as a recess appointment on the Eleventh Circuit for about a year now. Senator SPECTER, chairman of the Judiciary Committee, whom I respect very much, has now tried to make the case that he would be a moderate, fairminded judge based on 1 year of service, under the glare of spotlights, as people watched every decision handed down. He suggests he is going to change, he is not going to be the old William Pryor, if we give him an appointment to the Eleventh Circuit. He will be less political. Chairman SPECTER said he will be less of an activist.

I am not persuaded. He has not really had an opportunity to rule on the full spectrum of issues he will face in a lifetime on the bench.

There have been only so many cases which he has considered. Some you can consider liberal in his decisionmaking, some conservative, but to take this 1 year of a probationary period, with this close scrutiny, and say that is what he is all about, I think is to overstate the case.

Mr. Pryor and his supporters have a simple strategy to try to convince the Senate to grant him a lifetime position as a Federal judge. Rather than talk about his troubling record or radical views, they focus on his religious affiliation and accuse anyone who questions him of religious discrimination. I think that is wrong.

We should take care and understand what the Constitution says very directly about religion. There are three references, and the three references have really done a good job for America in over 200 years. The first is each person is entitled to his or her religious beliefs. Believe what you want to believe in the name of religion or do not believe anything. That is your right, your freedom of conscience to make that decision.

Secondly, this Government will not establish a church. We are not going to say this is a Christian nation and everything we do will be handled by the standards of Christ's teachings. We cannot do that under our Constitution. We should not do that because of diversity of religious belief.

Finally, that there be no religious test under the Constitution for anyone seeking office, as I mentioned earlier.

I think we have to be careful here about the use of religion in the debate about William Pryor and careful about it as we speak on the floor. It is not Mr. Pryor's ideas about religion that trouble me. It is his views and record on women's right, voting rights, inmates' rights, consumers rights, the constitutional principle of separation of church and State. Time and again, as Alabama attorney general, Mr. Pryor has taken extreme positions, made extreme statements on such a wide range of issues that the 25 to 30 minutes I have spoken here cannot possibly cover it.

He and his supporters say he will be a changed person. He will go through the so-called confirmation conversion. This will be the new William Pryor. Sadly, I believe, given a lifetime appointment, he will revert to form. He will follow the pattern of his life, the pattern of his statements, and the pattern of his beliefs.

Based on review of his record, it is a risk I cannot, in good conscience, take, and I will vote against Mr. Pryor's nomination.

#### BIG TOBACCO

Mr. DURBIN. Mr. President, on a separate subject, there was a decision reached this week by the Department of Justice which was very troubling. A lawyer sold out his client. It happens all the time. It is wrong, but it happens. What makes this case unique is the lawyer is the Attorney General and the client is the people of America. In a lawsuit that had been brought against the tobacco companies, there was expert testimony to the fact these tobacco companies should pay up to \$130 billion over 25 years for lying to the American people and for all the medical expenses their deadly product created. A similar lawsuit was brought by the States not that long ago. So the Department of Justice, slow to begin this process, was taking the tobacco companies to court.

Then, out of the blue, came the following, and this was reported in the press:

After 8 months of courtroom argument, Justice Department lawyers abruptly upset a

landmark civil racketeering case against the tobacco industry yesterday by asking for less than 8 percent of the expected penalty.

Suing for \$130 billion, the lawyer for the people of the United States walked into the courtroom this week and said: Oh, we just want \$10 billion. The story goes that this Justice Department lawyer, Stephen Brody, even shocked the tobacco company representatives by announcing that he only needed \$10 billion over 5 years. The Government's own expert said \$130 billion over 25 years. What a discount. Here is the lead from the story:

Government lawyers asked two of their own witnesses to soften recommendations about sanctions that should be imposed on the tobacco industry if it lost a landmark civil racketeering case, one of the witnesses and sources familiar with the case said yesterday.

Matt Myers, a person I know and worked with in the past, said he was asked to basically change his testimony to lighten up on the tobacco companies. He confirmed in this article. The second witness declined comment, but four separate sources familiar with the case said the Justice Department asked the same of him.

By the time the Government opened its racketeering case against tobacco companies last September, it had already spent \$135 million to develop its case. Why, at the 11th hour, would the Government's own lawyers, the people's own lawyers, fold under the pressure of the tobacco companies and give away so much potential recovery for the taxpayers of America?

Why would they ignore the advice of their own expert witness to seek a penalty of \$130 billion and reduce their demand to \$10 billion over 5 years?

Even the lawyer for Philip Morris tobacco company coordinating the case said as follows:

They've gone down—

Meaning the Government, your lawyer, the attorney—

from \$130 billion to \$10 billion with absolutely no explanation. It's clear the Government hasn't thought through what it's doing.

End of quote from Dan Webb, the lawyer from the tobacco company, who could not believe what he had heard when the Department of Justice walked into the courtroom and said: We are going to deeply discount the amount we are trying to recover.

Why is this money important? There are 45 million smokers in America. Many of them want to quit. The money was going to be used for cessation programs, reducing disease and death in America, and the Bush administration walked away from it, walked away from the vast amount already established in court as the amount necessary to move these programs forward.

In court yesterday, a Philip Morris lawyer tried to explain away the reduced fine by claiming that the Government's case was in disarray. The judge in the case interrupted the to-

bacco lawyer who was trying to put some credibility into the new position of the Bush administration by saying that was not true.

So what is the reason? Sadly, it is because there is too much political impact by the tobacco lobby on this administration, particularly on Associate Attorney General Robert McCallum, Jr.

Who is he? This is what the L.A. Times said about him:

Before his appointment in the Justice Department . . . he had been a partner at Alston & Bird, an Atlanta-based firm that had done trademark and patent work for R. J. Reynolds Tobacco. In 2002, McCallum signed a friend-of-the-court brief by the administration urging the Supreme Court not to consider an appeal by the Government of Canada to reinstate a cigarette smuggling case against R. J. Reynolds that had been dismissed. The Department's ethics office had cleared McCallum to take part in the case.

Let me point out, in fairness to Mr. McCallum, that he is not the only friend of the tobacco industry in the Bush administration. There are many.

Does this have something to do with the surprise announcement yesterday that the Justice Department was selling out its client, the American people, those addicted to tobacco? That is why Senators LAUTENBERG, KENNEDY, WYDEN, and I have sent a letter to the inspector general of the Justice Department, asking him to investigate this reversal of position by the Attorney General.

Just why in the world has the Attorney General of the United States thrown in the towel, given up, when he was supposed to be fighting for people across America who need this public health assistance?

I think that is a critical and unanswered question, which I hope the inspector general will address.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SHELBY. Mr. President, I rise today to express my strong support for the nomination of Bill Pryor, to serve on the United States Court of Appeals for the Eleventh Circuit.

I have known Bill for many years and have the highest regard for his intellect and integrity. He is an extraordinarily skilled attorney with a prestigious record of trying civil and criminal cases in both the Federal and State courts. He has also argued several cases before both the Supreme Court of the United States and the supreme court of the State of Alabama.

As the Attorney General of the State of Alabama, Judge Pryor established a reputation as a principled and effective legal advocate for the State and distinguished himself as a leader on many

important State issues. During his tenure as Attorney General, it was his duty and obligation to represent and defend the laws and interests of the State of Alabama. And while he may not have always agreed with those laws, he consistently fulfilled his responsibility dutifully and responsibly.

Long before being nominated to the Eleventh Circuit, Judge Pryor made it a priority to be open and honest about his personal beliefs, which is what voters expect from the persons whom they elect to represent them. Yet he has shown again and again that when the law conflicts with his personal and political beliefs, he follows the law as articulated by the Constitution and the Supreme Court.

Despite his detractors, I believe it is important to note that actions speak louder than words, and certainly, Judge Pryor's actions since joining the Eleventh Circuit speak volumes about his fairness and impartiality. During his brief tenure on the Court, Judge Pryor has authored several opinions that effectively demonstrate his willingness to protect the rights of those often overlooked in the legal system.

In light of all of the information that has been presented here today, I believe that we must confirm Judge Pryor. Bill Pryor is a man of the law and that is what we need in our Federal judiciary. Whether as a prosecutor, a defense attorney, the Attorney General of the State of Alabama, or a Federal judge, he understands and respects the constitutional role of the judiciary and specifically, the role of the Federal courts in our legal system. Indeed, I have no doubt that he will make an exceptional Federal judge because of the humility and gravity that he brings to the bench. I am also confident that he will serve honorably and apply the law with impartiality and fairness—just as he has done during his brief tenure on the Eleventh Circuit.

I again encourage my colleagues to support Judge Pryor's nomination because I believe it is what is right for our people, and it is what is right for our country.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CHAMBLISS. Mr. President, I rise today in support of the nomination of Judge William Pryor to the Eleventh Circuit Court of Appeals.

I would like to respond to the accusations by some of my colleagues concerning Bill Pryor's comments related to Section 5 of the Voting Rights Act. Judge Pryor has an outstanding record on civil rights and a demonstrated commitment to seeking equal justice for persons of all races.

Nevertheless, some of my colleagues on the other side have tried to characterize Bill Pryor as “out of the mainstream” because, as you have heard, he has called for the amendment of Section 5 of the Voting Rights Act.

Judge Pryor is not out of the mainstream on this issue, and I’ll explain why.

After you hear who agrees with Judge Pryor on his reasoning here, I think you will agree with me that if Bill Pryor is “out of the mainstream” on his critiques of Section 5 of the Voting Rights Act, he’s “out there” with some great Americans.

First, let me explain what Section 5 of the Voting Rights Act is about. Section 5 requires any “covered States”—States that are subject to the Voting Rights Act—to pre-clear any decision to change “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting.”

The Supreme Court in *Allen v. State Board of Elections* has made it clear that the:

legislative history on the whole supports the view that Congress intended to reach any State enactment which altered the election law of a covered State in even a minor way.

In practice, this means that Section 5 requires Federal officials at the Department of Justice to approve even very minor practices related to voting.

For example, if a State moved a polling place from one side of a street to another, this action would have to be pre-cleared by the Justice Department pursuant to Section 5.

Bill Pryor has called the Voting Rights Act “one of the greatest and most necessary laws in American history,” but he has taken to task Federal courts that have “turned the Act on its head and wielded . . . power to deprive all voters of the right to select . . . public officers,” even though the Act “was passed to empower minority voters in the exercise of the franchise.”

As Alabama Attorney General, Bill Pryor was by no means alone in his criticisms of the Section 5 of the Voting Rights Act.

In a brief before the Supreme Court in the case of *Georgia v. Ashcroft*, Thurbert Baker, our State Attorney General in Georgia, who himself is a Democrat and African-American, called Section 5 an “extraordinary transgression of the normal prerogatives of the states” and “a grave intrusion into the authority of the states.”

General Baker also stated that:

Section 5 was initially enacted as a “temporary” measure to last five years precisely because it was so intrusive.

Mr. President, I ask unanimous consent to have a copy of a letter that General Baker wrote back in 2003 to Senators SHELBY and SESSIONS of Alabama, in which General Baker describes Bill Pryor as “an excellent candidate for a slot on the 11th Circuit Court of Appeals,” printed in the RECORD.

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

DEPARTMENT OF LAW,  
Atlanta, GA, March 31, 2003.

Hon. RICHARD SHELBY,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

Hon. JEFF SESSIONS,  
U.S. Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATORS: I have had the great pleasure of knowing and working with Bill Pryor over the past five years. Through the National Association of Attorneys General, Bill and I have worked together on matters of mutual concern to Georgia and Alabama. During that time, Bill has distinguished himself time and again with the legal acumen that he brings to issues of national or regional concern as well as with his commitment to furthering the prospects of good and responsive government.

During his tenure as Attorney General, Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama. He joined the efforts of Attorneys General around the country in fighting the rising tide of identity theft, pushing through legislation in the Alabama legislature making identity theft a felony in Alabama. Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama’s citizens, pushing for tough money laundering provisions and stiff penalties for trafficking in date rape drugs.

Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well-connected the defendant may be, to ensure that the public trust is upheld and the public’s confidence in government is well-founded. He has worked with industry groups and the Better Business Bureau to crack down on unscrupulous contractors who victimized many of Alabama’s more vulnerable citizens.

From the time that he clerked with the late Judge Wisdom of the 5th Circuit to the present, though, the most critical asset that Bill Pryor has brought to the practice of law is his zeal to do what he thinks is right. He has always done what he thought was best for the people of Alabama. Recognizing a wrong that had gone on far too long, he took the opportunity of his inaugural address to call on an end to the ban on inter-racial marriages in Alabama law. Concerned about at-risk kids in Alabama schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.

These are just a few of the qualities that I believe will make Bill Pryor an excellent candidate for a slot on the 11th Circuit Court of Appeals. My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Sincerely,

THURBERT E. BAKER.

Mr. CHAMBLISS. General Baker goes on in his letter to my colleagues from Alabama to say:

My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Judge Pryor’s concerns about Section 5 have been borne out in Georgia, where the State appealed to the Supreme Court in *Georgia v. Ashcroft* to have a recent redistricting plan approved following the 2000 decennial census, and after a Federal district

court found that Georgia’s plan violated Section 5.

During the litigation in the district court, Congressman JOHN LEWIS, a hero of the civil rights movement, testified on behalf of the State of Georgia in support of the plan, noting that Georgia:

is not the same state it was. It’s not the same state that it was in 1965 or in 1975, or even in 1980 or 1990. We have changed. We’ve come a great distance.

JOHN LEWIS knows that thoughtful review of Section 5 could be of some benefit.

According to the *New York Times*, Georgia’s plan, pushed by both “white and black Democrats,” represented an attempt:

to reverse [a] trend in Georgia and elsewhere by redistributing some of the black voters and re-integrating suburban districts to gain a better chance of electing Democrats.

That is a quote from a *New York Times* article of January 18, 2003 at A12.

The *New York Times* further notes that Georgia currently has:

some safe Democratic districts with large black majorities, along with a sharply increased number of Republicans elected from suburban districts that had become increasingly white.

In his brief in *Georgia v. Ashcroft*, Georgia Attorney General Thurbert Baker cited his own election as an example of how African-American candidates can take “the overwhelming majority of the total vote against their white opponents” without the benefit of supermajority districts.

The Federal Government opposed Georgia’s plan on the ground that Section 5 does not give Georgia the power to eliminate supermajority minority legislative districts, even in the name of increasing overall minority voting power.

Section 5 has not only placed a burden on covered States, but also on the Justice Department, which has wasted time by being forced to pre-clear a huge number of changes in voting practices that have nothing to do with minority voting rights.

Section 5 requires covered states to pre-clear any decision to change:

any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting.

Again, the Supreme Court has made it clear that the:

legislative history on the whole supports the view that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way.”

That statement is included in *Allen v. State Board of Elections*, 393 U.S. 544, 566.

For example, if a State moved a polling place from one side of a street to another, this action would have to be pre-cleared by the Justice Department pursuant to section 5, which indicates that “any change in the boundaries of voting precincts or in the location of polling places” requires pre-clearance.

Another great American, the late U.S. Supreme Court Justice Lewis

Powell also criticized section 5 of the Act.

President Clinton has called Justice Powell "one of our most thoughtful and conscientious judges" and a Justice who reviewed cases "without an ideological agenda."

In 1973, in another case styled as *Georgia v. United States*, Justice Powell wrote in a dissenting opinion that: It is indeed a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a state to submit its [reapportionment] legislation for advance review [under section 5].

The most important point I would like to stress is that despite Mr. Pryor's well-documented concerns about Section 5 of the Voting Rights Act, he has vigorously enforced all provisions of the Act.

Let me give you two examples. First, when Alabama state legislator J.E. Turner died and the new candidate wanted to use stickers to place his name on the ballot, Attorney General Pryor issued an opinion stating that the use of stickers required pre-clearance under Section 5 of the Act. Certainly this illustrates that Bill Pryor was able to separate his personal disagreement with the requirements of Section 5 from his duty as Alabama's Attorney General to enforce the provision despite his personal views.

A second example involved Mr. Pryor's successful defense of several majority-minority voting districts, approved under Section 5, from a challenge by a group of white Alabama voters in the *Sinkfield v. Kelley* case. The voters, who were residents of various majority-white voting districts, sued the State of Alabama in Federal court, claiming that Alabama's voting districts were the product of unconstitutional racial gerrymandering.

The districts were created under a state plan whose acknowledged purpose was the maximization of the number of majority-minority districts in Alabama. Attorney General Pryor personally defended the majority-minority districts all the way to the U.S. Supreme Court, which held that the white voters could not sue because they did not reside in the majority-minority district and had not personally been denied equal treatment.

When some of these provisions of the Voting Rights Act are up for renewal, we should review and consider them in a very deliberative, bipartisan manner to make sure that the law today reflects the realities of our society here in the 21st Century.

Thurbert Baker and Bill Pryor, as attorneys general of two neighboring states in the South, know this to be the case one is African-American and one is white; one is a Democrat and the other is a Republican, but together they share a vision of making the voting rights laws of our country effective and enforceable in today's times.

To sum up, Bill Pryor has established an impressive record as a fair, diligent, and competent public servant. Two of

my fellow Georgians, John Lewis and Thurbert Baker, have expressed concerns with Section 5 of the Voting Rights Act, just as Bill Pryor did and just as the late Justice Lewis Powell did.

This is not out-of-the-mainstream thinking; it's thoughtful and sincere analysis.

Even the liberal New York Times had to concede as much in its comments regarding Georgia's redistricting plan.

Bill Pryor's nomination to the Eleventh Circuit enjoys strong bipartisan support in his home State of Alabama, and in my home State, which is also part of the Eleventh Circuit.

A month ago, I visited with a number of my district court judges, all of whom said that in their contact with the Eleventh Circuit Court of Appeals, they had nothing but great things to say about the job Bill Pryor is doing as an interim appointee to the Eleventh Circuit. I urge my colleagues to vote in favor of his confirmation today.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I am here to speak on the nomination of William Pryor to the Eleventh Circuit. Bill Pryor's nomination is the last of the three covered by the deal worked out by 14 of our colleagues to avoid meltdown in the Senate.

Yesterday was the vote on Janice Rogers Brown. It was a sad vote. Not a single Republican Senator broke with his or her party to vote against a nominee whom even the *National Review*, George Will, and others singled out for her judicial activism and radicalism. It showed again that the other side is willing to march in almost total lockstep with the President. If they had their way, the Senate would be a complete rubberstamp for any nominee the President proposes—totally against what the Founding Fathers intended this Senate to be.

The count is 2,921 to 2. Out of almost 3,000 votes on appellate court nominees, 44 in all, only twice have Republican Senators dared to deviate from the party line. Is that the kind of independent thinking that an up-or-down vote entails? It is a sad day, indeed. For sure, Janice Rogers Brown's views do not mirror those of most of my colleagues or even come close.

In a moment, I will go through all the reasons I am opposed to Judge Pryor's nomination and all the things he said with which I strongly disagree. Here is one I agree with. In his testimony before the Senate in 1997, Judge Pryor told Senators, "Your role of advice and consent in judicial nominees cannot be overstated." On this point, Judge Pryor and I see eye to eye.

As we await a slew of new nominations from the President, as we await the possible retirement of a Supreme Court Justice, and as we vote on the current nominees in the wake of an agreement that specifically urged President Bush to consult the Senate in advance of nominations, I again

plead with the President and my colleagues to look to the future. Look to a future where harmony can replace acrimony in the Senate, where bipartisanship can replace one-upmanship, and where discourse can replace demagoguery. How can that be done? It is very simple. The President can, as he said he would in a recent press conference, consult meaningfully with Senators before trying to jam extreme nominees down our throats.

The renomination of Bill Pryor was the most breathtaking example of the President's ignoring checks and balances and bypassing the Senate's role in the nomination and confirmation process. The President stuck a thumb in the eye of bipartisanship when he renominated people like Janice Rogers Brown, Priscilla Owen, and Richard Myers after they were rejected by the Senate.

But the President did not get his way with William Pryor, and then he took the truly extraordinary step of making a recess appointment. While the renomination of rejected judges was a thumb in the eye to bipartisanship, the recent appointment of Bill Pryor was a punch in the face. This was particularly outrageous because not only is Bill Pryor one of the most ideologically driven nominees we have ever seen but also because there were questions about his credibility with the committee, and there was an unfinished investigation regarding the Republican Attorney General Association that he founded.

It is not enough for him or any other nominee to simply say: I will follow the law. His views are too well known. His record is clear about how he will vote as a judge. We all know that judging is not a rote process. We all know our own individual values and thoughts influence how we interpret the law. If it were just by rote, we would have computers on the bench instead of men and women in black robes. There is a degree of subjectivity, especially in close cases and controversies on hot-button issues. It is hard to believe that the incredibly strong ideological bent of this nominee will not have an impact on how he rules.

As my colleagues know, I have no litmus test when it comes to nominees. I am sure most of this President's judicial nominees have been pro-life, but I voted for so many of them because I have been persuaded they are committed to upholding the rule of law. I, for one, believe a judge can be pro-life and yet be fair and balanced and uphold the woman's right to choose. But for a judge to set aside his or her own personal views, the commitment to the rule of law must clearly supersede his or her personal agenda. That is a trick some can pull off. Not everybody can.

Let's take a moment to review some of the more radical remarks William Pryor has made and some of the more polemical positions he has taken. On criminal justice issues, I tend to be conservative. I tend to agree with most



of my Republican colleagues. But there are lines which should not be crossed.

William Pryor defended his State's practice of handcuffing prisoners to hitching posts in the hot Alabama Sun for 7 hours without even giving them a drop of water to drink, and then he criticized the Supreme Court—hardly a liberal court—when it held this practice violated the eighth amendment ban on cruel and unusual punishment. We do have standards. We are not a medieval society, even for those of us who believe in tough punishment. What Pryor did, he goes far, too far, to say the least. In criticizing the Supreme Court's decision, he accused the Justices of applying their own subjective views on appropriate methods of prison discipline. The Supreme Court, which I believe was unanimous—or maybe 8 to 1—in rejecting William Pryor's view, was far more appropriate than he was.

He also called the Supreme Court's decision in *Miranda*—something that is part of judicially accepted law—one of the worst examples of judicial activism.

He has vigorously opposed the exemption of retarded defendants from being executed. He submitted an amicus brief to the Supreme Court in *Atkins v. Virginia*, and he argued that mentally retarded individuals should be subjected to the death penalty like anyone else.

When issues have been raised about the fair and just administration of punishment, particularly in some of these cases, Mr. Pryor's reaction has been to scoff.

When asked what steps Alabama would take to ensure that the death penalty was fairly applied—and I have supported the death penalty—regardless of the defendant's race, he said:

I would hate for us to judge the criminal justice system in a way where we excuse people from committing crimes because, well, we have imposed enough punishment on that group this year, and that's precisely what you are being asked to think of with that kind of analysis.

It is ridiculous. The analysis simply said, don't take race into account. This is a judge who will be fair and impartial and open to advocates' positions on both sides of an issue?

How about States rights? Mr. Pryor has been one of the staunchest advocates of efforts to roll back the clock, not just to the 1930s but to the 1890s. He is an ardent supporter of an activist Supreme Court agenda cutting back Congress's power to protect women, workers, consumers, the environment, and civil rights.

As Alabama's attorney general, Mr. Pryor filed the only amicus brief from among the 50 States. Only 1 attorney general out of all 50 filed a brief urging the Supreme Court to undo significant portions of the Violence Against Women Act. I am a proud author of that act. I carried the bill in the House when I was a Congressman. And to be so opposed to preventing women from being beaten by their husbands and

taking remedies to deal with women who are so beaten makes no sense to me.

In commenting on that law, Pryor said:

One wonders why [VAWA] enjoys such political support, especially in the Congress.

One wonders why it enjoys such support when, for the first time, we in Washington, hailed by Republicans and Democrats, started trying to help women who were beaten by their husbands? When they used to go to certain police stations, they were told—not out of malice but out of ignorance—go home, it is a family matter; whose children had watched them be hit? And he cannot understand why it enjoys such political support? He is not the kind of man I want on the court of appeals.

How about child welfare? Bill Pryor's ardent support of States rights extends even to the realm of child welfare. At the same time he was conceding that Alabama had failed to fulfill the requirements of a Federal consent decree regarding the operation of a child's welfare system, he was demanding his State be let out of the deal.

On environment, we have more of the same concerns. Pryor was the lone attorney general to file an amicus brief arguing the Constitution does not give the Federal Government power to regulate interstate waters as a habitat for migratory concerns.

When it comes to disabilities, contrast Mr. Pryor's approach with the approach he took in *Bush v. Gore*. Bill Pryor was the lone State attorney general to file an amicus brief supporting the Supreme Court's intervention in Florida's election dispute. Every other attorney general, Democrat and Republican, had the sense to stay out of this dispute. Not Mr. Pryor.

Yet when it came to the ADA, the disabilities act, Mr. Pryor was the driving force behind the case in which a nurse contracted breast cancer, took time off to deal with her illness, and when she returned—in violation of the ADA—she found that she was demoted.

In conclusion, Mr. Pryor is extreme. Again, why is he, over and over again, 1 of the 50 attorneys general—there are a lot of conservative attorneys general—to file these briefs? Why is he, on things that are part of the mainstream of American feelings and jurisprudence—environment, Americans With Disabilities Act—way over?

Why did he say:

I will end with my prayer for the next administration. Please, God, no more Souters?

That is what he said before the Federalist Society, a Republican appointee to the bench. The man is clearly an ideologue. The man does not respect the rule of law in too many instances.

As I have said before, Bill Pryor is a proud and distinguished ideological warrior. But ideological warriors, whether from the left or from the right, are bad news for the bench. They tend to make law, not interpret law. That is not what any of us should want from our judges. Ideological warriors,

whether from the left or the right, do not belong on courts of appeals.

I will suggest that you do not need to take my word for it. Here is what Grant Woods, the former attorney general of Arizona, and a conservative Republican, said of Mr. Pryor: While I would have great question of whether Mr. Pryor has an ability to be nonpartisan, I would say he was probably the most doctrinaire and partisan attorney general I have dealt with in 8 years. So I think people would be wise to question whether or not he is the right person to be nonpartisan on the bench.

I could not have said it better myself.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Iowa.

Mr. HARKIN. Mr. President, I am here to speak again, as so many before me, on the nomination of William Pryor to the Eleventh Circuit Court of Appeals.

Now, we have heard many concerns and complaints about Mr. Pryor. We have heard that Mr. Pryor cost his State millions of dollars when he refused to join litigation seeking to hold tobacco companies accountable for the cost of smoking because he believes that "smokers, as a group, do not impose the cost of their habit on the government" and, listen to this, that the premature deaths of smokers actually save the Government the cost of "Social Security, pensions, and nursing home payments."

We have heard about Mr. Pryor's vigorous defense of Alabama's use of the hitching post as a punishment, a practice the Supreme Court held to be cruel and unusual punishment.

So there has been a lot of talk about different things about Mr. Pryor and what he has stood for, but I am here specifically to talk about Mr. Pryor's persistent, repeated efforts to eliminate the ability of people with disabilities to receive equal treatment in our society. I am here to talk about this nominee's hostility toward the Americans with Disabilities Act.

Most of my colleagues know that I had a brother who was deaf. Through his eyes, my family and I saw firsthand what discrimination against persons with disabilities looks like. It was, and still is, very real.

When we in Congress sought to remedy this history of discrimination, we spent years laying out, piece by piece, a legislative record fully documenting the overwhelming evidence that discrimination against people with disabilities in America was rampant. At the time we passed this bill, we took care to make sure that this important civil rights law had the findings and the constitutional basis to pass muster with the Supreme Court. The signing of the ADA was the culmination of a monumental bipartisan effort that sought to right decades worth of wrongs.

So what did William Pryor have to say about this bill that was signed by

President Bush in 1990, supported overwhelmingly by the American people, supported overwhelmingly by both Republicans and Democrats in the Senate and the House? What did he have to say about it? In the case of Board of Trustees of the University of Alabama v. Garrett, he argued that Congress did not identify "even a single instance of unconstitutional conduct" to support the Americans with Disabilities Act.

This is complete and utter nonsense. We documented it, hundreds and hundreds and hundreds of cases of unconstitutional discrimination against people with disabilities—cases of the forced sterilization of people with disabilities, the denial of educational opportunities, unnecessary institutionalizations, among others.

Mr. Pryor has made no secret of the fact that he does not believe we in Congress have the power to pass laws to protect people from discrimination. He has worked hard to find cases with which to challenge the power of Congress to protect victims of domestic violence, victims of age discrimination, and women seeking to take maternity leave under the Family and Medical Leave Act. He has also repeatedly filed cases challenging Congress's authority to allow Americans with disabilities to live full and productive lives under the Americans with Disabilities Act.

Now, some of my colleagues may remember that 2 years ago I stood on this floor and asked Senators to oppose the nomination of Jeffrey Sutton because Mr. Sutton had devoted a significant portion of his legal career to trying to have the Americans with Disabilities Act and other laws designed to protect Americans from discrimination declared unconstitutional. At that time, many of my colleagues on the other side of the aisle argued that Jeffrey Sutton should be confirmed because he was simply doing the work on behalf of his client. Well, guess who his client was. The client was William Pryor, then-attorney general of Alabama.

It is hard to imagine any other nominee with such a record of aggressive negative activism. Given the record of William Pryor, it is impossible to imagine that someone with a disability rights or civil rights claim will get a fair decision by him.

So I cannot support putting someone on a Federal circuit court who has gone out of his way and worked hard affirmatively to undermine the Americans with Disabilities Act. And that is what he has done.

Mr. President, I have a list of 68 groups, disability-related groups. They represent the interests of individuals with disabilities, both nationally and some in States. I ask unanimous consent that the list of these 68 organizations, along with a few letters from a number of the groups, be printed in the RECORD.

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

# DISABILITY COMMUNITY OPPOSITION TO PRYOR NATIONAL

AAPD  
ACCESS FOR AMERICA  
ADA WATCH  
Bazelon Center for Mental Health Law  
National Association of the Deaf (NAD)  
National Coalition on Self Determination, Inc.

National Disabled Students Union (NDSU)  
National Council on Independent Living (NCIL)

United Spinal (formerly Eastern Paralyzed Veterans)

World Association of Persons with Disabilities

## ALABAMA

Independent Living Center of Birmingham, Alabama

Center for Independent Living of Jasper, Alabama

## ALASKA

Southeast Alaska Independent Living

## ARIZONA

Arizona Bridge to Independent Living (ABIL) of Phoenix, AZ

Services Maximizing Independent Living and Empowerment (SMILE) of Yuma, AZ

New Horizons Independent Living Center, (Prescott Valley, AZ)

## CALIFORNIA

California Council of the Blind  
California Democratic Party Disabilities Caucus

Disability Resource Agency for Independent Living, (Stockton, CA)

Independent Living of Southern California  
Independent Living Center, Claremont, CA (Claremont, CA)

Independent Living Resource Center of San Francisco, CA

Independent Living Resource Center, Ventura, CA (Ventura, CA)

Placer Independent Resource Services  
Southern California Rehabilitation Services

California Foundation for Independent Living Centers (CFILC)

## COLORADO

Center for Independence Grand Junction (Grand Junction, CO)

## FLORIDA

Access Now

Center for Independent Living of South Florida (Miami, FL)

Self Reliance, Inc. (Tampa, FL)

## IDAHO

Disability Action Center NW, Inc. (Coeur D'Alene, ID)

## ILLINOIS

Center for Independent Living of Illinois/Iowa

Lake County Center for Independent Living  
Illinois Network of Centers for Independent Living

## IOWA

Center for Independent Living of Illinois/Iowa

## KANSAS

Southeast Kansas Independent Living Resource Center (SKIL)

Prairie Independent Living Resource Center (PILR), Hutchinson KS

Cherokee County Advocacy Group

## KENTUCKY

Kentucky Disabilities Coalition

## MAINE

Maine Developmental Disabilities Council

## MARYLAND

Eastern Shore Center for Independent Living, (Cambridge, MD)

The Freedom Center (Frederick, MD)

## MASSACHUSETTS

Stavros Center for Independent Living (Amherst, MA)

## MISSISSIPPI

Mississippi Statewide Independent Living Council

Mississippi Coalition for Citizens with Disabilities

## MONTANA

Summit Independent Living Center, Inc., (Missoula, MT)

Living Independently for Today and Tomorrow, (Billings, MT)

## NEW JERSEY

Center for Independent Living of South Jersey (Westville)

Heightened Independence and Progress (Hackensack)

## NEW YORK

ARISE (Syracuse)

Southern Tier Independence Center (Binghamton)

The Genesee Region Independent Living Center (Batavia, NY)

Northern Regional Center for Independent Living (Watertown)

## OHIO

The Ability Center of Defiance, OH

The Ability Center of Greater Toledo (Sylvania)

Tri-County Independent Living, (Akron, OH)

## OREGON

Disability Advocacy for Social and Independent Living (DASIL), (Jackson County, OR)

## PENNSYLVANIA

Pennsylvania Statewide Independent Living Council

Pennsylvania Council for the Blind

## SOUTH CAROLINA

Disability Resource Center, (North Charleston, SC)

## TENNESSEE

Tennessee Disability Coalition

## TEXAS

Houston Area Rehabilitation Association

ABLE Center for Independent Living, (Odessa, TX)

## VIRGINIA

Disabled Action Committee, Dale City, VA

## WEST VIRGINIA

Fair Shake Network (Institute, WV)

Mountain State Centers for Independent Living (Huntington)

## WISCONSIN

Options for Independent Living (Green Bay, WI)

Unknown: Options Center for Independent Living—Illinois or MN/ND?

## ADA WATCH, NATIONAL COALITION

## FOR DISABILITY RIGHTS,

Washington, DC, June 10, 2004.

Hon. PATRICK LEAHY.

DEAR SENATOR LEAHY: ADA Watch is an alliance of hundreds of disability and civil rights organizations united to protect the Americans with Disabilities Act (ADA) and the civil rights of people with disabilities. The disability community is opposed to the confirmation of Alabama Attorney General William Pryor because we do not believe a person with a disability would receive a fair hearing from a "Judge Pryor."

Pryor has demonstrated a commitment to extremism rather than to justice. Pryor's right-wing ideology is far outside the mainstream of American legal thought. Pryor has led the battle to undo the work of a democratically-elected Congress to legislate federal protections for American citizens. Despite widespread bipartisan support for the

Americans with Disabilities Act (ADA), Pryor said he was "proud" of his role in weakening the ADA and "protecting the hard-earned dollars of Alabama taxpayers when Congress imposes illegal mandates on our state.

William Pryor, nominated to the U.S. Court of Appeals for the Eleventh Circuit, has been a leader in the effort to limit congressional power to enact laws protector civil rights. Pryor has prevailed in a series of 5-4 cases before the Supreme Court that have curtailed civil rights, including the *Board of Trustees of Alabama v. Garrett*, which successfully challenged the constitutionality of applying the Americans with Disabilities Act of 1990 to states as employers.

Pryor argued that the protections of the ADA were "not needed" to remedy discrimination by states against people with disabilities. This decision prevents persons with disabilities from collecting monetary damages from state employers. Most significantly, it has resulted in fewer attorneys being willing to represent individual in ADA cases against state employers. Despite the massive record of egregious conduct toward individuals with disabilities by states that Congress has compiled—including instances of forced sterilization of individuals with disabilities, unnecessary institutionalization, denial of education, and systemic prejudices and stereotyping perpetrated by state actors—Pryor argued that states were actually in the forefront of efforts to protect the rights of individuals with disabilities.

Pryor is a leading architect of the recent "states' rights" or "federalism" movement to limit the authority of Congress to enact laws protecting individual and other rights. He is among those fighting to eliminate federal protections and leave us with a patchwork of uneven civil rights protections dependent on an individual's zip code.

Sincerely,

JIM WARD.

#### OPPOSITION TO CONFIRMATION OF NOMINEE WILLIAM H. PRYOR, JR. TO U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The National Association of the Deaf (NAD) is opposed to the confirmation of nominee William H. Pryor, Jr., to the U.S. Court of Appeals for the Eleventh Circuit.

Currently the Attorney General for the State of Alabama, Pryor is a "states' rights" and "federalism" ideologue, a leader in the movement to limit the authority of Congress to enact laws protecting individual civil rights. Pryor has fought aggressively against the Americans with Disabilities Act (ADA) and other laws that protect Americans with disabilities and other minorities.

The NAD is opposing Pryor because of his outspoken activism against federal civil rights protections for people with disabilities and other minorities. His commitment is to ideology, not to justice.

Established in 1880, the NAD is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans across a broad range of areas including education, employment, health care, and telecommunications.

The NAD is a dynamic federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and national members. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

KELBY N. BRICK,  
Associate Executive  
Director, National

Association of the  
Deaf Law and Advocacy  
Center.

ILLINOIS/IOWA CENTER FOR  
INDEPENDENT LIVING,  
Rock Island, IL, July 21, 2003.

Please note that the Illinois/Iowa Center for Independent Living opposes the nomination for William Pryor. We strongly feel that Mr. Pryor and his record as the Attorney General in Alabama does NOT support nor represent the millions of people with disabilities or their basic civil rights. Please know that we will do all we can to see that his nomination is stopped! Thank you for your cooperation and help!

SUSAN A. SACCO.

THE ABILITY CENTER OF  
GREATER TOLEDO,  
Sylvania, OH, July 14, 2003.

TO THE SENATE JUDICIARY COMMITTEE: The Ability Center of Greater Toledo expresses its adamant opposition to the nomination of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit. Our opposition is based on his record as an attorney, as an Attorney General and on his comments made publicly which represent his personal views.

Mr. Pryor's professional position in cases such as *Garrett v. Alabama*, and *Alexander v. Sandoval*, to name a few, indicate a distinct inclination toward the protection of states from individual's attempt to protect themselves under federal civil rights laws. The results of cases like these seriously weaken the enforcement of laws like the Americans with Disabilities Act and therefore seriously affect the independence and quality of life of American citizens with disabilities.

Mr. Pryor's publicly declared notion that the ADA was not needed, that there was no pattern of discrimination by the states, that Congress therefore had no authority to enact its protections, flies in the face of the thousands of cases of discrimination identified by Congress. His attitudes are a slap in the face of American citizens who were forced to be sterilized, institutionalized and otherwise denied access to places and things that able-bodied people take for granted. The passage of the ADA opened doors, literally and figuratively, to thousands of individuals to live, work and play when and where they chose. Unfortunately there continues to be defiance and ignorance of employers, businesses and government entities regarding the right to access and opportunity granted to all citizens. The ADA, and other civil rights legislation, is the only defense people with disabilities can call on to realize their independence and potential. There is no other protection or defense.

The Ability Center asks that you oppose this nomination as a statement that the civil rights of all U.S. citizens are a priority above all else. Oppose the nomination to send a message that any judicial candidate who demonstrates, in word and deed, extreme ideology is not an appropriate choice for the judicial bench. Oppose the nomination because it is a lifetime appointment and that such an appointment represents a serious and real threat to millions of citizens with disabilities. Appoint individuals to the federal court system who have demonstrated an ability to interpret the law without bias and extreme ideologies. This is not William Pryor.

Sincerely,

SUSAN HETRICK,  
Advocacy Director.

HEIGHTENED INDEPENDENCE  
AND PROGRESS,  
Hackensack, NJ, July 14, 2003.

Heightened Independence and Progress  
(hip) Center for Independent Living strongly

opposes the confirmation of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit.

People with disabilities have worked long and hard to bring about the Americans with Disabilities Act (ADA) and rely on the Act's protections to ensure that employers, schools, governmental entities and business both large and small do not discriminate against anyone because of a disability.

William Pryor has taken positions about ADA related cases that cause disability advocates to have serious concerns about his ability to be objective in such cases. We strongly urge that William Pryor not be confirmed to a position on the Eleventh Circuit Court of Appeals.

NANCY HODGINS,  
Advocacy Coordinator.  
EILEEN GOFF,  
Executive Director.

JUNE 10, 2003.

DEAR SENATOR LEAHY: The disability community is opposed to the confirmation of Alabama Attorney General William Pryor because we do not believe a person with a disability would receive a fair hearing from a "Judge Pryor."

Why?

Pryor has demonstrated a commitment to extremism rather than to justice. Pryors right-wing ideology is far outside the mainstream of American legal thought.

William Pryor, nominated to the U.S. Court of Appeals for the Eleventh Circuit, has been a leader in the effort to limit congressional power to enact laws protecting civil rights. Pryor has prevailed in a series of 5-4 cases before the Supreme Court that have curtailed civil rights, including the *Board of Trustees of Alabama v. Garrett*, which successfully challenged the constitutionality of applying the Americans with Disabilities Act of 1990 to states as employers.

Pryor argued that the protections of the ADA were "not needed" to remedy discrimination by states against people with disabilities. This decision prevents persons with disabilities from collecting monetary damages from state employers. Most significantly, it has resulted in fewer attorneys being willing to represent individuals in ADA cases against state employers. Despite the massive record of egregious conduct toward individuals with disabilities by states that Congress had compiled—including instances of forced sterilization of individuals with disabilities, unnecessary institutionalization, denial of education, and systemic prejudices and stereotyping perpetrated by state actors—Pryor argued that states were actually in the forefront of efforts to protect the rights of individuals with disabilities.

Pryor has led the battle to undo the work of a democratically-elected Congress to legislate federal protections for American citizens. Despite widespread bipartisan support for the Americans with Disabilities Act, (ADA). Pryor said he was "proud" of his role in "protecting the hard-earned dollars of Alabama taxpayers when Congress imposes illegal mandates on our state."

Pryor is a leading architect of the recent "states' rights" or "federalism" movement to limit the authority of Congress to enact laws protecting individual and other rights. He is fighting to reverse the results of our nation's civil war and leave us with a patchwork of uneven civil rights protections dependent on an individual's zip code.

He personally has been involved in key Supreme Court cases that, by narrow 5-4 majorities, have restricted the ability of Congress to protect Americans' rights against discrimination and injury based on disability, race, and age. Worse, he has urged

the Court to go even further than it has in the direction of restricting congressional authority. Just last month, for example, the Court, in an opinion by Chief Justice Rehnquist, rejected Pryor's argument that the states should be immune from lawsuits for damages brought by state employees for violation of the federal Family and Medical Leave, Act.

VICTORIA WOLF,  
Assistive Technology  
Specialist, Disability  
Resource Agency for  
Independent Living.

EASTERN PARALYZED VETERANS  
ASSOCIATION,  
Jackson Heights, NY, July 14, 2003.

Hon. ORRIN G. HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR ORRIN G. HATCH: The Eastern Paralyzed Veterans Association strongly opposes the confirmation of William Pryor to the Eleventh U.S. Circuit Court of Appeals. In the past, Mr. Pryor's attempts to limit Congressional authority in the area of disability rights have directly undermined the protections given to people with disabilities through the Americans with Disabilities Act (ADA) and other disability rights laws.

In *Board of Trustees of University of Alabama v. Garrett*, Mr. Pryor formulated the argument that Congress did not have the authority under the Constitution to apply the ADA to States in employment discrimination suits for damages. Additionally, Pryor successfully persuaded in 5-4 majority of the Supreme Court in *Alexander v. Sandoval* that individuals cannot sue to enforce regulations under Title VI of the Civil Rights Act of 1964. Since the decision was issued states have begun to use its reasoning in efforts to persuade the courts that people with disabilities should not be allowed to enforce regulations under the ADA and Section 504 of the Rehabilitation Act requiring reasonable accommodations, integration of individuals with disabilities, and accessible public housing.

Mr. Pryor's positions in these and other cases (i.e., *Pennsylvania Department of Corrections v. Yeskey* and *California Board of Medical Examiners v. Hason*) clearly represent an interpretation of the Equal Protection Clause, Spending Clause, and Commerce Clause that would dramatically restrict Congress's authority and hinder its ability to pass laws protecting the rights of Americans with disabilities, older workers, and others under the Constitution. For this reason, Eastern Paralyzed Veterans Association strongly urges you not to confirm Mr. Pryor to the court.

People with disabilities have fought long and hard to achieve the protections afforded by the ADA and like-minded laws. We must continue the fight to ensure that an activist court does not abridge these rights and protections. Please vote against William Pryor's confirmation.

Thank you.

Sincerely,

JEREMY CHWAT,  
Director of Legislation.

INDEPENDENT LIVING CENTER OF  
SOUTHERN CALIFORNIA, INC.,  
July 14, 2003.

TO WHOM IT MAY CONCERN: This letter is written on behalf of the Independent Living Center Of Southern California, to oppose the nomination of Mr. William Pryor, to the U.S. Court of Appeals for the Eleventh Circuit.

Please note that this nomination would gravely affect the civil rights of persons with disabilities.

Sincerely,

PETER HUARD,  
Client Assistance Program.

THE FREEDOM CENTER, INC.  
Frederick, MD, July 21, 2003.

JIM WARD,  
Executive Director, ADA Watch Coalition,  
Washington, DC.

DEAR JIM: I am the Executive Director for the Freedom Center, a center for independent living in Frederick, MD. We empower persons with disabilities to lead self-directed, independent, and productive lives in a barrier-free community. We work to ensure the removal of physical and attitudinal barriers that are faced by Americans with disabilities.

We, on behalf of the disability community, are strongly opposed to the nomination of Alabama Attorney General William G. Pryor. We are strongly opposed to the confirmation of his appointment to the U.S. Court of Appeals for the Eleventh Circuit. This is a lifetime appointment which could eventually lead to an appointment to the Supreme Court. Attorney General Pryor's right-wing ideology is far outside the mainstream of American legal thought. He is responsible for the weakening of the ADA in recent Supreme Court battles. He took a position against Patricia Garrett in her case against the State of Alabama when she was wrongly discriminated against because of her disability. He followed her to the Supreme Court and was responsible for influencing the Supreme Court by hiring an extreme Federalistic, right wing, and a State's Rights activist lawyer to represent the State of Alabama. Because the Supreme Court ruled in favor of the State of Alabama against Ms. Garrett, the ADA has been weakened. One can no longer sue a state government or entity under the Federal ADA. It is Attorney General Pryor's belief that the ADA is unconstitutional. In this respect, he has undermined Congress's effort to protect all Americans regardless of what state they live in. He has attacked Section 504 of the Rehabilitation Act, the Individuals with Disabilities Educational Act, and all basic civil rights against people with disabilities, gender and race. He not only has held a position in the University of Alabama v. Ganett case but has filed Amicus Briefs in *Pennsylvania Dept. of Corrections v. Yeskey* and *Medical Board of California v. Hason*. He also took opposition to the *Alexander v. Sandoval* case. All of his oppositions also include running amok in his own state using the state laws to his own belief. It is because of his ideology that we have laws such as the Federal ADA, IDEA, Civil Rights, etc. The laws were implemented to protect Americans from individuals like him. Because of his track record, he cannot be a Federal Judge. A Federal Judge must be unbiased and have full understanding of the total law. A Federal Judge cannot interpret Federal laws to fulfill his own beliefs as a State's Rights activist. A Federal Judge cannot use his position to further his own cause. It is imperative that we do all that we can do to help our legislators to understand the importance of approving a nomination that is nonpartisan of any individual who would take his position seriously and for the good of the American people and not for his own beliefs or reasons.

You may sign our name to any petition or letter that opposes the confirmation of Alabama Attorney General William G. Pryor. You have permission to use our letter to give to members of Congress to help them to be our voices and understand why we are so opposed to his confirmation to the U.S. Court of Appeals for the Eleventh Circuit. Thank you very much for your attention to this very urgent matter. Let's all work together to prevent deterioration to the ADA and other disability civil rights.

Sincerely,

JAMEY GEORGE,  
Executive Director.

INDEPENDENT LIVING RESOURCE  
CENTER—SAN FRANCISCO,  
San Francisco, CA, July 3, 2003.

Hon. DIANNE FEINSTEIN,  
San Francisco, CA.

DEAR SENATOR FEINSTEIN: I am contacting you with great concern about the possible appointment of an anti-ADA judicial activist to the 11th Circuit Federal Court of Appeals, Alabama Attorney General Bill Pryor. I am asking you, on behalf of the over 150,000 people with disabilities in San Francisco that our agency represents to firmly oppose Mr. Pryor's appointment.

Attorney General Pryor has proved on many occasions that he is an opponent not only of the ADA, but of other civil rights legislation as well. Mr. Pryor did not support the passage of an Alabama State disability rights law; has opposed enforcement of ADA Title II to state prisons (arguments that were rejected by the U.S. Supreme Court); has supported denial of patients' rights for Medicaid recipients; among other affronts to civil rights. This is hardly a neutral judicial appointment.

We are concerned, Senator, that you hear the voices of your constituents with disabilities. We find it ironic on the eve of our country's 'independence day' that such an opponent of independence for people with disabilities should be a nominee to such a key judicial post. Please oppose this nomination.

Sincerely,

PAMELA S. FADEM,  
Information Manager, ILRCSF.

Mr. HARKIN. Here are 68 different disability groups from all over the United States.

This is from the National Association of the Deaf:

The National Association of the Deaf is opposing [Mr.] Pryor because of his outspoken activism against federal civil rights protections for people with disabilities and other minorities. His commitment is to ideology, not to justice.

Here is the Illinois/Iowa Center for Independent Living:

We strongly feel that Mr. Pryor and his record as the Attorney General in Alabama do NOT support nor represent the millions of people with disabilities or their basic civil rights.

The National Disabled Students Association stated the nomination of Judge Pryor would be "devastating to the rights of over 54 million Americans with disabilities protected by the Americans with Disabilities act. . . ."

So, Mr. President, there may be a lot of reasons that people have for opposing this nominee to go on the circuit court. I want to make it crystal clear that my major objection to this person going on the circuit court is his open, consistent, and persistent opposition to the Americans with Disabilities Act. He has made no secret of it. He does not think we had the power to pass it.

He said, in his own opinion, that we did not even document one single instance of unconstitutional conduct against people with disabilities. Well, I am sorry, courts have held differently: forced sterilizations of people with disabilities, forced institutionalizations of people who did not need to be institutionalized, denying people with disabilities educational opportunities. Maybe he never heard of the case of *PARC v.*

Pennsylvania. Perhaps he did not know that courts had held there was a record, a strong record, of discrimination in public education against kids with disabilities, not letting them go to school, denying them educational opportunities.

The courts held that as long as a State provides a free public education, just as they could not discriminate on the basis of race, or sex, or national origin, they cannot discriminate on the basis of disability either. So the courts held that there is a constitutional right for kids in our country to get a free, appropriate public education, as long as the State is providing that. The kids with disabilities have to be allowed in the public schools, also.

But for Mr. Pryor, no. He says, no, not even one instance do we have of an unconstitutional discrimination. I do not know where Mr. Pryor went to law school. I did not even look it up. It does not make any difference to me. But whatever he learned there he must have forgotten. It seems to me, here is an individual with an ideological perception that he is right and everyone else is wrong, that only he knows what is constitutional and not—not the Congress, not the Senate, not even the Supreme Court. He alone has a right to decide that. He alone has a right to decide whether people with disabilities are protected under the Americans with Disabilities Act.

We have come too far in our country. We spent years developing the Americans with Disabilities Act. When President Bush signed it in 1990, we had accumulated a voluminous record of discrimination, from the earliest childhood to the latter stages of life, with people with disabilities being discriminated against. We sought to remedy that with the Americans with Disabilities Act.

When it passed the Senate, I said it was the proudest day of my legislative career, and it still is—when the ADA passed the Congress and was signed into law. And we have not looked back. We look around our country now and we see people with disabilities in education, traveling, going out to eat, holding down good jobs, getting the civil rights that all the rest of us enjoy.

But for Mr. Pryor, people with disabilities do not have those rights. They only have the right—these are my own words—it seems to me Mr. Pryor has said, in his decisions and in his writings and in his perceptions of the Americans with Disabilities Act, that people with disabilities only have the right to be pitied, they only have the right to get whatever it is that those of us who are not disabled choose to give to them.

Well, I am sorry, that is not enough. People with disabilities have every right, Mr. President, that you and I have. So it is for that reason, that he has gone out of his way—I could see if a judge made one mistake and maybe made a decision but came back and

rectified it, looked at the law, looked at the history, but Mr. Pryor did not do that. He did not go back and look at the history of the ADA. He did not go back and find out all these examples that we had come up with that is in the record. He just simply said: I know what is best. I know what is best for people with disabilities.

Well, people with disabilities have been hearing that for far too long in our country: We know what is best for you—that paternalizing attitude. People with disabilities said: No, we are going to be on our own. We are going to have our own civil rights. We are going to decide our own future. We are going to decide how we want to live, not how you, the Government, or you, society, want us to live.

Well, we have come a long way in 15 years since the ADA was signed. This is one circuit court judge who would turn the clock back. And he will get these cases. He will get them. And people with disabilities will be on the short end of the stick.

So for that reason, and perhaps a lot of other reasons but for that reason alone—for that reason alone—Mr. Pryor should not be confirmed for this circuit court position.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I rise in strong support of the nomination of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit or, to put it more precisely, I rise to support the permanent appointment of Judge William Pryor to the Eleventh Circuit.

Judge Pryor's credentials, his character, and commitment to judicial restraint already make a compelling case for his appointment. His continuing service on the Eleventh Circuit only adds to that compelling case.

I urge my colleagues to vote for confirmation so Judge William Pryor can continue to be a valuable member of the U.S. Court of Appeals.

Debate about this nomination did not just begin. President Bush nominated William Pryor more than 2 years ago. During a lengthy hearing before the Judiciary Committee in June 2003, he answered more than 185 questions. It has now become common practice for Senators to deluge a nominee with post-hearing written questions. Judge Pryor answered nearly 300 of those as well. The Judiciary Committee debated this nomination during three different business meetings and favorably reported it twice here to the Senate floor where we have already debated it in the context of two previous attempts to invoke cloture.

Here we are debating the Pryor nomination again. I am one of many Senators who believes we should have confirmed this nomination a long time ago. Yesterday more than one of our Democratic colleagues complained that we are debating judicial nominations when, they said, "we should be doing legislative business." That is exactly what we would be doing were it not for the confirmation obstruction campaign led by those very same Democratic Senators. They are the ones who met in 2001 to change the confirmation ground rules. They are the ones who demand dozens and dozens of unnecessary rollcall votes that have eaten up literally days of floor time. They are the ones who launched this campaign of outrageous and unprecedented judicial filibusters.

Our Democratic colleagues have changed the way we do judicial confirmation business in the Senate, and that has changed the way we do legislative business. They have no one to blame but themselves. To come in here and complain that we are not doing the business of the people when one-third of the separated powers in this country involves judges is pretty much out of line.

Under the standards the Senate traditionally applied to judicial nominations, we would already have confirmed the nomination before us. Although some across the aisle have attempted to change the ground rules, I am pleased we have now invoked cloture and are in the final stretch of debate on this very important nomination. There is light at the end of the confirmation tunnel.

We have become accustomed to the pattern of attack by those who oppose President Bush's judicial nominees. They equate a nominee's personal views with that nominee's judicial views. They create the most wretched and distorted caricature of a nominee, turning him into some creature one might see on "Law and Order" or "America's Most Wanted."

What it boils down to is the wrong-headed notion that no one who thinks for himself, who does not toe the left-wing line, whose perspective or values did not turn the liberal litmus paper the right—or left—color, or who as a judge may fail consistently to deliver politically correct results is acceptable. These advocates of an activist judiciary are not foolish enough to attack every nominee. They will remind us of how many of this President's judicial nominees they have supported. But the circumstances that have brought us here today demonstrate the confirmation ground has shifted.

I urge my colleagues not to be persuaded by the caricatures created by Washington-based lobbyists and left-wing groups which need to send out the next fundraising appeal. Instead I urge my colleagues to listen to those who actually know William Pryor, who have worked with William Pryor, because they are among his strongest supporters.

Dr. Joe Reed, chairman of the Alabama Democratic Conference—yes, that is right, the Alabama Democratic Conference, the State Democratic Party's African-American caucus—knows William Pryor. He has worked with William Pryor, and he strongly supports William Pryor. Note what Dr. Joe Reed has to say about this nominee.

He says that William Pryor:

will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him. I am a member of the Democratic National Committee and, of course, General Pryor is a Republican, but these are only party labels. I am persuaded that in General Pryor's eyes, Justice has only one label—Justice!

Any of us would certainly be hard pressed to come up with a better endorsement or a more substantive compliment for any judge on any court anywhere in America.

Listen to Alvin Holmes, an African American who has served in the Alabama House of Representatives for nearly three decades. He introduced a bill to remove the State Constitution's ban on interracial marriage. Representative Holmes says that while white political leaders in the State, Democrats and Republicans, either opposed the bill or kept quiet, then-Attorney General William Pryor spoke out. William Pryor urged Alabamians to vote for removing the ban on interracial marriage and then, when it passed, he defended the measure in court against legal challenge.

Representative Holmes knows William Pryor. He has worked with William Pryor, and he strongly supports William Pryor. Listen to what Representative Holmes says about this nominee, this African-American leader of the Alabama House of Representatives:

I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

Or consider the opinion of Judge Sue Bell Cobb who sits on the Alabama Court of Criminal Appeals. This is what she says:

I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. It is for these reasons and more that I am indeed honored to recommend General Pryor for nomination to the 11th Circuit Court of Appeals.

That is the Honorable Sue Bell Cobb, judge of the Alabama Court of Criminal Appeals.

Think about that. These are people who know William Pryor. These testimonies—and there are many more like them—describe a man who cares deeply about what is right and who has the character to do what is right, no matter what the political cost. People such as these are in the best position to know the real William Pryor. If this were a court of law, their testimony

would be deemed especially credible. Theirs is not hearsay testimony such as we are hearing from some with the other side. They are not repeating someone's talking points. They are not offering generalities or clichés.

Talking points, generalities, and clichés, however, are all that Judge Pryor's opponents have to offer. The far left-wing Washington-based lobbyists who appear to make their living opposing President Bush's judicial nominations repeat the same rhetoric about nominee after nominee. Sometimes I wonder whether they put together their press releases and action alerts simply by cutting and pasting in the name of a new nominee.

They use the same mantra now, saying Judge Pryor is hostile to civil rights, hostile to virtually every right under the sun. Perhaps he is also the cause of childhood asthma, global warming, and rising interest rates.

I would listen to the people I have just quoted who know the man. They are all Democrats, by the way.

If there is any reason to believe such a thing as these awful comments that have been made by our colleagues on the other side, then these left-wing Washington lobbyists should be able to convince Dr. Joe Reed, Alvin Holmes, and Judge Sue Bell Cobb that Judge William Pryor is hostile to civil rights. I wish them luck because I know they can't do that. And they know they can't do it. That is what is reprehensible.

Perhaps the most important element of judicial duty is the commitment to follow the law regardless of personal views. Throughout his career William Pryor has not just stated such a commitment to judicial restraint, he has demonstrated it. We all know, for example, that William Pryor is pro-life. His belief in the sanctity of human life no doubt helps explain his advocacy for children. Like millions of Americans, most Alabamians apparently share such pro-life values. In 1997, the State legislature enacted a ban on partial-birth abortion. If William Pryor were what his critics claim, that would surely have been his chance to take a stand, stake a claim, defy the Supreme Court, and to seek to impose his personal moral code. He did no such thing, proving once again that his critics are flat wrong.

(Mr. ALEXANDER assumed the chair.)

Mr. HATCH. After the U.S. Supreme Court ruled in *Stenberg v. Carhart* that a State legislative ban on partial-birth abortion is unconstitutional, Attorney General William Pryor instructed State law enforcement officials to abide by that decision, even though he personally disagreed. The Senator from Tennessee, Mr. ALEXANDER, presiding in the Chair right now, reminded us earlier today that this was at General Pryor's own initiative. The law, not his personal views, formed how he carried out his official duties.

Attorney General Pryor filed an amicus brief in the *Lawrence v. Texas* case

defending a State's right to prohibit certain sexual conduct. Alabama had a statute similar to the Texas statute being challenged in that case. When the Supreme Court ruled against his position, he immediately released an official statement that the Supreme Court decision rendered Alabama's law unenforceable.

Similarly, the entire country knows that as Alabama Attorney General, William Pryor took an unpopular stand regarding the Ten Commandments display in the Alabama judicial building. One respected religious magazine placed a picture of Judge Pryor on its cover with a headline asking whether his legal stance amounted to political suicide. It is clear that Judge Pryor places the law above personal priorities and political expediency. This stuff about following the law rather than personal opinions is not rhetoric, talking points, or window dressing. This is not just William Pryor's stated commitment, this is his demonstrated commitment.

It is a record that makes former Alabama Attorney General Bill Baxley, another Democrat, strongly support Judge Pryor's nomination. Here is what General Baxley, a leading Democrat in Alabama, said about William Pryor:

In every difficult decision he has made, his actions were supported by his interpretation of the law, without race, gender, age, political power, wealth, community standing, or any other competing interest affecting judgment. I often disagree, politically, with Bill Pryor. This does not prevent me from making this recommendation because we need fairminded, intelligent, industrious men and women, possessed of impeccable integrity, on the Eleventh Circuit. Bill Pryor has these qualities in abundance. . . . There is no better choice for this vacancy.

That is Bill Baxley, former Alabama Attorney General, leading Democrat in the State.

Just think about that. These Democratic leaders from Alabama paint a very consistent picture of William Pryor. He will uphold the law without fear or favor. He makes decisions without regard to political or irrelevant factors. He is fairminded, intelligent, and industrious. I certainly agree with this assessment, though it does not come first from the Senator from Utah. Democrats such as Dr. Joe Reed, Representative Alvin Holmes, Judge Sue Bell Cobb, and Attorney General Bill Baxley know the difference between private views and public duty. They know the difference between personal opinion and judicial opinion. And they strongly support William Pryor's nomination to the Eleventh Circuit.

I wish some of my Democratic colleagues and their left-wing enablers knew the difference. Instead they focus only on results. All that matters, it appears, is that a judge rules right or left, as the case may be.

On Tuesday a Democratic Member of this body summed up their results-oriented litmus test approach when he said:



with respect to a whole series of issues, this nominee is profoundly wrong.

No doubt each of us in this body has heard something like that in a campaign commercial. We might hear it here when the Senate is in legislative session. But this is a judicial nomination we are debating. What does it mean to say that the judicial nominee is wrong on the issues? Never mind being judicially correct, just be politically correct. Results are all that matters.

Yesterday during the debate on the Brown nomination, the Senator from California, Mrs. BOXER, took a similar tack. She put up one poster after another, each stating in the most simplistic terms the results of a case, and then claimed that Justice Brown personally favored the result for which she voted.

This insidious tactic claims, for example, that if a judge votes that the law does not prohibit racial slurs, then the judge must favor racial slurs. If a judge votes that the law does not prohibit an employer's hiring decision, then the judge must favor that hiring decision. In March of 2000, 29 current Senators, including my friend from California, Senator BOXER, voted against a constitutional amendment to allow protection of the American flag. How would any of them respond—how would the Senator from California respond—to the accusation that by that vote, they were siding with the flag desecraters?

That would be an outrageous charge, and we all know that.

Yet opponents of these judicial nominees, including the Senator from California, are using exactly the same tactic, exactly the same logic. They continue doing so in this debate over William Pryor's nomination. But this tactic misleads the American people about what judges do, and it twists and distorts these debates about whether to confirm judicial nominees.

I am reminded of a 1998 article written by the distinguished Judge Harry Edwards, appointed to the U.S. Court of Appeals for the DC Circuit by President Jimmy Carter, in which he warned that giving the public a distorted view of judges' work is bad for the judiciary and the rule of law. The tactics being used against nominees such as William Pryor are, indeed, giving the public a distorted view of judges' work.

Thankfully, Judge Pryor knows the difference between personal views and the law. He knows the difference between means and ends. And I am proud to say that Judge Pryor refuses to go down the politicized road of judicial activism. He has demonstrated where his commitment lies. He has shown, in each phase of his career, that he will follow the law.

Our colleague and my fellow Judiciary Committee member, Senator SESSIONS, has worked very hard to educate this body about this fine nominee. He has a special perspective on Judge Pryor's

commitment to follow the law. He hired William Pryor in the Alabama attorney general's office and Judge Pryor replaced him when then-Attorney General SESSIONS joined us here in the Senate. I thank our colleague for his tireless and principled efforts. I know this Senator's understanding of this nominee is better as a result.

William Pryor is demonstrating that same commitment on the U.S. Court of Appeals for the Eleventh Circuit. That is exactly what America needs in her judges, and I urge my colleagues to support a permanent appointment for Judge William Pryor.

Mr. President, I have taken a minute or two over my allotted time. I apologize to my colleague.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I support the confirmation of William Pryor to the Eleventh Circuit. I think he is a truly outstanding individual and, most importantly, after all these years of waiting, I am pleased he is finally going to get an up-or-down vote on his nomination. I am pleased, in just a few hours, Bill Pryor will be confirmed as a Federal appellate judge. He more than deserves to be confirmed by the Senate. Bill Pryor is doing a great job now, and he will continue doing a great job in the future.

The problem is how we have gotten to where we are with the hangup and these judges not being voted on. I continue to be troubled by the road we have been going down in this judicial nomination process. Unfortunately for Bill Pryor, he has been one of the prime targets of the slash-and-burn program of the left-wing liberal interest groups. He and several other good candidates nominated by President Bush have been subject to off-base, trumped-up charges which just smear an individual's record without regard to the reality of that record.

We need to look at the merits of a candidate, and, on the merits, Bill Pryor is one of the more impressive nominees coming before the Senate.

William Pryor graduated magna cum laude from Tulane Law School, where he was editor in chief of the law review. He served as a law clerk to civil rights legend and champion Judge John Wisdom. He practiced law for several years before joining the attorney general's office in the State of Alabama. He also taught law as an adjunct professor at Cumberland Law School. So without a doubt, and going even beyond the good attributes I pointed out, Bill Pryor has the legal experience to serve on this Federal bench. But that is not all. William Pryor has the unwavering support of the people who knew him best—the citizens of his very own State of Alabama. His support among Alabama Republicans is near unanimous. But furthermore, and maybe more importantly, some of the most important members of the Alabama Democratic leadership are just as supportive of this Pryor nomination.

For example, the chairman of the Alabama Democratic Conference, which is the State Democratic Party's African-American caucus, said that Bill Pryor is a first-class public official who will be a credit to the judiciary and a guardian of justice.

Former Democratic Gov. Don Siegelman described Bill Pryor as an incredibly talented, intellectually honest attorney general who calls the issues like they ought to be called.

These are just some of the comments made by Democrats, of which I am aware, who support this good man.

But that does not seem to stop some groups or people inside the beltway from upping that ante and spreading lies. The usual suspects are back in the saddle again, however, with a vengeance to mischaracterize this man's record and drag his good name through the mud.

But if one really takes a close look at Bill Pryor's record, one can only find that he is a man who embodies the characteristics that any Federal judge ought to have. The fact is that William Pryor is a man who puts law before politics. The role of a Federal judge, as all my colleagues know and as best stated by Chief Justice John Marshall, is to "say what the law is."

That is exactly upon which Bill Pryor has built a distinguished law career. The truth is, in the face of opposition from both Democrats and Republicans, Bill Pryor has steadfastly based his legal decisions on court rulings and not on his own political beliefs. Bill Pryor's actions are the only record that we need to look at to see that this is an individual who truly believes in the rule of law. He is the right man for the job, and we should keep this man on the Eleventh Circuit Court.

I have looked at Bill Pryor's record and some of the allegations made against him. Bill Pryor wins hands down, no contest.

I would like to refer to an article in the "Mobile Press Register," "Civil Rights Guardian, Outstanding Nominee." In this article, Willie Huntley took the opportunity to distinguish the views of Alabamians and most Americans from those shared by some inside-the-beltway, left-wing interest groups. Mr. Huntley is an African-American attorney. He is from Bill Pryor's hometown. He expressed why the people of Alabama should continue to trust in this man, Bill Pryor, rather than in the liberal special interest groups, such as People for the American Way, organizations that are so powerful here with some Members of Congress.

I would like to read some of what this article has to say about Bill Pryor, again, emphasizing Willie Huntley, an African-American attorney from Bill Pryor's hometown:

People for the American Way asserts that Pryor's appointment would devastate civil rights. What its people don't say is that after about 100 years of inaction by other leaders, Bill Pryor led a coalition that included the NAACP to rid the Alabama Constitution of its racist ban on interracial marriage.

Bill Pryor then defended the repeal against a court challenge by a so-called Confederate organization. Our Attorney General also took the side of the NAACP in successfully defending majority-minority voting districts—all the way to the U.S. Supreme Court—against challenges by white Alabama Republicans.

Bill Pryor further opposed a white Republican redistricting proposal that would have hurt African-American voters. He did not back down to criticism from his own party—not one inch.

He then played a key role in the successful prosecution of former Ku Klux Klansmen Bobby Frank Cherry and Thomas Blanton, Jr., for the 1963 bombings of the 16th Street Baptist Church in Birmingham.

Pryor started a mentoring program for at-risk kids and regularly goes to Montgomery public schools to teach African-American kids to read.

Because Bill Pryor has a civil rights record that very few can equal, it is no wonder that African-American leaders who know and who have worked with him—like Artur Davis, Joe Reed, Cleo Thomas, and Alvin Holmes—support his nomination to the Eleventh Circuit Court of Appeals.

Ignoring Pryor's defense of voting rights for African-Americans, People for the American Way charges that he opposes the landmark Voting Rights Act. The truth is, he has dutifully enforced all of the Voting Rights Act every time a case has come up.

The article goes on to conclude:

The truth and the record show that Bill Pryor has fought for the civil rights and voting rights of African-Americans in Alabama when People for the American Way were nowhere to be found. Now that President Bush has nominated Pryor to a Federal judgeship, People for the American Way assumes that it can come here and attack him. . . . We who actually know Bill Pryor support him 100 percent.

Mr. President, I ask unanimous consent to print in the RECORD the article from which I quoted so people can read it in its entirety.

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

[From CFIF.ORG]

CIVIL RIGHTS GUARDIAN, OUTSTANDING  
NOMINEE

(By Willie J. Huntley Jr.)

The Washington-headquartered, liberal watch-hunt against President Bush's federal judicial nominees has targeted its next victim, and it is one of our own: Bill Pryor, the attorney general of Alabama.

Among those leading the charge against Pryor is the mis-named group People For the American Way. This should be no surprise; PFAW has led vicious attacks against Attorney General John Ashcroft, Justice Clarence Thomas, Priscilla Owen, Miguel Estrada and numerous other Republican nominees.

PFAW is a radical leftist group that has supported broad court protection for child pornography; burning the American flag, and publicly funded art portraying the Virgin Mary splattered with elephant dung. Most recently, PFAW helped coordinate protests against the war in Iraq—the war in which some Alabamians gave their lives for their country.

PFAW is funded by the pornography industry and Hollywood radicals, including Playboy magazine, the Screen Actors Guild, and the Center for Alternative Media & Culture. (And they call Bill Pryor an extremist.)

PFAW asserts that Pryor's appointment would devastate civil rights. What its people

don't say is that after about 100 years of inaction by other leaders, Bill Pryor led a coalition that included the NAACP to rid the Alabama Constitution of its racist ban on interracial marriage.

Pryor then defended the repeal against a court challenge by a so-called Confederate heritage organization.

Our attorney general also took the side of the NAACP in successfully defending majority-minority voting districts—all the way to the U.S. Supreme Court—against a challenge by white Alabama Republicans.

Bill Pryor further opposed a white Republican redistricting proposal that would have hurt African-American voters. He did not back down to criticism from his own party—not one inch.

He then played a key role in the successful prosecution of former Ku Klux Klansmen Bobby Frank Cherry and Thomas Blanton Jr. for the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham. In fact, he will personally argue to uphold Blanton's murder conviction before the Alabama Court of Criminal Appeals later this month.

Pryor started a mentoring program for at-risk kids, and regularly goes to Montgomery public schools to teach African-American kids to read.

Because Bill Pryor has a civil rights record that very few can equal, it is no wonder that African-American leaders who know and have worked with him—like Artur Davis, Joe Reed, Cleo Thomas and Alvin Holmes—support his nomination to the 11th Circuit Court of Appeals.

Ignoring Pryor's defense of voting rights for African-Americans, PFAW charges that he opposes the landmark Voting Rights Act. The truth is, he has dutifully enforced all of the Voting Rights Act every time a case has come up.

Pryor has simply stated that a procedural part of the Voting Rights Act—Section 5—has problems that Congress should fix. Section 5 requires federal officials in Washington to approve even minor changes in voting practices that have nothing to do with discrimination.

For example, last year, Pryor issued an opinion that required a white replacement candidate for a deceased white state legislator to get Washington approval under Section 5 to use stickers to put his name on the ballot over the name of the deceased candidate.

Thurbert Baker, the African-American Democratic attorney general of Georgia, has voiced similar concerns about Section 5 before the U.S. Supreme Court.

Undeterred, PFAW and its allies also charge that Pryor believes in "states' rights"—their code words for racism. The truth is that he believes in the Constitution. He has fought to protect the state's treasury from lawsuits that would have taken our tax dollars away from the state—away from salaries for teachers and medical care for poor people.

It is the job of an attorney general to defend his client—the state. In fact, the key Supreme Court case on defending a state from lawsuits was won not by Pryor, but by Democratic Attorney General Bob Butterworth of Florida.

Democratic attorneys general like Eliot Spitzer of New York, Jim Doyle of Wisconsin and others have all made the same arguments to defend their state budgets. I guess they are all "right-wing extremists," too.

PFAW and its allies have also attacked Pryor for being extremist on abortion rights. As a dedicated Roman Catholic, Bill Pryor loves kids and is against abortion, no doubt about it.

But even though he disagrees with abortion, he instructed Alabama's district attor-

neys to apply Alabama's partial-birth abortion law in a moderate way that was consistent with U.S. Supreme Court precedent.

Again, he was criticized by Republicans; pro-life activists accused him of gutting the statute. Again, he didn't back down.

Not surprisingly, PFAW and its allies have attacked Pryor for supporting the display of the Ten Commandments in courthouses. But Pryor simply took the position that if a representation of the Ten Commandments can be carved into the wall of the U.S. Supreme Court's courtroom, it can be placed in an Alabama courtroom.

PFAW also has attacked Pryor for the position he took in the Alexander vs. Sandoval case, in which a person who didn't speak English sued to force Alabama to spend its money on printing driver's license tests in foreign languages.

As broke as our state is, there are better things to spend our money on—like teaching kids to read English so they can take the test and read road signs, and also paving the roads for them to drive on. Pryor fought this attempt to drain our state budget, and the U.S. Supreme Court agreed with him.

The truth and the record show that Bill Pryor has fought for the civil rights and voting rights of African-Americans in Alabama when PFAW was nowhere to be found. Now that President Bush has nominated Pryor to a federal judgeship, PFAW assumes that it can come here and attack him.

I, for one, suggest that PFAW pack up its pro-pornography, flag-burning, anti-religious, attack-dog tactics and go back to Hollywood and Washington.

We who actually know Bill Pryor support him 100 percent.

Mr. GRASSLEY. Mr. President, I hope my colleagues will see through all the smoke and mirrors that have been kicked up by groups such as the People for the American Way. I hope my colleagues will take a very close look at the facts and reject those allegations that are not true, just as many Alabamians have so rejected because the people who know this man best ought to be the ones to whom we listen.

I hope that Bill Pryor's true record will shine through and that my colleagues will join me in supporting his nomination.

I close by, once again, telling my Senate colleagues that if the role of a Federal judge is to say, as Chief Justice John Marshall said, "to say what the law is," then there are very few candidates as qualified as William Pryor.

Being a good judge is not about doing what is popular, and it is not for sure about giving in to liberal special interest groups, and it certainly is not about legislating the left-wing's agenda from the bench. Being a good judge is about fairly applying the law, fairly applying the law no matter who the person is, no matter how unpopular the cause or the argument being advocated is. It is not the role of a judge, nor should it ever be the role of a judge, to serve as a puppet to the popular position. That is what William Pryor has built his career on—the rule of law, enforcing the law, carrying out the law.

I know that is what William Pryor will continue to do when he is finally confirmed by this Senate for the Eleventh Circuit Court of Appeals.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand we are under a time consideration. I believe I have half an hour. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Will the Chair remind me when I have 5 minutes remaining?

The PRESIDING OFFICER. The Chair will do that.

Mr. KENNEDY. Mr. President, I urge my colleagues to oppose Mr. Pryor's nomination. Contrary to the widespread impression of a partisan breakdown in the judicial nominations process, Democrats in this closely divided Senate have sought to cooperate with the President on the issues. And we have largely succeeded. We have confirmed 210 of President Bush's nominees in the past 4 years; 96 percent of the nominees have been confirmed.

Only 10 nominees did not receive the broad bipartisan support needed for confirmation, because their records showed that they would roll back basic rights and protections.

Mr. Pryor's nomination illustrates the problems. His views are at the extreme right wing of legal thinking. It is clear from his record that he does not deserve confirmation to a lifetime seat on an appellate court that often has the last word on vital issues for millions of people who live in Alabama, Georgia, and Florida, the States that comprise the Eleventh Circuit.

Mr. Pryor is no true conservative. He has sought to advance a radical agenda contrary to much of the Supreme Court's jurisprudence over the last 40 years, and at odds with important precedents that have made our country more inclusive and fair.

Mr. Pryor has fought aggressively to undermine the power of Congress to protect civil and individual rights. He has tried to cut back on the Family and Medical Leave Act, the Americans with Disabilities Act, and the Clean Water Act. He has been contemptuously dismissive of claims of racial bias in the application of the death penalty, and has relentlessly advocated the use of the death penalty, even for persons with mental retardation. Mr. Pryor has even ridiculed the current Supreme Court Justices, calling them "nine octogenarian lawyers who happen to sit on the Supreme Court." He even has his facts wrong. Only two of the nine Justices are 80 years old or older.

In addition to these serious substantive concerns, his nomination was rushed through the Judiciary Committee in violation of the committee's rules, before the committee could complete its investigation of major ethical questions raised by the nominee's own testimony at his hearing and by his answers and non-answers to the committee's follow-up questions. When these serious problems in Mr. Pryor's record

prevented him from receiving the Senate support needed for confirmation, President Bush made an end-run around the constitutional system of checks and balances by giving him a recess appointment during a brief Senate recess that was, in all likelihood, an unconstitutional use of the recess appointment power.

In the last Congress, some Members of the majority presented a version of the history of the nomination and the committee's investigation which did not comport with the facts. The history is important, because it shows that Democrats have in fact acted expeditiously and responsibly, and that the rush to judgment in the committee in the last Congress was clearly an effort to cut off a needed further investigation.

As the extraordinary rollcall vote in the Judiciary Committee on July 23, 2003 shows, every member of the minority voted, "no, under protest for the violation of Rule IV."

Democrats did not invent the issue that provoked such an unprecedented protest. Years before Mr. Pryor's nomination, lengthy articles in Texas and D.C. newspapers raised the question of the propriety of the activities of the Republican Attorneys General Association.

It was reported that the organization sought campaign contributions to support the election of Republican attorneys general, by arguing they would be less aggressive than Democratic attorneys general in challenging business interests for violations of the law. Some descriptions of this effort characterized it as a "shakedown" scheme.

The leaders of the association denied the allegations, but refused to disclose its contributors. They were able to maintain their secrecy by funneling the contributions through an account at the Republican National Committee that aggregated various kinds of State campaign contributions, and avoided separate public reporting of the contributions or the amount of their gifts.

The issue received significant press coverage during the 2002 Senate campaign in Texas, especially after several Republican attorneys general denounced the association as fraught with ethical problems.

Because Mr. Pryor had been identified publicly as a leader of the association's efforts, and the ethical issues raised by it were obviously relevant to his qualifications, he was asked about the issue at his nomination hearing and in written follow-up questions. His responses avoided the issue and raised more questions than they answered.

In July 2003, the Judiciary Committee began a bipartisan investigation of the matter, in accordance with an investigative plan provided to the majority. No witnesses were ever questioned under oath as part of the investigation, and in fact, the investigation was cut short by the committee majority almost as soon as it began. The Republican investigator actually in-

structed interviewees that they did not have to answer questions from the minority investigator, or comply with document requests from the minority.

As a result, all of the committee Democrats, having considered the information available up to that point, wrote to the chairman and informed him that the investigation was producing serious and disturbing information, that it would require substantial additional time, that his investigators were interfering with it, and that after it was complete, the minority members would want to question the nominee under oath.

The Republican staff had offered informal staff interviews with the nominee before that time, but the Democratic investigators had, as any serious investigator would, declined that offer until the basic investigative work had been done. In any event, the Democratic members wanted to question the nominee in person under oath at the appropriate time.

At the committee meeting to consider the issue, the chairman rejected the minority's unanimous request out of hand. He insisted on a vote on the nomination without completion of the investigation and without further questioning of the nominee under oath. That was the situation when Senator LEAHY invoked the committee's rule IV to prevent a premature vote on the nomination. The party line vote was 10-9.

The fact that no minority member was among the 10 should have prevented an immediate vote on the nomination and allowed the investigation to continue. But the chairman refused to follow rule IV and insisted on an immediate vote.

The 9 Democrats on the committee all voted against reporting the nomination, each noting an objection to the violation of rule IV.

The 10 Republicans voted to report it, with one Republican stating that his vote to report it did not mean he would necessarily vote for the nominee on the floor. He also stated that he would want to review the results of the investigation with the nominee before any Senate vote.

Despite the lack of cooperation from the majority staff, the minority staff attempted to obtain further information, and did develop new information which expanded both the scope and the gravity of our original concerns. However, in the face of the majority's refusal to cooperate, a further investigation involving the witnesses was impossible.

I mention this to make clear that the matters raised by this investigation are very serious, and we should not sweep these questions under the rug. We are not doing our job in reviewing this nomination if we look the other way in the face of these serious ethical questions. The Judiciary Committee should have completed the investigation in 2003, reviewed its findings, heard from the nominee under oath,

and then decided whether he should be listed for debate and consideration.

This year, when the committee again considered Judge Pryor's nomination, the majority offered to permit a few phone calls to witnesses whose telephone interviews were not completed or who could not be found in 2003. That offer was appreciated, but, as was obvious from the first call, it was too little and too late.

The well of evidence had been poisoned by the majority investigator's negative statements to witnesses in 2003, and now it would take an even more concerted inquiry to elicit the full story from witnesses who were adverse to begin with. Nevertheless, because some day that story will probably come out, this aspect of the nomination remains a ticking-ethical time bomb.

The rush to judgment on this nomination is particularly troubling, given the serious substantive problems in Mr. Pryor's record. His supporters say that his views have gained acceptance by the courts, and that his legal positions are well within the legal mainstream, but many disagree. Mr. Pryor has consistently advocated to narrow individual rights and freedoms far beyond what any court in this land has been willing to hold.

The Supreme Court rejected his argument that States could not be sued for money damages for violating the Family and Medical Leave Act. Had Mr. Pryor prevailed, it would have been far more difficult to protect workers who need time off because of their own health problems or to care for a loved one.

The Supreme Court also rejected Mr. Pryor's sweeping argument that Congress lacked authority to pass the Clean Water Act's protections for wetlands that are home to migratory birds.

The Court rejected his argument that States should be able to criminalize private sexual conduct between consenting adults. It rejected his far-reaching argument that counties should have the same immunity from lawsuits that States have. It rejected his argument that the right to counsel does not apply to defendants with suspended sentences of imprisonment. It rejected his argument that it was constitutional for Alabama prison guards to handcuff prisoners to hitching posts for hours in the summer heat.

Mr. Pryor's opposition to the rights of the disabled is particularly disturbing. In one case, in an opinion Justice Scalia, the Supreme Court unanimously rejected his argument that the Americans with Disabilities Act does not apply to State prisons.

In another case, the Supreme Court rejected his view that provisions of the act ensuring that those with disabilities have access to public services are unconstitutional. In that case, a plaintiff who uses a wheelchair had challenged the denial of access to a public courthouse. He had refused to crawl up

the courthouse stairs to reach the public courtroom. In his brief in the case, Mr. Pryor argued that Congress has no power to require States to make public facilities accessible to the disabled. He argued that denying access to courthouses does not violate the principle of equal protection, because the disabled have no absolute right to attend legal proceedings affecting their rights.

In arguing that the legislative history did not show a need for them to act, Mr. Pryor dismissed congressional findings of discrimination against the disabled, and evidence that the University of Georgia had located its office of handicapped services in an inaccessible second-floor room. According to Mr. Pryor, such "anecdotes provide no indication of the extent of the inaccessibility, or whether the inaccessibility lacked a rational basis and was therefore unconstitutional." That is nonsense. It is obvious that the wording of this legislative history clearly describes the extent of the inaccessibility. And there is no rational justification for a State university to put an office serving disabled students in an inaccessible second-floor location.

The Supreme Court also rejected Mr. Pryor's radical view of what constitutes cruel and unusual punishment in the use of the death penalty. It rejected his argument that executing retarded persons does not offend the eighth amendment. The Eleventh Circuit, a court dominated by conservative, Republican appointees, later unanimously rejected Mr. Pryor's attempt to evade the Supreme Court's decision. He had tried to prevent a prisoner with an IQ of 65, who even the prosecution agreed was mentally retarded, from raising a claim that he should not be executed.

The Supreme Court also rejected his attempt to limit the right to counsel for the poor. Mr. Pryor argued that the poor have no right to counsel in misdemeanor cases, even if they risk imprisonment if found guilty. He told the Court during oral argument that it is reasonable for the State to preserve its own resources, just as a more affluent defendant would preserve its resources and not incur the cost of counsel in this kind of circumstance. The Supreme Court held that the right to counsel when the accused faces possible imprisonment is more important than Mr. Pryor's financial concern.

Again and again, his far-reaching arguments like these have been rejected by the courts. Mr. Pryor is not a nominee within the legal mainstream.

He and his supporters pretend that he is only "following the law," but in fact Mr. Pryor repeatedly tried to make different law, using the Alabama Attorney General's office as a political platform for his own radical agenda.

We are expected to believe that despite the intensity with which he has advocated for these radical legal positions and the many years he has devoted to dismantling basic rights, he will start to "follow the law" if he re-

ceives a lifetime appointment to the Eleventh Circuit. Repeating that mantra again and again and again in the face of his extreme record does not make it credible that he will do so.

His many inflammatory statements show that he lacks the temperament to serve on the Federal court. He ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama was one of only two States in the Nation that uses the electric chair as its sole method of execution. The Supreme Court granted review to determine whether the use of the electric chair was cruel and unusual punishment.

For Mr. Pryor, however, the Court should not even have paused to consider the Eighth Amendment. He said the issue: should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court. This does not reflect the thoughtfulness we seek in our Federal judges.

He is dismissive of concerns about fairness in capital punishment and the possible execution of persons who are innocent. He has stated: make no mistake about it, the death penalty moratorium movement is headed by an activist minority with little concern for what is really going on in our criminal justice system.

On the issue of women's rights, Mr. Pryor has criticized constitutional protections against gender discrimination. He dismissed as "political correctness" the Supreme Court's decision that a State-run military academy could not deny admission to women because of stereotypes about how women learn.

In a 1997 statement to Congress, Mr. Pryor opposed section 5 of the Voting Rights Act, which has been indispensable in ensuring that all Americans have the right to vote, regardless of race or ethnic background. He called this important law an affront to federalism and an expensive burden that has far outlived its usefulness.

In March, we commemorated the 40th anniversary of Bloody Sunday, in which Martin Luther King, Congressman JOHN LEWIS, and others were brutally attacked on a peaceful march in Mr. Pryor's home State of Alabama while supporting the right to vote for all Americans, regardless of race. Yet we are now being asked by the administration to confirm a nominee who opposes the Voting Rights Act.

The Supreme Court has repeatedly upheld the constitutionality of section 5, but Mr. Pryor's derisive statements—criticizing both the act and the Supreme Court itself—give no confidence that he will enforce the law's provisions. There is too much at stake to risk confirming a judge who would turn back progress on protecting the right to vote.

It is no surprise that this nomination is opposed by leaders of the civil rights movement, including the Reverend Fred Shuttlesworth, a leader of the Alabama movement for civil rights,

the Reverend C.T. Vivian, and many of Dr. Martin Luther King's other close advisors and associates.

It is clear that Mr. Pryor sees the Federal courts as a place to advance his political agenda. When President Bush was elected in 2000, Mr. Pryor gave a speech praising his election as the "last best hope for federalism." He ended his speech with these words—a "prayer for the next administration: Please God, no more Souters." He was referring to Justice Souter, a Republican nominee to the court, whose opinions Mr. Pryor apparently disagreed with.

In another speech, he said he was thankful for the *Bush v. Gore* decision. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.

Some have argued that Mr. Pryor's record in his year as a recess appointee on the Eleventh Circuit somehow erases his long career of opposition to fundamental rights. The fact that Mr. Pryor has voted with other judges during the period when he was temporarily appointed to the court says nothing about what he would do if given a lifetime appointment and the freedom from Senate oversight. It is no wonder that he might be cautious when he only has a temporary appointment to the court. We should not be swayed by "confirmation conversions," and especially not by "recess appointment conversions."

My colleagues on the other side have brought up every argument they could find to save him. His record is full of examples of extreme views, and they try to rebut each one. They call Senate Democrats and citizens who question Mr. Pryor's fitness—including more than 204 local and national groups—a variety of names. They even accuse us of religious bias.

They claim that those who oppose Mr. Pryor's nomination do so because of his faith. That's ridiculous given the record. Such a claim is unworthy of the Senate. Most of us would have had no idea what religious views are held by Pryor, or any other nominee, if Republicans had not raised the issue.

The real question is why, when there are so many qualified Republican attorneys in Alabama, the President would choose such a divisive nominee? Why pick one whose record raises so much doubt as to whether he will be fair? Why pick one who can muster only a rating of partially unqualified from the American Bar Association?

At stake is the independence of our Federal courts. We count on Federal judges to be intelligent, to have the highest integrity, to be open-minded. Most of all, we count on them to treat everyone fairly and not to prejudge a case based on ideology. Mr. Pryor is free to pursue his agenda as a lawyer or as an advocate, but he does not have the open-mindedness and fairness needed to be a Federal judge, and I urge my colleagues to defeat this nomination.

Mr. President, I have, I believe, just a few minutes left. How much time do I have?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. KENNEDY. Mr. President, I have pointed out at other times in recent days that we have been tied up with these Federal judges—the handful of Federal judges who will have enormous impact in terms of our court systems—we have been tied up with this issue for weeks and weeks when this President could have appointed, as I mentioned in the final moments of my speech, outstanding, distinguished jurists who could have gone through here like 95 or 96 percent of the other nominees.

While we have been taking weeks and weeks, let me just mention a few of the things that have been happening that are affecting real American families. Let's just take the last week, for example. Let's take the New York Times last Sunday:

Tax Laws Help to Widen the Gap at the Very Top. The share of the Nation's income earned by those in the uppermost category has more than doubled since 1980.

There is a long article about what is happening in our country between the working families, middle-income families, and the super-wealthy, and the reasons for it. Are we debating or considering or thinking about doing anything about that? No, not the Senate.

Here is Monday, New York Times:

College Aid Rules Change and Families Pay More.

Are we doing anything about that this week? Are we having a debate on that issue, about what we can do to make college tuition more available to families here in the United States? No, no. That is not on the agenda.

Then look at Tuesday:

Pension Law Loopholes Help United Hide Its Troubles.

Loopholes in the federal pension . . . allow United Airlines to treatment its pension fund . . . solid for years when in fact it was dangerously weakened.

And it basically collapsed.

Pensions, retirement for working families, a matter of principal concern for millions of our workers—are we doing very much about that on the floor of the Senate? No.

Wednesday:

G. M. Will Reduce Hourly Workers by 25,000. General Motors said Tuesday it will cut 25,000 from its blue collar workforce.

We don't have a silver bullet to answer that, but don't we think we should be thinking about, if we lost 25,000 workers, what we ought to do and what we might do in terms of helping working families and looking at an industry? That was Wednesday.

Here we have Thursday, front-page story:

Limit for Award in Tobacco Case Set Off Protests.

The Justice Department's decision to seek \$10 billion instead of what the professional attorneys in the Justice Department said that they should, \$130 billion.

They were going to use that \$130 billion to educate primarily teenagers, primarily teenage girls. Four thousand teenagers start smoking every day, and 2,000 become addicted. Try to educate them with \$130 billion? What happened to the Justice Department? They threw in the towel. You would think we would talk about that.

That is in this last week. These issues affect middle-income working families, and what do we spend our time on here in the Senate for the last 6, 7, 8, 9 weeks? Debating these judges, when we know if we had a President who would offer nominees in the mainstream of judicial thinking, those individuals would be confirmed, like 96 percent of them were. Then perhaps we would have a chance to do something that has been talked about on every front page of every newspaper just this last week and that affects in a very real and important way the quality of life of children in this country, working families, and retirees.

Finally, I think I join with Senator LEVIN and Harry Reid, wondering why in the world next week we are not going to be considering the Defense Authorization bill instead of going to the Energy bill. We need an energy bill but, as has been pointed out by the supporters of the Energy bill, passage of that bill will not reduce the gas price by 1 cent. The Defense Authorization bill will send a very clear message about our commitment on death benefits, on uparmoring humvees, on looking after families in terms of health insurance—all of these issues that are out there. We would send a very clear message that the Senate of the United States is behind that reauthorization. We may have our questions about Iraq policy, but everyone in this body supports our troops. Why aren't we considering the Defense Authorization bill?

These are some of the concerns many of us have who think this Senate is not meeting its responsibilities to the American people or to our national security and defense.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I have sought recognition to support the nomination of Judge William H. Pryor, Jr., to be a judge for the Eleventh Circuit. It has been divided.

Judge Pryor comes to this position with a very distinguished record. He graduated from Northeast Louisiana University in 1984, magna cum laude; from the Tulane University School of Law in 1987, again magna cum laude; was editor-chief of the Law Review of the Tulane University School of Law, which is no minor achievement. There

are not too many editors-in-chief around. That is quite an accomplishment. So the academic career is really extraordinary.

Following graduation from law school, he was law clerk to Judge John Minor Wisdom for the Court of Appeals for the Fifth Circuit, a very distinguished jurist. A I speak on this subject, the Presiding Officer is Senator LAMAR ALEXANDER, who, as I recollect, was also a law clerk to Judge John Minor Wisdom and, on the recommendation of Senator ALEXANDER, he spoke very highly of William Pryor, the people who knew him in a very distinguished clerkship, one of America's great, historical jurists. Bill Pryor was his law clerk.

He then had a distinguished record in the practice of law, working for the firm of Cabaniss, Johnston, Gardner, Dumas & O'Neal; was an adjunct professor at the Samford University, Cumberland School of Law; and came back into the practice of law for 4 more years with Walston, Stabler, Wells, Anderson & Bains. Then, from 1995 to 2004, he was Deputy Attorney General and also Attorney General of the State of Alabama and has been on the U.S. Circuit Court for the Eleventh Circuit now for a year, having obtained an interim appointment from President Bush.

Judge Pryor has been criticized for his views, expressed very forcefully, in opposition to the decision of the Supreme Court of the United States in *Roe v. Wade*. The quotation attributed to him was that it was the "worst abomination of constitutional law in our history," which is pretty strong language. That is about as strong as you can get.

The issue is not what is his personal view of *Roe v. Wade*. The issue is what would he do as a circuit court of appeals judge when faced with the responsibility to uphold the law of the land, of the Supreme Court.

This subject came up during the confirmation hearing of Judge Pryor before the Judiciary Committee on June 11, 2003. I propounded the following question to Judge Pryor:

The Chairman [Senator HATCH at the time] has asked about whether you have made some comments which you consider intemperate, and I regret I could not be here earlier today, but as you know, we have many conflicting schedules. But I note the comment you made after *Planned Parenthood v. Casey*, where you were quoted as saying—first I would ask you if this is accurate. I have seen a quote or two not accurate. "In the 1992 case of *Planned Parenthood v. Casey* the Court preserved the worst abomination of constitutional law in our history." . . . is that an accurate quotation of yours?

Mr. PRYOR. Yes.

It is pretty hard to get a simple answer of a witness anywhere and I appreciated that kind of brevity.

I continued:

Senator SPECTER. Is that one which would fall into the category that Senator Hatch has commented on, you wish you had not made?

Mr. PRYOR. No, I stand by the comment.

Then I asked:

Why do you consider it an abomination, Attorney General Pryor?

And he responded:

Well, I believe that not only is the case unsupported by the text and structure of the Constitution. But it has led to a morally wrong result.

And he goes on to give his reasons for his conclusion.

He was very candid, very steadfast, and stood up to what he had said and was not running from it.

Later, he made it plain he would abide by the law of the land, that his personal views of *Roe v. Wade* were not determinative. The record shows my own view has been to uphold the Supreme Court decision in *Roe v. Wade*, a subject I will not discuss as to my own views, but I respect a difference of opinion.

In looking for the confirmation of a Federal judge, the issue is, will he follow the law of the land. He said he would and said so very emphatically on the record.

On March 3 of this year, I wrote to Senator REID because this question had come up. I cited the applicable page of the RECORD June 11, page 45 of the transcript where the following exchange occurred:

Chairman HATCH. So even when you disagree with *Roe v. Wade* you would act in accordance with *Roe v. Wade* on the Eleventh Circuit Court of Appeals?

Mr. PRYOR. Even though I strongly disagree with *Roe v. Wade* I have acted in accordance with it as Attorney General and would continue to do so as a Court of Appeals judge.

Chairman HATCH. Can we rely on that?

Mr. PRYOR. You can take it to the bank, Mr. Chairman.

Again, that is about as emphatic as you can be on that subject.

During the course of Judge Pryor's tenure on the Court of Appeals, he has handed down quite a number of opinions which show maturity, which show growth, and which undercut many of the objections of his critics.

I ask unanimous consent the relevant portions of the transcript I have just referred to from the Judiciary Committee hearing and the letter which I sent to Senator REID dated March 3, 2005, be printed in the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. SPECTER. Shortly after becoming chairman of the Judiciary Committee, within a week, by memorandum dated January 12 of this year, I sent to all members of the Judiciary Committee a memorandum including summaries of some of Judge Pryor's statements which I thought merited analysis and reconsideration by those who had opposed him in the past. Those opinions included the decision in *DIRECTV v. Treworgy*, where Judge Pryor ruled against a major satellite transmission corporation, instead siding with a private citizen to shield him from liability. Also, a case on Judge Pryor's decision protecting religious

liberty, *Benning v. Georgia*, also decided in the year 2004. A case illustrating Judge Pryor's protection of civil rights in the case of *Wilson v. B/E Aerospace, Incorporated*. A case which involved a district court's dismissal of a female employee's gender discrimination claims. Judge Pryor reinstated her claim of bias as to promotion and remanded back to the district court.

By way of amplification of the case I referred to on *Benning v. Georgia*, that involved a situation when the Georgia prison system refused an inmate's request to practice his Jewish faith. Judge Pryor enabled the prisoner to continue to worship in his preferred manner.

The case involving *Sarmiento-Cisneros*, where Judge Pryor ruled protecting immigrants' rights, involved a Mexican immigrant who desired to remain in the United States with his family. Judge Pryor vacated the deportation order, enabling the family to remain together, and brought a common-sense interpretation to a harsh ruling by the Bureau of Immigration and Customs Enforcement.

The case of *Brown v. Johnson* is an illustration of Judge Pryor's judgment and decision in protecting prisoners' rights. Judge Pryor recognized the need for improvement in the treatment of an inmate afflicted with HIV and concluded that prison officials were not sufficiently concerned about the serious medical needs under the Eighth and 14th Amendments.

Judge Pryor also stood by the petitioner, permitting him to proceed in forma pauperis.

Judge Pryor has faced, in his capacity as Attorney General of Alabama, quite a number of situations where he took positions which were very unpopular politically and contrary to his own views, but did so because of his determination and his recognition that he was supposed to uphold the law of the land.

In a very highly celebrated case nationally and internationally, as Attorney General for Alabama he proceeded against Alabama Chief Justice Roy Moore for refusing to remove the large depiction of the Ten Commandments on display in the Alabama Supreme Court after the Federal courts ruled the display was unconstitutional. In that case, Judge Pryor commented that his personal beliefs were contrary to what he was ruling. He took a lot of criticism from his Alabama constituency and when asked about his decision to enforce the law against Alabama Chief Justice Moore, Judge Pryor stated:

This was not a tough call. I believe that our freedom depends on the rule of law. The reason the American experiment has been successful is because we are a nation of laws and not of men. No person is above the law. We have to abide by the law even when we disagree with it. That is the guiding principle of my public service.

Hard to structure a response better than that. Cannot do any better than



that, when you say you disagree with something and you disagree strongly, but you recognize your obligation to enforce the law.

On other occasions, then-Attorney General Pryor set aside personal beliefs and instructed State law enforcement officials to enforce the Supreme Court rulings. Shortly after the U.S. Supreme Court issued its ruling in *Lawrence v. Texas*, he released a press statement through the Web site of the Office of Attorney General saying that in light of the Supreme Court ruling in *Lawrence*:

the law of Alabama . . . which prohibits consensual sodomy between unmarried persons, is now unenforceable.

Similarly, after the Supreme Court ruled in *Stenberg v. Carhart*, which struck down a Nebraska law prohibiting partial-birth abortion, then-Attorney General Pryor issued a statement to State officials saying State officials "are obligated to obey the *Stenberg* ruling until it is overruled or otherwise set aside."

Judge Pryor's record shows commitment to improving race relations and protecting racial equality. As attorney general, Judge Pryor worked with President Clinton's U.S. attorney Doug Jones to prosecute former klansmen who bombed Birmingham's 16th Street Baptist Church in the 1960s which resulted in the death of four young girls. He helped to start a drive to rid the Alabama Constitution of its racist prohibition on interracial marriage and then stepped up to head the effort to end the ban, ultimately to its victory in November of 2000.

He dedicated much of his career to protecting the interests and the safety of women. As Attorney General, he supported and lobbied for legislation that created a State crime of domestic violence.

I ask unanimous consent the summaries of the cases which I referred to previously be printed in the *RECORD*, with a pertinent letter, at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. SPECTER. In conclusion, it is a very healthy situation in that we are now proceeding to take up these nominees individually. That is something which I had sought to do since taking over the chairmanship of the Judiciary Committee. We have moved ahead now with three controversial nominees. It is my hope we will continue to take up these nominees, one at a time, and evaluate them on their merits.

As I have said in a number of floor statements, we have reached the current confrontation because of a practice which goes back almost 20 years, starting with the last 2 years of the Reagan administration and continuing with 4 years of President Bush, and when the Democrats took control of the Senate and the Judiciary Committee, they stopped the processing of judges and slowed it down.

Then when we Republicans won the election in 1994, for the last 6 years of the Clinton administration we slowed down the process and tied up some 70 judges in committee, a practice that I objected to at the time, and supported Judge Paez and Judge Berzon and others. Then the controversy was ratcheted up with the unprecedented systematic filibustering of judges, and then the unprecedented move by President Bush in the interim appointment, after the Senate rejected a judge, albeit by the route of not getting closure.

My time has expired, and I note the presence of the distinguished Democratic leader, so I yield the floor in mid-sentence, Mr. President.

#### EXHIBIT 1

Senator SPECTER. The Chairman has asked about whether you have made some comments which you now consider intemperate, and I regret, that I could not be here earlier today, but as you know, we have many conflicting schedules. But I note the comment you made after *Planned Parenthood v. Casey*, where you were quoted as saying—first I would ask you if this quote is accurate. I have seen a quote or two not accurate. "In the 1992 case of *Planned Parenthood v. Casey* the Court preserved the worst abomination of constitutional law in our history," close quote. Is that an accurate quotation of yours?

Mr. PRYOR. Yes.

Senator SPECTER. Is that one which would fall into the category that Senator Hatch has commented on, you wish you had not made?

Mr. PRYOR. No, I stand by that comment.

Senator SPECTER. Why do you consider it an abomination, Attorney General Pryor?

Mr. PRYOR. Well, I believe that not only is the case unsupported by the text and structure of the Constitution, but it had led to a morally wrong result. It has led to the slaughter of millions of innocent unborn children. That's my personal belief.

Senator SPECTER. With that personal belief, Attorney General Pryor, what assurances can you give to the many who are raising a question as to whether when you characterized it an abomination and slaughter, that you can follow a decision of the United States Supreme Court, which you consider an abomination and having led to slaughter?

Mr. PRYOR. I would invite anyone to look at my record as Attorney General, where I've done just that. We had a partial birth abortion law in our State that was challenged by abortion clinics in Alabama in 1997. It could have been interpreted broadly or it could have been interpreted narrowly. I ordered the district attorneys of Alabama to give it its narrowest construction because that was based on my reading of *Roe* and *Casey*. I ordered the district attorneys to apply that law only to post-viable fetuses. I could have read it easily more broadly. The governor who appointed me was governor at the time and a party to the lawsuit, disagreed with me and openly criticized me. A pro-life activist in Alabama criticized me. But I did it because I thought that was the right legal decision. I still had an obligation to defend Alabama law. This was a recently-passed Alabama law. When the Supreme Court of the United States later of course struck down this kind of partial birth abortion law, we conceded immediately in district court that the decision was binding, but until then I was making the narrowest argument I could make, trying to be faithful to the Supreme Court's precedent, while also being faithful

to my role as Attorney General and my oath of office to defend a law recently passed by the legislature.

Senator SPECTER. When you talk about post-viability and you have the categorization of partial birth or late-term abortion, is not that statute necessarily directed toward post-viability?

Mr. PRYOR. That was one of the main arguments I made in construing it, but if you look at the actual language—

Senator SPECTER. Well, I asked you that question as to whether there was a basis for construing it to the contrary. When you talk about partial birth abortion, we are talking about an event in the birth canal which is definitely post-viability. When you talk about late-term abortion, we are also talking about post-viability. So aside from having some people who will raise a question about anything, whether there is a question to be raised or not, was it not reasonably plain on the face of the statute that they were talking about post-viability?

Mr. PRYOR. No, I don't think anyone would contend life. I believe that abortion is morally wrong. I've never wavered from that, and in representing the people of Alabama, I have been a candid, engaged Attorney General, who has been involved in the type of—

Chairman HATCH. What does that mean with regard to the Eleventh Circuit Court of Appeals? If you get on that court, how are you going to treat *Roe v. Wade*?

Mr. PRYOR. Well, my record as Attorney General shows that I am able to put aside my personal beliefs and follow the law, even when I strongly disagree with it, to look carefully at precedents and to do my duty. That is the same duty that I would have as a judge. Now, as an advocate for the State of Alabama of course I have an obligation to make a reasonable argument in defense of the law, but as a judge I would have to do my best to determine from the precedents what the law actually at the end of the day requires. My record demonstrates that I can do that.

Chairman HATCH. So even though you disagree with *Roe v. Wade* you would act in, accordance with *Roe v. Wade* on the Eleventh Circuit Court of Appeals?

Mr. PRYOR. Even though I strongly disagree with *Roe v. Wade* I have acted in accordance with this as Attorney General and would continue to do so as a Court of Appeals Judge.

Chairman HATCH. Can we rely on that?

Mr. PRYOR. You can take it to the bank, Mr. Chairman.

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, March 3, 2005.

Hon. HARRY REID,  
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR REID: When we talked earlier this week, we discussed the question of whether or not Judge Pryor had testified that he would follow *Roe v. Wade*. I have had the transcript reviewed from Judge Pryor's hearing on June 11, 2003. I think that you will find the following exchange between Senator Hatch and Judge Pryor, which can be found on page 45 of the transcript, dispositive:

Chairman HATCH: So even though you disagree with *Roe v. Wade* you would act in accordance with *Roe v. Wade* on the Eleventh Circuit Court of Appeals?

Mr. PRYOR: Even though I strongly disagree with *Roe v. Wade* I have acted in accordance with this as Attorney General and would continue to do so as a Court of Appeals Judge.

Chairman HATCH: Can we rely on that?

Mr. PRYOR: You can take it to the bank, Mr. Chairman.

I am enclosing a copy of the transcript.

Sincerely,

ARLEN SPECTER.

EXHIBIT 2

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, January 12, 2005.

TO MEMBERS OF THE SENATE JUDICIARY COMMITTEE: As you know, Judge William Pryor has been sitting on the United States Court of Appeals for the Eleventh Circuit for the past eleven months. The President has stated his intention to re-submit Judge Pryor's name for confirmation to the Eleventh Circuit. In light of his expected renomination, I have asked my staff to examine Judge Pryor's Eleventh Circuit opinions.

I thought you might be interested in knowing some more about these opinions. In particular, I'd like to bring to your attention several opinions that demonstrate Judge Pryor's willingness to protect the rights of individuals often overlooked in the legal system. It is my hope that these opinions and his record on the Eleventh Circuit for the past eleven months will be considered by the Committee on evaluating him on his re-nomination.

Sincerely,

ARLEN SPECTER.

MEMORANDUM

During his tenure on the Eleventh Circuit Court of Appeals, Judge William Pryor has authored several opinions demonstrative of his willingness to protect the rights of those often overlooked in the legal system.

Standing up to Corporations: *DIRECTV, Inc. v. Treworgy*, 373 F.3d 1124 (11th Cir. 2004)

Judge Pryor ruled against a major satellite-transmission corporation, siding instead with a private citizen to shield him from liability.

Background: DIRECTV (DTV), a provider of satellite television, encrypts transmissions of pay-per-view and premium programming. The security encryption can be illegally circumvented by using "pirate access devices," which allow users to intercept and decrypt DTV's transmissions. Mike Treworgy bought two pirating cards, which enable someone with a satellite dish to receive signals without paying for the service. There was no evidence that Treworgy actually intercepted a signal with his cards. DTV sued Treworgy for possessing these devices under the Electronic Communications Privacy Act of 1986 (Wiretap Act), which criminalizes the intentional manufacture, distribution, possession and advertising of piracy devices. Treworgy argued that the Wiretap Act did not create a private right of action against persons merely in possession of access devices.

Holding: The Eleventh Circuit, Judge Pryor writing, held that DTV did not have a private right of action against Treworgy for mere possession of intercepting technology, and required that the device must have been used to pirate programming before private rights of action arise. "Congress chose to confine private civil actions to defendants who had 'intercepted, disclosed, or intentionally used' [a communication] . . . possession of a pirate access device alone, although a criminal offense, creates nothing more than conjectural or hypothetical harm."

Protecting Religious Liberty: *Benning v. Georgia*, 2004 WL 2749172 (11th Cir. 2004)

When the Georgia prison system refused an inmate's requests to practice his Jewish faith, Judge Pryor enabled the prisoner to continue to worship in his preferred manner.

By finding that RLUIPA is a proper exercise of Congress' Spending authority, the Eleventh Circuit kept viable similar legal

remedies for the elderly, disabled and other victims of discrimination.

Background: Ralph Benning, an inmate in the Georgia prison system, asserted that as a "Torah observant Jew" he was being prevented from fulfilling his religious duties, such as eating only kosher food, and wearing a yarmulke. Georgia moved to dismiss and argued that §3 of The Religious Land Use and Institutionalized Persons Act (RLUIPA) exceeds the authority of Congress under the Spending and Commerce Clauses, and violates the Tenth Amendment and the Establishment Clause. RLUIPA imposes strict scrutiny on federally funded programs or activities that burden the religious rights of institutionalized persons.

Holding: The Eleventh Circuit, Judge Pryor writing, rule that Congress did not exceed its authority under the Spending Clause in enacting §3 of RLUIPA. The court held that Congress' spending conditions need meet only a "minimal standard of rationality." The court found that protecting religious exercise of prisoners is a rational goal, and the United States "has a substantial interest in ensuring that state prisons that receive federal funds protect the federal civil rights of prisoners." The Eleventh Circuit also concluded that the statute did not violate the Tenth Amendment by infringing on areas reserved to the states, nor did it violate the Establishment Clause. Judge Pryor further recognized that, "given the necessarily strict rules that govern every aspect of prison life, the failure of prison officials to accommodate religion, even in the absence of RLUIPA, would not be neutral; it would be hostile to religion."

Protecting Civil Rights: *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079 (11th Cir. 2004)

When the district court dismissed a female employee's gender discrimination claims, Judge Pryor reinstated her claim of bias as to a promotion, and remanded back to the district court.

Background: Loretta Wilson filed an employment discrimination action against B/E Aerospace, Inc. (B/E) alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended in 42 U.S.C. sections 2000e et seq., and the Florida Civil Rights Act, Fla. Stat. sections 760.01 et seq. She claimed that B/E discriminated against her on the basis of sex by not promoting her to the position of Site Vice President and by later terminating her.

Procedural Summary: B/E filed a motion for summary judgment at the conclusion of discovery. The district court granted the motion in its entirety finding that Wilson failed to both provide direct evidence of discrimination and establish a prima facie case of discrimination.

Holding: Judge Pryor, writing for the Eleventh Circuit, allowed Wilson's case to proceed against the corporation. Focusing on the two distinct types of conduct alleged—discrimination in promotion and discharge—the court concluded that an admission by a supervisor at B/E that Wilson was "the obvious choice" and the "most qualified" for the then-pending promotion created a genuine issue of fact, prompting Judge Pryor to remand as to the failure-to-promote claim. As to the discharge claim, the court concluded that Wilson had offered no evidence that her termination was based on sex.

Protecting Immigrant Rights: *Sarmiento-Cisneros v. U.S. Attorney General*, 381 F.3d 1277 (11th Cir. 2004).

Judge Pryor stood up for a Mexican immigrant who desired to remain in the United States with his family.

By vacating the deportation order, Judge Pryor enabled a family to remain together and brought a commonsensical interpretation to the harsh Bureau of Immigration and Customs Enforcement order.

Background: Jose Sarmiento-Cisneros was an alien from Mexico who was deported and then reentered the United States illegally, married an American citizen, and then applied for an adjustment of status before the effective date of 8 U.S.C. 1231(a)(5). The Bureau of Immigration and Customs Enforcement (BICE) sought to reinstate a removal order under 8 U.S.C. 1231(a)(5) and argued that the statute's provisions barring an alien from filing an application for discretionary relief apply retroactively.

Holding: After examining the statute, Judge Pryor, writing for the Eleventh Circuit, joined five other circuits in concluding that 8 U.S.C. 1231(a)(5) does not apply retroactively. The court therefore granted the petition for review and vacated the BICE deportation order. Sarmiento Cisneros was thus able to enjoy discretionary relief available to him prior to the BICE's rescission of the previously granted relief.

Protecting Prisoners' Rights: *Brown v. Johnson*, 387 F.3d 1344 (11th Cir. 2004).

Judge Pryor recognized the need for improved treatment for an inmate afflicted with HIV, concluding that prison officials were indifferent to his serious medical needs under the Eighth and Fourteenth Amendments.

Judge Pryor not only stood up for the prisoner, but enabled him to proceed in forma pauperis.

Background: John Brown, a prisoner in the Georgia State Prison, had been prescribed medication for HIV and hepatitis. Two months after this prescription had been granted, a different doctor ceased treatment. Eight months later, Brown filed a §1983 claim against the second doctor and the Medical Administrator for the Georgia State Prison alleging deliberate indifference to his serious medical needs in violation of the due process clause of the Fourteenth Amendment and the Eighth Amendment. Additionally, Brown filed a petition to proceed in forma pauperis.

Procedural Summary: The Prison Litigation Reform Act (PLRA) establishes the procedures for courts to use to assess prisoner complaints brought in forma pauperis. The provision of the PLRA in question, 28 U.S.C. section 1915(g) (often referred to as the "three strikes rule"), bars a prisoner from proceeding in forma pauperis after he has filed three meritless lawsuits, unless the prisoner is in imminent danger of serious medical injury. A magistrate judge recommended that Brown's petition to proceed in forma pauperis be denied and that his complaint be dismissed without prejudice because Brown had filed at least three meritless lawsuits previously, and had not met the imminent physical injury exception. Brown then filed timely objections to the recommendation and he filed a motion to amend his complaint. The district court denied Brown's motion to amend his complaint because the complaint was subject to "three strikes" dismissal. Subsequently, the district court adopted the recommendation of the magistrate judge and dismissed Brown's complaint without prejudice. Brown then appealed, and the district court granted him permission to proceed in forma pauperis.

Holding: Judge Pryor, writing for the Eleventh Circuit, determined that the district court's dismissal of Brown's motion to amend his complaint under the PLRA, and its conclusion barring Brown from proceeding in forma pauperis, were in error. Further, Judge Pryor found that the district court abused its discretion in denying him the right to amend his complaint pursuant to FRCP 15. The amended complaint, sufficiently alleging imminent danger of serious physical injury under 28 U.S.C. 1915(g), permitted Brown to proceed in forma pauperis.

Finally, Judge Pryor found that Brown had stated a valid claim of deliberate indifference to serious medical needs under the Eighth and Fourteenth Amendments. Therefore the district court's judgment was reversed and remanded for further proceedings, effectively allowing Brown's suit to go forward, and enabling him to get necessary medical treatment.

(At the request of Mr. LEAHY, the following statement was ordered to be printed in the RECORD.)

• Mr. JEFFORDS. Mr. President, I would like to express my opposition to the nomination of William H. Pryor, Jr., to the Eleventh Circuit Court of Appeals.

Mr. Pryor has a distinguished legal career. He graduated magna cum laude from Tulane University Law School, clerked for a judge on the Fifth Circuit Court of Appeals, was a law professor at Samford University, and served as attorney general for the State of Alabama. While he deserves recognition for his legal background, that alone is not enough in my estimation to be confirmed for a lifetime appointment to the Federal bench. In my review of Mr. Pryor's statements, actions, and writings, I am concerned that Mr. Pryor's personal opinion, rather than the law, will compel his decisions in some cases.

My areas of concern arise in areas of the law that I have spent my career working to address, including the environment, reproductive rights, and gay rights.

On the environment, for example, Mr. Pryor urged the U.S. Supreme Court to declare unconstitutional Federal efforts to protect wildlife on private lands under the Endangered Species Act. In regard to this case, the lower court stated that Mr. Pryor's constitutional arguments would "place in peril the entire federal regulatory scheme for wildlife and natural resource conservation." The case is *Gibbs v. Babbitt*.

In another important case, *Solid Waste Authority of Northern Cook County v. United States*, Mr. Pryor urged the Supreme Court to strike down Federal efforts to protect waters and wetlands that provide habitat for migratory birds. Finally, Mr. Pryor has advocated in testimony before the Senate that States should not be held accountable in court for failing to enforce minimum Federal standards from the joint hearing before the U.S. Senate Committee on Environment and Public Works and the U.S. Senate Committee on the Judiciary, July 16, 2002.

On reproductive rights Mr. Pryor in 1997 called the *Roe v. Wade* decision, "the day seven members of our highest court ripped the Constitution and ripped out the life of millions of unborn children." In a speech during that same year, Mr. Pryor criticized the 1992 Supreme Court decision in *Planned Parenthood v. Casey* by stating that this decision "preserved the worst abomination of constitutional law in our history: *Roe v. Wade*."

Finally, during Mr. Pryor's career he has actively worked to oppose gay

rights. In fact, he has gone so far as to seek out cases to file briefs, or spoken out on the merits of such cases, that have no connection to the job he was currently performing. For example, even though Alabama had no similar statute, Mr. Pryor filed an amicus brief in the *Romer v. Evans* case supporting Colorado's law prohibiting local governments from enacting laws protecting gays and lesbians from discrimination. In addition, despite the fact that the *Lawrence v. Texas* case did not involve Alabama law, Mr. Pryor's interest was so keen that he petitioned the Supreme Court for leave to participate in the oral argument and filed a brief on the merits of the case.

Some have argued that Mr. Pryor should not be held to all these briefs and statements because he was just doing his job and protecting the rights and positions of his client or employer. However, the problem with this argument is that many of the positions he has taken have not related to the requirements of the job he was performing, but were positions he singularly advocated because he believed in them and sought out cases to express and uphold his beliefs. It is this fact that concerns me and leads me to believe that Mr. Pryor will use his personal beliefs rather than settled law to decide cases.

His actions as a recess appointment to the Eleventh Circuit Court of Appeals have not diminished my concern, especially when Mr. Pryor was the deciding vote that prohibited the full Eleventh Circuit to consider the unique Florida law banning gay adoption. Given these facts and Mr. Pryor's history, I opposed limiting debate on his nomination in 2003, and continue to do so today.

Unfortunately, I will be necessarily absent for the votes that will occur related to this nominee. However, I feel it is necessary to express my position on this important nomination. •

Mrs. CLINTON. Mr. President, the nomination of William H. Pryor, Jr., to the Eleventh Circuit Court of Appeals is nothing more than a political promotion cloaked in the thin veil of a judicial nomination. Judge Pryor has been an active and dutiful soldier in the administration's systematic assault on the Constitution and individual rights, effectively making his nomination for a lifetime appointment to the Eleventh Circuit Court of Appeals political payback for a job perceived well done. Given Judge Pryor's disdain for the Constitution and individual rights, I encourage my colleagues to join me in opposing Judge Pryor's nomination.

If confirmed for a lifetime appointment to the Eleventh Circuit Court of Appeals, Judge Pryor would pose an enormous threat to the rights, protections, and freedoms of all Americans. Judge Pryor's professional record demonstrates a willingness to contort the law in order to make it fit his political agenda. During his 7-year tenure as at-

torney general of Alabama, Judge Pryor advanced his own personal, conservative agenda not only through litigation in which Alabama was a party, but also by filing amicus curiae briefs in cases in which Alabama was neither an interested party nor under any obligation to participate. As attorney general of Alabama, Judge Pryor amassed a stunning record replete with hostility for the rights of Americans and contempt for constitutionally mandated protections. In addition to attacking the validity of constitutional freedoms, Judge Pryor advocated for the dissolution of congressionally required protections intended to preserve individual rights, to safeguard our environment and to maintain the barriers that separate church and state.

Judge Pryor has advocated a view that the Constitution does not harbor some of our most critical individual rights and freedoms. He has taken the position that these freedoms should be decided by the States, based on majority vote, regardless of whether constitutional rights are violated. The danger of this simple thinking is of course to regionalize the Constitution, making one's constitutional rights dependent on where one resides. But much more egregious is what this proposal would do to our Bill of Rights; it effectively makes our inalienable rights as Americans open to public and political debate. This surely could not have been what the Framers envisioned when they drafted our Constitution.

Judge Pryor's general contempt for the Constitution is clear in the positions he advocated as attorney general of Alabama. In one amicus brief to the Supreme Court, Judge Pryor defended a State practice of handcuffing prisoners to a hitching post and exposing them to the hot sun for 7 hours at a time without water or bathroom breaks. This cruel and unusual brand of punishment advocated by Judge Pryor was later rejected by the U.S. Supreme Court, which held that "the use of the hitching post under these circumstances violated 'the basic concept underlying the Eighth Amendment, [which] is nothing less than the dignity of man.'"

Showing disdain for constitutionally protected reproductive freedom, Judge Pryor has called *Roe v. Wade* "the worst abomination of constitutional law in our history." In this spirit, he has endorsed the formation of unconstitutional barriers that would thwart the practice of reproductive freedom, going as far as defending Alabama's so-called "partial-birth abortion" ban despite the fact that it lacked the constitutionally required exception to protect the health of the pregnant woman.

But Judge Pryor's attacks against privacy interests are not only relegated to reproductive rights. Judge Pryor believes that it is constitutional to imprison gay men and lesbians for having sex in the privacy of their own homes. In an amicus brief asking the Supreme Court to uphold Texas' "Homosexual Conduct" law, Judge Pryor

advocated criminalizing homosexual intercourse between consenting adults, ignoring the equal protection clause of the 14th amendment. In his brief on behalf of the people of Alabama, Judge Pryor equated sex between two consenting adults of the same gender with "activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia . . ." This is from a brief in *Support of Respondent at 25, Lawrence v. Texas*, 539 U.S. 558, 2003.

Judge Pryor's disrespect for the rule of law however, is not limited to his disregard for the Constitution. Judge Pryor has long been a foot soldier in the conservative movement's attack on the authority of Congress to enact laws protecting individual and other rights. He and like-minded conservative ideologues have hidden behind the labels "States rights" and "federalism," when what they are truly advocating is the restriction of Congress to protect Americans' rights against discrimination and injury based on disability, race, and age.

Again as attorney general of Alabama, Judge Pryor abused his discretion, making Alabama the only State to file an amicus brief in support of striking down part of the Violence Against Women Act. As Alabama's attorney general, Judge Pryor filed briefs calling for the elimination of protections contained in the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Clean Water Act, and the Endangered Species Act. On two separate occasions, he testified in Congress against EPA enforcement of the Clean Air Act and against key provisions of the Voting Rights Act.

In one Supreme Court case in which his office again filed an amicus brief, Judge Pryor urged the Supreme Court to hold that State employees cannot sue for damages to protect their rights against discrimination under the Americans with Disabilities Act. In a narrow 5-to-4 decision, the Court agreed with Judge Pryor's "States' rights" argument. After the decision, Judge Pryor expressed tremendous satisfaction for his part in dismantling a portion of one of this generation's seminal pieces of civil rights legislation. Judge Pryor said he was "proud" of his role in "protecting the hard-earned dollars of Alabama taxpayers when Congress imposes illegal mandates on our state."

Americans deserve better than this. They deserve even-tempered jurists who will not use the bench as a pulpit for the advancement of their own political agenda. Given Judge Pryor's disregard for individual rights, the Constitution and congressionally mandated protections, I cannot in good faith extend my constitutionally required consent to his nomination, and I encourage my Senate colleagues to again withhold their support as well.

Mrs. FEINSTEIN. Thank you, Mr. President.

I would like to discuss the nomination of William Pryor to the Eleventh

Circuit Court of Appeals. I have closely reviewed Judge Pryor's record, and based upon it, I believe that Judge Pryor would have difficulty putting aside his extreme views in interpreting the law. Consequently, I do not believe that Judge Pryor should be confirmed to a lifetime appointment on the Eleventh Circuit Court of Appeals.

Before President Bush's recess appointment of William Pryor to the Eleventh Circuit in February 2004, Pryor had not been a judge. As a result, he lacks a record as a sitting judge through which his judicial temperament and impartiality may be examined. Consequently, one must look to Judge Pryor's actions and statements throughout his career.

In his career, Judge Pryor has primarily been a politician, and considering the vehemence with which he has advocated his political views, I have serious concerns that he can set aside those views and apply the law in an independent, non-partisan fashion.

First, I want to be very clear about one thing. My objection to confirming Judge Pryor to a lifetime seat on the Eleventh Circuit Court of Appeals has nothing to do with Judge Pryor's personal religious beliefs.

There are those who have been spreading the false statement that some Democrats vote against judicial nominees because of a nominee's religious beliefs. And that has been said about me. The majority leader even had on his Web site a newspaper column that says I voted against Judge Pryor because of his religious beliefs.

So I went back and I took a look at my statement on the floor, and I took a look at my statement in the Judiciary Committee markup, and they are both clear that my concerns with Judge Pryor have nothing to do with his religious beliefs. As I stated before this body in July of 2003:

Many of us have concerns about nominees sent to the Senate who feel so very strongly and sometimes stridently and often intemperately about certain political beliefs, and who make intemperate statements about those beliefs.

So we raise questions about whether those nominees can truly be impartial, particularly when the law conflicts with those beliefs.

It is true that abortion rights can often be at the center of these questions. As a result, accusations have been leveled that, at any time reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice.

But pro-choice Democrats on the Judiciary Committee have voted for many nominees who are anti-choice and who believe that abortion should be illegal—some of whom may . . . have been Catholic. I do not know, because I have never inquired.

So this is truly not about religion. This is about confirming judges who can be impartial and fair in the administration of justice.

Before the Judiciary Committee, I said of Judge Pryor that, "I think his

faith speaks favorably to his nomination and to his commitment to moral values, which I have no problem with. I would like people in the judiciary with positive and strong moral values."

I am troubled that legitimate and serious concerns over Judge Pryor and other nominees have been brushed aside, and instead it is said that we on this side are trying to make a case against people of faith. That simply is not true.

Thomas Jefferson wrote of the establishment clause of the first amendment, "I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and state."

The Supreme Court has written that "the most important of all aspects of religious freedom in this country is that of the separation of church and state."

It is because the separation of church and state ensures religious freedom, that some of Judge Pryor's actions and statements concern me.

There are those who have minority-held religious views. There are those who have majority-held religious views. But one of the beautiful things about America is that it is a pluralistic society and that the government has stayed out of religion. The founding fathers, looking at the history of Europe, recognized the sectarian strife and religious oppression that can arise from favoring one religion over another. They came here and they founded a government where there was to be a distinct line drawn between government and religion, and it has served this country well.

So when people confuse arguments that are made to support the separation of religion and government with an opposition to people of faith, they could not be more wrong. And I think this has to be made increasingly clear. We've all seen the inflammatory ads. We've all heard the commercials.

I hope that a more responsible tone will be struck, because the value of the separation between church and state is based on the fact that once that bright line is broken, what one has to grapple with is which religion do you put in the courtroom? Which religion do you allow to be celebrated in a governmental framework?

If the separation of church and state, that has been a part of this nation since its founding, is abolished, these become very real and very disturbing questions.

Accordingly, I am extremely concerned by Judge Pryor's actions and statements promoting the erosion of the division between church and state.

As deputy attorney general and attorney general of Alabama, Judge Pryor vigorously defended the display of a statue of the Ten Commandments

in the Alabama supreme court. However, when questioned about whether it would be constitutional to display religious artifacts or symbols from other religions in the court room, Pryor was noticeably silent.

According to an April 4, 1997 Associated Press account, Pryor said that "the State has no position on whether the Alabama supreme court Chief Judge's right to pray and have a religious display in his courtroom extends to people of other faiths." That Judge Pryor did not take that opportunity to make clear that all religions are equal before our courts is distressing.

Also while Deputy Attorney General, Judge Pryor defended the Alabama supreme court Chief Judge's practice of having Christian clergymen give prayers when jurors first assembled in his courtroom for a trial. Judge Pryor sought to have an Alabama trial judge declare this practice constitutional under the U.S. and Alabama constitutions. The trial judge ruled against Pryor, concluding that the prayer was unconstitutional.

The judge cited the Chief Judge's own statements that "acknowledged that through prayer in his court, he is promoting religion." Pryor's decision to pursue this case despite the Chief Justice's own admission that the prayer was intended to promote religion—thereby violating the establishment clause of the Constitution—is perplexing.

It is imperative that our judges—particularly judges on our Courts of Appeals—respect and follow the law, especially the Constitution. I do not believe that a lawyer with Judge Pryor's record of consistent attacks on the establishment clause and the separation of church and state enshrined therein should be given a lifetime appointment to the Eleventh Circuit.

Another concern I have with Judge Pryor is the extreme positions he has advocated regarding a woman's right to choose. I have voted for numerous anti-choice judicial nominees. However, Judge Pryor's positions are beyond the mainstream even of those who oppose the right to choose. Furthermore, his incendiary remarks on the subject demonstrate not only a lack of appropriate judicial temperament, but a lack of respect for the Supreme Court.

Judge Pryor opposes abortion even in cases of rape and incest and supports an exception only where a woman's life is endangered. He has called *Roe v. Wade* "the worst abomination of constitutional law in our history," and said, "I will never forget January 22, 1973, the day seven members of our highest court ripped the Constitution and ripped out the life of millions of unborn children."

As attorney general of Alabama, Judge Pryor called *Roe* and *Miranda v. Arizona*, the well known Supreme Court decision requiring that criminal defendants be informed of their right to remain silent, "the worst examples

of judicial activism." This depth of hostility to the established precedent of the Supreme Court is disquieting in an appellate court nominee.

At his confirmation hearing, Judge Pryor had the opportunity to clarify or step back from these inflammatory remarks. Nevertheless, he stood by his statement that *Roe* is the "worst abomination of constitutional law in our history"—worse than *Plessy v. Ferguson*, the decision upholding segregation, the *Dred Scott* decision, which denied citizenship and court access to all slaves and their descendants, or the *Korematsu* case, validating the government's internment of Japanese citizens during World War II.

That a nominee for a court just below the Supreme Court believes that an existing precedent of the Supreme Court protecting a woman's right to choose is worse than long discredited decisions denying blacks citizenship or permitting segregation is deeply disturbing and out of line with the last hundred years of American jurisprudence.

In statements addressing the scope of Federal Government, Judge Pryor has promoted a role so limited that the Federal Government would be forced to abdicate many of its central responsibilities. For example, he has stated that Congress "should not be in the business of public education nor the control of street crime."

I do not believe that the Federal Government should ignore critical matters like education and crime, and neither do most Americans. However, my larger concern is not that Judge Pryor's position is contrary to my viewpoint or even that it is contrary to the views of most Americans, but that it is contrary to binding Supreme Court precedent establishing the breadth of the Federal Government's powers.

This extremely limited view of the role of Federal Government is reflected in the positions Judge Pryor has taken on a number of important issues.

Testifying before the Judiciary Committee as attorney general of Alabama in 1997, Judge Pryor urged the repeal of Section 5 of the Voting Rights Act, calling it an "affront to federalism, and an expensive burden that has far outlived its usefulness."

Section 5 of the Voting Rights Act requires any changes in voting laws in states with a specific history of voting discrimination to be pre-cleared by the Justice Department or the Federal District Court in Washington, D.C. to ensure they have no discriminatory purpose or effect. In this way, Section 5 of the Voting Rights Act has been a critical tool in guaranteeing the voting rights of minorities.

Today, Section 5 of the Voting Rights Act continues to ensure voting rights. In the last ten years, Section 5 of the Voting Rights Act has been applied in more than a half-dozen states to ensure that districts are not redrawn to intentionally dilute minority votes and that polling places are

not moved for the primary purpose of discouraging minority voting.

Judge Pryor's strong criticism of this important safeguard of civil rights, particularly on federalism grounds—meaning he believes that the Federal Government has no right to intervene, even where a citizen's right to vote is threatened—concerns me.

One of Judge Pryor's legacies as attorney general of Alabama is his effort to weaken and undermine the Americans with Disabilities Act, passed in 1990 to protect the rights of the disabled. For example, in *Tennessee v. Lane*, Pryor, then attorney general of Alabama, submitted an amicus brief seeking to deny a disabled defendant access to his own trial.

Pryor argued that the constitutional guarantees of equal protection and due process "do not require a State to provide unassisted access to public buildings" and even took the extraordinary position that there is no absolute right for a defendant to be present at his own criminal trial, stating that "even as to parties in legal proceedings, there is no absolute right to attendance." The Supreme Court rejected these extreme positions advocated by Pryor.

Pryor's repeated attempts to use judicial means to undo the legislation protecting basic civil rights raise questions about both his willingness to protect individual's civil rights and his propensity to judicial activism—using the courts as a partisan vehicle to undo legislation he does not support.

Supporters of Judge Pryor's nomination point to his brief record as a recess appointee to the Eleventh Circuit as evidence of Judge Pryor's ability to set aside his strong political views. While Judge Pryor, in his short tenure on the Eleventh Circuit has not authored any particularly controversial opinions, decisions he has written addressed what are largely technical and uncontroversial legal issues.

Judge Pryor's brief stint as a recess appointee may or may not offer a representative preview of the opinions he would render as a lifetime member of the Eleventh Circuit.

Ultimately, my concern is that Judge Pryor does not display the dispassionate, independent view that we want from our judges. While in private practice, Pryor's commitment to the Republican Party apparently interfered with his representation of clients. Valstene Stabler, a partner at the Birmingham firm of Walston, Stabler, Wells, Anderson & Baines, described Pryor as being "so interested in what the Republican Party was doing in the state, he was having trouble devoting attention to his private clients."

A Washington Post editorial observed that:

Mr. Pryor's speeches display a disturbingly politicized view of the role of the courts. He has suggested that impeachment is an appropriate remedy for judges who "repeatedly and recklessly . . . overturn popular will and . . . rewrite constitutional law." And he talks publicly about judging in the vulgarly political terms of the current judicial culture

war. He concluded one speech, for example, with the following prayer: "Please, God, no more Souters" a reference to the betrayal many conservatives feel at the honorable career of Supreme Court Justice David H. Souter.

Republicans who have worked with Judge Pryor have voiced concerns over his ability to be an independent, non-partisan judge. Grant Woods, the former Republican attorney general of Arizona said that "he would have great question of whether Mr. Pryor has an ability to be non-partisan. I would say he was probably the most doctrinaire and most partisan of any attorney general I dealt with in 8 years. So I think people would be wise to question whether or not he's the right person to be non-partisan on the bench."

A judge must be able to set aside his views and apply the law evenly and fairly to all. Mr. Pryor's intemperate legal and political beliefs, and his strident statements and actions in furtherance of those beliefs, have led me to question whether he can be truly impartial.

Aside from his brief tenure on the Eleventh Circuit as a recess appointee, Judge Pryor has no judicial record upon which to evaluate him. Consequently, we must consider his fitness for the Eleventh Circuit on the basis of his actions and statements as deputy attorney general and attorney general of Alabama. Looking back on this highly partisan and controversial tenure, I cannot vote for Judge Pryor's confirmation to a lifetime appointment on the Eleventh Circuit Court of Appeals.

Mr. KOHL. Mr. President, I rise today to express my continued opposition to the nomination of William Pryor to be a judge on the Eleventh Circuit Court of Appeals. Judge Pryor's record was extensively considered and examined by the Senate when he was first nominated for this position in 2003. After he failed to obtain confirmation, President Bush used a recess appointment to appoint him to the Eleventh Circuit, an appointment that will expire at the end of the year, and now has renominated him to a permanent seat on the court. I find no reason today to alter my earlier conclusion that his record of extremism makes clear that he falls far outside the mainstream, and that I have no choice but to vote against his confirmation.

When considering a nominee to a Federal court judgeship, we consider many things. The nominee should possess exemplary legal skills, judgment, and acumen. The nominee should be learned in the law. And the nominee should be well regarded among his peers, and in his or her community. Perhaps most important of all is the nominee's judicial temperament.

An appeals court judge's solemn duty and paramount obligation is to do justice fairly, impartially and without favor. An appeals court judge must be judicious—that is, he or she must be open minded, must be willing to set his

personal preferences aside, and judge without predisposition. And, of course, he or she must follow controlling precedent faithfully, and be able to disregard completely any views he or she holds to the contrary.

In the case of Judge Pryor, we are presented with a nominee whose views are so extreme that he fails this basic test. In case after case, and on issue after issue, Judge Pryor compiled a public record as Alabama's attorney general of taking the most extreme positions, often at odds with controlling Supreme Court precedent, and in the most hard-line and inflexible manner.

Judge Pryor's views are outside of the mainstream on issues affecting civil rights, women's rights, disability rights, religious freedom, and the right to privacy. During his confirmation hearings at the Judiciary Committee 2 years ago, he assured us that despite these views, he would follow settled law and Supreme Court precedent. But he made this promise only after making extreme statements to the Committee and during his hearing and refusing to disavow other zealous positions that he has taken throughout his career. I concluded then—and do not believe differently now—that I had no basis to believe Judge Pryor could put his personal views aside and apply the law of the land as decided by the Supreme Court.

Judge Pryor's supporters argue that his record in the year since he has sat as a judge on the Eleventh Circuit as a recess appointee demonstrates that he is worthy of confirmation. Yet, in each of the decisions that his supporters rely on for this judgment, Judge Pryor joined unanimous panels in supporting results virtually mandated by controlling precedent. Much more relevant than Judge Pryor's short and temporary tenure on the Eleventh Circuit is his record during all the years of his professional career prior to his recess appointment, especially his seven years of service as Alabama's attorney general, as well as his testimony before our committee in 2003.

And his record of extremism and ideologically motivated decision making during his years as attorney general could not be more clear. While attorney general of Alabama, Judge Pryor actively sought out cases where he could expand on his cramped view of federalism and challenge the ability of the Federal Government to remedy discriminatory practices. Many of the cases in which he took his most extreme legal positions were on behalf of the State of Alabama where he had the sole decision under State law as to what legal position to assert. These cases include his assertion of federalism claims to defeat provisions of the Age Discrimination in Employment Act and the Americans With Disabilities Act; his opposition to Congress's authority to provide victims of gender-motivated violence to sue their attackers in federal court; his argument that Congress exceeded its au-

thority in passing the Family and Medical Leave Act; and many other cases. The extreme legal positions advanced in these cases were fully and entirely the responsibility of this nominee while he served as Alabama's attorney general.

Of course, Judge Pryor has every right to hold his views, whether we agree with him or not. He can run for office and serve in the legislative or executive branches should he convince a majority of his fellow Alabamians that he is fit to represent them. But he has no right to be a federal appeals court judge. Only those who we are convinced are impartial, unbiased, fair, and whose only guiding ideology is to follow the Constitution to apply equal justice to all are fit for this position. Unfortunately, we can have no confidence that he will set these views aside and faithfully follow the Constitution and binding precedent. For these reasons, I must oppose his confirmation.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 3:15 until 3:30 shall be under the control of the Democrats, and the time from 3:30 until 3:45 shall be under the control of the Democratic leader.

The Senator from Nevada.

Mr. REID. Mr. President, the time I have left over from the 15 minutes that is from 3:30 to 3:45 I will leave to Senator LEAHY. I am going to use part of his time now.

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

Mr. REID. Mr. President, I rise to express my strong opposition to the nomination of William Pryor to the Eleventh Circuit Court of Appeals.

At the outset, let me note the unusual fact that we are considering whether to confirm this nominee to a court on which he has been sitting for over a year as a recess appointee. In my view) this nomination is entitled to no special deference as a result of the nominee's status as a sitting federal judge.

There are serious constitutional questions about the validity of Mr. Pryor's recess appointment, and his confirmation at this time does not answer those questions with regard to cases heard by this or other recess appointees. Nor should it embolden President Bush to continue the questionable practice of appointing judges without the advice and consent of the Senate.

I oppose this nominee because his views on a wide range of vital issues are far outside the mainstream of legal thought, and I question his ability to put those views aside to decide cases impartially.

I said during the floor debate yesterday that Janice Rogers Brown is President Bush's most objectionable nominee. But I want to be clear: on the critical issue of civil rights, William Pryor holds views that are equally offensive as those of Justice Brown. The Pryor nomination deserves to be defeated just as the Brown nomination deserved to be defeated.



Any analysis of Mr. Pryor's judicial philosophy should begin with his views on federalism. This nominee has been a self-styled leader of the so-called federalism revolution conservative legal circles, a movement that challenges the authority of Congress to remedy civil rights violations.

Now, I am certainly thankful that the Framers of the Constitution had the wisdom to create a Federal system that divided power between the national and State governments. But for Mr. Pryor, the word "federalism" is more than that—it is a code word or a systematic effort to undermine important Federal protections for the disabled, the aged, women, minorities, labor, and the environment.

While attorney general of Alabama, Pryor told a Federalist Society conference that Congress:

should not be in the business of public education nor the control of street crimes . . . With real federalism, Congress would . . . make free trade its main domestic concern. Congress would not be allowed to subvert the commerce clause to regulate crime, education, land use, family relations, or social policy . . .

One proponent of the federalism movement is Michael Greve, a conservative scholar at the American Enterprise Institute. Greve told the New York Times that:

what is really needed here is a fundamental intellectual assault on the entire New Deal edifice.

Greve said he thinks this attack on the New Deal will get a good hearing from judges like William Pryor. Greve says of Pryor:

[he] is the key to this puzzle; there's nobody like him.

Let's look at some of the bedrock laws that Mr. Pryor has challenged under the banner of federalism. Mr. Pryor has argued that the Federal courts should narrow, or throw out entirely, all or portions of the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Civil Rights Act, the Clean Water Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Violence Against Women Act, and the Voting Rights Act.

What would America look like if this federalist revolution were to take hold in the Federal courts? University of Chicago Law Professor Cass Sunstein describes it well:

Many decisions of the Federal Communications Commission, the Environmental Protection Agency, the Occupational Safety and Health Administration and possibly the National Labor Relations Board would be unconstitutional. It would mean that the Social Security Act would not only be under political but also constitutional stress . . . the Securities and Exchange Commission and maybe even the Federal Reserve would be in trouble. Some applications of the Endangered Species Act and Clean Water Act would be struck down as beyond Congress's commerce power.

As attorney general of Alabama, Pryor had the sole power to decide what legal action the State and its

agencies would take, and he used that power to file "friend of the court" briefs attacking many of these statutes. In fact, Alabama was the only State to file a brief against the Violence Against Women Act, while 36 States submitted briefs in support of the statute—which had passed Congress with bipartisan support.

With regard to the Voting Rights Act, Mr. Pryor had the following to say when he testified before Congress in 1997:

I encourage you to consider seriously, for example, the repeal or amendment of section 5 of the Voting Rights Act, which is an affront to federalism and an expensive burden that has far outlived its usefulness, and consider modifying other provisions of the Act that have led to extraordinary abuses of judicial power.

The Voting Rights Act is still of vital importance, and section 5 is one of its most important sections. I have grave concerns that if Mr. Pryor cannot understand the continuing need for voting rights protections for minorities, he is unlikely to rigorously enforce the act in cases before the Circuit. This is especially important since all of the States within the circuit are covered, in whole or in part, by Section 5.

Mr. Pryor has waged an assault on other civil rights laws. In the case of *Alexander v. Sandoval*, Pryor filed a brief for Alabama which urged the Court to drastically restrict title VI of the Civil Rights Act, which bars discrimination in federally funded programs. In a 5-to-4 opinion written by Justice Scalia, the Supreme Court agreed with Pryor and held that there is no private right of action to enforce title VI regulations. This ruling was a dramatic setback for the civil rights movement and continues to impede the enforcement of civil rights laws.

While five Supreme Court Justices agreed with Pryor about title VI, his outside-the-mainstream views have often been rejected by the current conservative Supreme Court. In fact, the Court unanimously rejected three of Mr. Pryor's federalism arguments: that sovereign immunity applies not only to States but to counties; that the Americans with Disabilities Act does not apply to State prisons; and that a law barring a State from selling the personal information of its citizens without permission is unconstitutional.

It is no wonder that the *Atlanta-Journal Constitution*, in an editorial entitled "Right-wing Zealot is Unfit to Judge," wrote that Mr. Pryor's nomination:

is an affront to the basic premise that a candidate for the federal bench must exhibit respect for established constitutional principles and individual liberties. Pryor may be a good lawyer and a faithful Republican, but his lifelong extremism disqualifies him for a federal judgeship.

And there is more.

There is Mr. Pryor's view of the equal protection clause, which led him to oppose a 7-to-1 ruling by the Supreme Court that opened the Virginia Military Institute, a State-funded uni-

versity, to women. Predictably, Mr. Pryor called that case an example of the Supreme Court being "both anti-democratic and insensitive to federalism."

There is Mr. Pryor's contempt for what he called the "so-called wall of separation between church and state" and his belief that this important doctrine was created by "errors of case law." In fact, Mr. Pryor remarked at a graduation ceremony that "the challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective."

There is his view of the Constitution's prohibition on cruel and unusual punishment. The Supreme Court—which has not exactly been liberal on this issue—rejected Mr. Pryor's argument that prison guards could handcuff prisoners to a hitching post in the Alabama sun and deny them bathroom breaks or water. It also rejected his argument that it is permissible to execute the mentally retarded. It also rejected his argument that counsel need not be provided to indigent defendants charged with a misdemeanor that carries a jail sentence.

Is this the kind of judge we want to confirm to a lifetime seat on a Federal appellate court?

Do we want a judge who, when the Supreme Court questioned the constitutionality of Alabama's use of the electric chair in 2000, lashed out at the Court by saying "[T]his issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court"?

Do we want a judge who, on the day after the Supreme Court's final ruling in *Bush v. Gore*, said:

I'm probably the only one who wanted it 5-4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.

On another occasion he said:

Please God, no more Souters.

This kind of temperament served Pryor well as a Republican politician, but this doesn't represent the kind of judicial temperament we want on the Federal bench.

The Senate must exercise its advice and consent responsibility with great care. In fact, we should follow Mr. Pryor's own advice. He once told a Senate subcommittee that:

your role of advice and consent in judicial nominations cannot be overstated.

I agree with him on that point. For these reasons, I urge my colleagues to withhold the in consent to this very unacceptable nomination.

Mr. President, I apologize to my friend. Since he was not here, I used my time a little early. So the record is clear, my friend is the great Senator PAT LEAHY from Vermont.

Mr. LEAHY. I thank the Senator.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, how much time is available?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont has such time until 3:45 remaining.

Mr. LEAHY. I appreciate that.

Mr. President, last month 80 American service men and women died in Iraq, along with more than 700 Iraqis. This week, there are reports that the Army National Guard and the Marines are not meeting their recruitment goals, in spite of the bonuses and benefits being offered. The price of gasoline, prescription drugs, health care, and so many essentials for American working families are rising a lot faster than their wages. This week, the Washington Times reported that the rate of increase in the Consumer Price Index doubled in the last year. This week, we have learned that General Motors has planned to lay off another 25,000 workers and that other companies are not expanding or are, even worse, downsizing. The report of only 78,000 jobs created last month puts us back to the dismal levels that have characterized so many months during this administration. A loss of our manufacturing jobs continues at a steady drip. Millions are suffering and dying in Africa. The British Prime Minister visited to urge greater efforts to help.

But, of course, we debated none of these issues in the Senate. The Republican leadership continued to force us to expend our precious days debating something else. And what is that? The Senate's time has been focused not on these things that touch the pocketbooks of Americans but almost exclusively on this administration's divisive and contentious judicial nominees.

Over the last several months, and for many days and weeks over the last few years, the work of the Senate has been laid aside by the Republican leadership to force debate after debate on divisive nominations, on people who are going to be paid almost \$200,000 a year in lifetime jobs. Those who are barely able to make their week's rent or their month's mortgage ask what we are doing in the Senate.

Among the matters the Senate has neglected this week in order to devote its attention to these nominations are many issues that concern the American people. One matter is the consideration and passage of the NOPEC bill. It is bipartisan legislation. It affects all Americans, Republicans and Democrats. Senator DEWINE, a Republican of Ohio, Senator KOHL, a Democrat of Wisconsin, are key sponsors. The sponsors of the bill include Senator GRASSLEY, Senator SPECTER, Senator COBURN, and Senator SNOWE.

With an increase in gasoline prices of almost 50 percent during the four years

of the Bush Presidency, with Americans having to pay so much more to drive to work, to get their kids to school, just to get around to conduct the daily business of their lives, the Republican leadership of the Senate is ignoring this substantial burden on American working families.

This week, the national average price for a gallon of regular gasoline was \$2.12. When the President took office, it was \$1.46. We just heard reports that in Vermont and New Hampshire home heating oil prices will be up another 30 percent this fall and winter.

The artificial pricing scheme enforced by OPEC affects all of us, and it is especially tough on our hard-working Vermont farmers. Rising energy expenses can add thousands of dollars a year to the costs of operating a 100-head dairy operation, a price that could mean the difference between keeping the family business alive for another generation or shutting it down.

With summer coming, many families are going to find that OPEC has put an expensive crimp in their vacation plans. Some are likely to stay home; others will pay more to drive or to fly so that they can visit their families or take their well-deserved vacations.

Americans deserve better. If the White House is not going to intervene, then Congress has to act. It is past time—it is past the time—for holding hands and exchanging kisses with Saudi princes, princes who have artificially inflated the price of gasoline. The President's jawboning with his close friends in Saudi Arabia has proven unsuccessful. It is time to act, but the Senate, under Republican leadership, is choosing instead to revisit another extreme judicial nomination, one that has already been considered.

The production quota set by OPEC continues to take a debilitating toll on our economy, our families, our businesses, industry, and farmers. Last year and again earlier this year, the Judiciary Committee voted to report favorably to the full Senate the bipartisan NOPEC bill, which is short for No Oil Producing and Exporting Cartels Act. Our legislation would apply America's antitrust laws to OPEC's anti-competitive cartel. It would prohibit foreign states from working together to limit production and set prices, restrain the trading of petroleum and natural gas, when such actions affect the United States. It would give the Department of Justice and the Federal Trade Commission authority to enforce the law through antitrust actions in Federal courts.

Why not give the Justice Department clear authority to use our antitrust laws against the anti-competitive, anti-consumer conduct in which the OPEC cartel is engaged here in the United States?

This bipartisan bill was reported by the Judiciary Committee more than a year ago, in April of last year. It was reintroduced this year and reported,

again, in April of this year. It has been stalled on the Senate Business Calendar for too long. It is a bipartisan initiative that could help in the fight to reduce gasoline prices now and heating oil prices in the fall and winter. It deserves a vote. Why not have an up or down vote on this measure without further delay by the Republican leadership? Why can't we do that when we have seen gasoline go from \$1.46 to \$2.12 in this President's administration? No, instead we spend weeks and months, not passing legislation that would win the support of a majority of Republicans and Democrats, but talking about a handful of people who are going to get lifetime, well-paid jobs.

Another consequence of the Republican leadership's fixation on carrying out this President's attempt to pack the Federal courts with activist jurists may be much-needed asbestos compensation reform. For more than 3 years, I have been working on asbestos reform to provide compensation to asbestos victims in a fair and more expedited fashion. Chairman SPECTER and I have worked closely on S. 852, the FAIR Act. It, too, is pending on the Senate Business Calendar, even though it was voted out in a bipartisan effort last month.

Chairman SPECTER deserves enormous credit for this achievement, even though we were slowed significantly by the extensive debate on contentious nominees and the nuclear option the past few months. We have been working in good faith to achieve a bipartisan legislative process on this issue. We have done so, despite criticism from the left and the right. In fact, after the bill was successfully reported by the committee, Senator HATCH called it the most important measure the Senate would consider this year for the American economy. Are we debating it on the floor? No. We are debating a handful of right-wing activist judges for lifetime, highly paid jobs.

There are many items that need prompt attention. The Armed Services Committee completed its work on the Department of Defense authorization bill. But we are seeing the Republican leadership delay action on the Defense authorization bill at a time when we have so many of our men and women under arms overseas. I don't know why they are doing it, unless it is to allow more activist judges to come through. At a time when we have young men and women serving their country around the world, and we are talking about the recently recommended base closings, I would have thought the Defense authorization would be more of a priority than three or four activist judges.

The Senate Energy Committee successfully completed its consideration of an Energy bill, and it was reported to the Senate with a strong bipartisan majority. Despite its balance and a bipartisan vote, the Senate Republican leadership said, no, we can't talk about it. We have to talk about a couple more right-wing activist judges.

Another matter that deserves timely attention is the Stem Cell Research Enhancement Act which was just passed by the House of Representatives. It is another bipartisan effort that deserves our attention. It had 200 House sponsors, led by Congressman CASTLE and Congresswoman DEGETTE. It passed with 238 votes. It is critically important. It authorizes work on embryonic stem cells which otherwise would be discarded, work which holds great promise and hope for those families suffering from debilitating disease and injury. More effective treatments for Parkinson's, Alzheimer's disease, diabetes, for spinal cord injuries, for many other diseases are all possibilities. Why are we not debating that? We have three or four more activist right-wing judgeships for lifetime, highly paid positions. That is far more important than stem cell research.

While the administration continues to talk about its efforts to weaken Social Security, there is bipartisan legislation we should be considering, the Social Security Fairness Act. Are we going to talk about that? No. Will we talk about the fact that the administration is raiding the Social Security fund to pay for their war in Iraq? That is something they don't want to talk about. They want to talk about Social Security failing, but they don't talk about the fact that they have to take the money out of the Social Security fund to pay for the war in Iraq. We can't talk about the Social Security Fairness Act here on the floor because we have to take the time for three or four more right-wing activist judges.

The bill I talked about is a bill that Republican and Democratic Senators have cosponsored over the years to protect the Social Security retirement of police officers. Those on the front lines protecting all of us from crime and violence should not see their Social Security benefits reduced. That needs fixing. We could have done that easily this week. But, no, we can't protect our police officers. Instead, we will make sure that a handful of right-wing activist judges get highly paid lifetime jobs.

These are merely examples of some of the business matters the Republican majority of the Senate has cast aside to force more debate on more contentious nominees. The Senate could be making significant legislative progress on an agenda that would result in much-needed and tangible relief to the American people on a number of important fronts. We could be acting to lower gas prices, authorize actions against illegal cartels, make asbestos compensation efficient and effective, authorize vital scientific research, provide fairness to police officers and to make health care more affordable, create new and better jobs and give our veterans and their families the support they need and deserve. Instead, the Republican leadership of the Senate continues its narrow focus on helping this Administration pack the federal courts with extreme nominees.

For more than four years, we have seen the Republican congressional leadership and the administration ignore the problems of Americans with a single-minded effort to pack and control the Federal courts. Unemployment, gas prices, the number of uninsured, the Nation's budget, the trade deficit were all lower when President Bush assumed office. Through Republican Senate obstruction of more than 60 of President Clinton's moderate and qualified judicial nominees, more than 60 of President Clinton's nominees who were subjected to a pocket filibuster by Republicans, judicial vacancies went up. But let's take a look.

Since President Bush came in, what are the things that have gone up? Unemployment has gone up 21 percent. Since President Bush came in, what has gone up? The budget deficit has gone up. It has gone from a \$236 billion surplus under President Clinton to a \$427 billion deficit under President Bush—\$663 billion down the rat hole. What else has gone up? The price of gas has gone from \$1.42 to \$2.10. That is not helping the average American. Let's take a look at the trade deficit. It has gone up from \$36 billion to \$55 billion. How about the percentage of the uninsured? That has gone up another 10 percent.

But the full-time, highly paid positions of judgeships is the one thing that has come down. Judicial vacancies have come down 49 percent.

It seems that is far more important than seeing projected trillions of dollars in surpluses go to trillions of dollars in projected deficits, far more important than the problem we create when we allow the Saudis, the Chinese, the South Koreans, the Japanese, and others to pay our bills but then be able to manipulate our economy. It seems wrong.

We helped the President confirm a record number of his judges, but we Democrats would like to see us talk about the people who are out of work, the price of gasoline, the huge deficits that have been created by this presidency.

We know that yesterday the Senate confirmed Janice Rogers Brown to the Court of Appeals for the D.C. Circuit, despite the fact she is a divisive and controversial nominee. She was opposed by both her home State Senators because she had a record so extreme it marked her as one of the most activist judicial nominees ever chosen by any President.

In the past, when both Senators from a nominee's State opposed them, the person, even if highly qualified, would be turned down. In this case, we have somebody who is not qualified, an activist judge opposed by both of her State's Senators, who still passed. I mention that because I remember Justice Ronnie White, now the first African American to serve as Chief Justice of the Missouri Supreme Court. When the two Senators from his home State, Republican Senators, said they were

opposed to him, what happened? In 1999, every Republican Senator came on to the floor and voted down Justice Ronnie White, even though he had been voted out of the Judiciary Committee with heavy support. They said: Whoops, he may be this distinguished African-American jurist from Missouri. But we have two Senators from his State who oppose him so we will vote him down. And they did.

But yesterday, what a difference. What a difference if you have a Republican in the White House. Those same Republican Senators, joined by new Republican Senators, the same Republican Senators who told me, "We know that Justice Ronnie White is well qualified, but, after all, we have to follow the fact that the two Senators from his State say they don't want him, so we have to vote him down," those same Senators come up here and meekly come in, in lockstep, and vote for Judge Brown, even though the two home-state Senators, for very good reasons, opposed her.

Last week, all but one Republican Senator voted to confirm Priscilla Owen.

Yesterday's vote on the Brown nomination apparently indicates Republican Party discipline has been restored. For all the talk about profiles in courage and Senators voting their conscience, the Republican majority has reduced the Senate to a rubberstamp of this President's extreme and activist nominees. Even though Senators will tell you privately they would vote against this person if it was secret ballot, the White House tells them what to do.

William Pryor has argued that Federal courts should cut back on the protections of important and well-supported Federal laws, including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, the Family and Medical Leave Act. That should be enough to vote against him, but it won't be, not with this rubberstamp. He has repudiated decades of legal precedents that permitted individuals to sue States to prevent violations of Federal civil rights regulations. Is that going to cause us to vote him down? Heck no.

His aggressive involvement in the Federalist revolution shows he is a goals-oriented activist who has used his official position to advance his cause. While his advocacy is a sign to most people of the extremism, he trumpets his involvement. He is unabashedly proud of his repeated work to limit congressional authority to promote the health, safety, and welfare of all Americans.

His passion is not some obscure legal theory but a legal crusade that has driven his actions since he was a student and something that guides his actions as a lawyer. His speeches and his testimony before Congress demonstrate just how rooted his views are, how much he wants to effect a fundamental change in this country.

Just remember this: These judicial nominees are being confirmed for life. They do not leave or get reconsidered after the congressional elections next year or after this administration ends. They serve as lifetime appointments to the Federal court.

It is one thing for us to ignore all the things we should be doing for the American people, but I urge all Senators, on both sides of the aisle, to end this up-or-down rubberstamp, fulfill the Senate's constitutionally mandated duty to evaluate with clear eyes the fitness of judicial nominees, even President Bush's nominees, when they are for lifetime appointments. Stop telling me privately how you would vote if it was a secret ballot. Have the courage to vote in an open ballot the same way.

In the last Congress, following one of the most divisive debates I have seen on the floor of the Senate, I explained why I felt strongly about voting against the nomination of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit—in committee and in two unsuccessful cloture attempts. The President disregarded the advice given to him by the Senators opposing this nomination, and he installed Mr. Pryor as a recess-appointed judge on the Eleventh Circuit where he will serve until the end of this year. Today, because the President continues to insist on pushing his most divisive nominees in a group that he renominated to the Senate, we are here voting yet one more time on this nomination.

I expect some will try to point to the few cases he has worked on during his time "auditioning" on the circuit court as evidence that he should be confirmed. But nothing Judge Pryor has done in the intervening period has changed my view that based on his entire career and record, if he were to receive life tenure on the Federal bench, he would put ideology above the law. I cannot support him.

In the course of their march toward the "nuclear option"—a development thankfully averted—the President and the Republican leadership escalated the rhetoric surrounding this issue in alarming ways. The majority leader last month participated in a telecast smearing opponents of the most extreme judicial nominees as "against people of faith." Arrayed behind the podium at that gathering were photos of the filibustered nominees, and speaker after speaker accused Democrats of opposing nominees such as Judge Pryor because of his faith. These are baseless and despicable accusations, and it is time the Republican leadership and other Republicans in and out of the Senate disavow them.

Senate Democrats do not oppose William Pryor because of his faith. We oppose the nomination of William Pryor to the Eleventh Circuit because of his extreme—some, with good reason, use the word "radical"—ideas about what the Constitution says about federalism, criminal justice and the death penalty,

violence against women, the Americans with Disabilities Act, and the Government's ability to protect the environment on behalf of the American people. Of course, those substantive concerns will not do much to advance Republicans' political ambitions and the agendas of polarizing interest groups. So some Republican partisans are putting the truth to one side. They dismiss the views of Democratic Senators doing their duty under the Constitution to examine the fitness of every nominee to a lifetime position on the Federal bench and choose, instead, to use smears and accusations.

The last time Judge Pryor came before this committee and the Senate, slanderous accusations were made by Republican Senators, and scurrilous newspaper advertisements were run by a group headed by the President's father's former White House counsel and a group whose funding includes money raised by Republican Senators and even by the President's family. Other Republican members of the Judiciary Committee and of the Senate stood mute in the face of these McCarthyite charges, or, worse, fed the flames. Now, the same type of rhetoric—identifying opponents as against faith—has again reared its ugly head.

This kind of religious smear campaign hurts the whole country. It hurts Christians and non-Christians. It hurts all of us, because the Constitution requires judges to apply the law, not their personal views. Remember that all of us, no matter what our faith—and I am proud of mine—are able to practice our religion as we choose or not to practice a religion. That is a fundamental guarantee of our Constitution. The Constitution's prohibition against a "religious test" in Article VI is consistent with that fundamental freedom. I hope that Republican Senators will debate this nomination absent the scurrilous charges that marked it the past and the discourse during the "nuclear option" last month.

Instead, the Senate's debate should center on the nominee's qualifications for this lifetime post in the Federal judiciary. There is an abundance of substantive and compelling reasons why William Pryor should not be a judge on the Eleventh Circuit. Opposition to Judge Pryor's nomination is shared by a wide spectrum of objective observers. Judge Pryor's record is so out of the mainstream that a vast number of editorial boards and others have weighed in with significant opposition.

Even The Washington Post, which has been exceedingly generous to the Administration's efforts to pack the courts, has termed Judge Pryor "unfit" and consistently opposed his nomination. In Alabama, both the Tuscaloosa News and the Hunstville Times wrote against the nomination. Other editorial boards across the country have spoken out, including the Atlanta Journal-Constitution, the Pittsburgh Post-Gazette, The New York Times,

the Charleston Gazette, the Arizona Daily Star, and The Los Angeles Times.

We have also heard from a large number of organizations and individuals concerned about justice before the federal courts. The Log Cabin Republicans, the Leadership Conference on Civil Rights, the AFL-CIO, the National Partnership for Women and Families and many others have provided the Committee with their concerns and the basis for their opposition. We have received letters of opposition from organizations that rarely take positions on nominations but feel so strongly about this one that they are compelled to publicly oppose it, including the National Senior Citizens' Law Center, the Anti-Defamation League and the Sierra Club.

The ABA's evaluation also indicates concern about this nomination. Their Standing Committee on the Federal Judiciary gave Mr. Pryor a partial rating of "not qualified" to sit on the Federal bench. Of course this is not the first "not qualified" rating or partial "not qualified" rating that this administration's judicial nominees have received. More than two dozen of President Bush's nominees have received indications of concerns about their qualifications from the ABA's peer reviews, which have been less exacting and much more accommodating to this administration than to previous ones. I would note that this softer treatment follows the changes in the process imposed by the Bush administration.

Judge Pryor has long been a leader of the federalist movement, promoting State power over the Federal Government. A leading proponent of what he refers to as the "federalism revolution," Judge Pryor seeks to revitalize state power at the expense of Federal protections, seeking opportunities to attack Federal laws and programs designed to guarantee civil rights protections. He has urged that Federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited. Not long ago, in a New York Times Magazine article about the so-called "Constitution-in-Exile" movement, Michael Greve, was quoted as saying, "Bill Pryor is the key to this puzzle; there's nobody like him. I think he's sensational. He gets almost all of it." That is precisely why he should not be confirmed.

William Pryor has argued that the Federal courts should cut back on the protections of important and well-supported Federal laws including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, and the Family and Medical Leave Act. He has repudiated decades of legal precedents that permitted individuals to sue states to prevent violations of Federal civil rights regulations. His aggressive involvement in this "federalist revolution" shows that he is a goal-oriented, activist conservative who has used his official position

to advance his "cause." Alabama was the only state to file an amicus brief arguing that Congress lacked authority to enforce the Clean Water Act. He argued that the Constitution's commerce clause does not grant the Federal Government authority to prevent destruction of waters and wetlands that serve as a critical habitat for migratory birds. The Supreme Court did not adopt his narrow view of the commerce clause powers of Congress. While his advocacy in this case is a sign to most people of the extremism, he trumpets his involvement in this case. He is unabashedly proud of his repeated work to limit congressional authority to promote the health, safety and welfare of all Americans.

His passion is not some obscure legal theory but a legal crusade that has driven his actions since he was a student and something that guides his actions as a lawyer. His speeches and testimony before Congress demonstrate just how rooted his views are, how much he seeks to effect a fundamental change in the country, and how far outside the mainstream he is.

Judge Pryor is candid about the fact that his view of federalism is different from the current operation of the Federal Government—and that he is on a mission to change the government to fit his vision. His goal is to continue to limit Congress's authority to enact laws under the Fourteenth Amendment and the commerce clause—laws that protect women, ethnic and racial minorities, senior citizens, the disabled, and the environment—in the name of sovereign immunity. Is there any question that he will pursue his agenda as a judge on the Eleventh Circuit Court of Appeals reversing equal rights progress and affecting the lives of millions of Americans for decades to come?

Judge Pryor's comments have revealed insensitivity to the barriers that disadvantaged persons and members of minority groups and women continue to face in the criminal justice system. This is what is at stake for Americans, the consumers of our justice system. This is the type of judge this President and this Republican leadership are intent on permanently installing in our justice system.

In testimony before Congress, William Pryor has urged repeal of Section 5 of the Voting Rights Act—the centerpiece of that landmark statute—because, he says, it "is an affront to federalism and an expensive burden that has far outlived its usefulness." That testimony demonstrates that Judge Pryor is more concerned with preventing an "affront" to the States' dignity than with guaranteeing all citizens the right to cast an equal vote. It also reflects a long-discredited view of the Voting Rights Act. Since the enactment of the statute in 1965, every Supreme Court case to address the question has rejected the claim that Section 5 is an "affront" to our system of federalism. Whether under Earl War-

ren, Warren Burger, or William Rehnquist, the United States Supreme Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy not a "burden" that has "outlived its usefulness."

His strong views against providing counsel and fair procedures for death row inmates have led William Pryor to doomsday predictions about the modest reforms in the Innocence Protection Act that would create a system to ensure competent counsel in death penalty cases. When the United States Supreme Court questioned the constitutionality of Alabama's method of execution in 2000, William Pryor lashed out at the Supreme Court, saying: "[T]his issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court." Aside from the obvious disrespect this comment shows for the Nation's highest court, it shows again how results-oriented Judge Pryor is in his approach to the law and to the Constitution. Of course an issue about cruel and unusual punishment ought to be decided by the Supreme Court. It is addressed in the Eighth Amendment, and whether or not we agree on the ruling, it is an elementary principle of constitutional law that it be decided by the Supreme Court, no matter how old its members.

Judge Pryor has also vigorously opposed an exemption for persons with mental retardation from receiving the death penalty, exhibiting more certainty than understanding or sober reflection. He authored an amicus curiae brief to the Supreme Court arguing that the Court should not declare that executing mentally retarded persons violated the Eighth Amendment. After losing on that issue, Judge Pryor made an unsuccessful argument to the Eleventh Circuit that an Alabama death-row defendant is not mentally retarded.

Judge Pryor has spoken harshly about the moratorium imposed by former Illinois Governor George Ryan, calling it a "spectacle." Can someone so dismissive of evidence that challenges his views be expected to hear these cases fairly? Over the last few years, many prominent Americans have begun raising concerns about the death penalty including current and former supporters of capital punishment. For example, Justice O'Connor recently said there were "serious questions" about whether the death penalty is fairly administered in the United States, and added: "[T]he system may well be allowing some innocent defendants to be executed." In response to this uncertainty, Judge Pryor offers us nothing but his obstinate view that there is no problem with the application of the death penalty. This is a position that is not likely to afford a fair hearing to a defendant on death row.

Judge Pryor's troubling views on the criminal justice system are not limited

to capital punishment. He has advocated that counsel need not be provided to indigent defendants charged with an offense that carries a sentence of imprisonment if the offense is classified as a misdemeanor. The Supreme Court nonetheless ruled that it was a violation of the Sixth Amendment to impose a sentence that included a possibility of imprisonment if indigent persons were not afforded counsel.

Judge Pryor is overwhelmingly hostile to a woman's right to choose. There is every indication from his record and statements that he is committed to reversing *Roe v. Wade*. Judge Pryor describes the Supreme Court's decision in *Roe v. Wade* as the creation "out of thin air [of] a constitutional right," and opposes abortion even in cases of rape or incest.

Judge Pryor does not believe *Roe* is sound law, neither does he give credence to *Planned Parenthood v. Casey*. He has said that "*Roe* is not constitutional law," and that in *Casey*, "the court preserved the worst abomination of constitutional law in our history." When Judge Pryor appeared before the Committee, he repeated the mantra suggested by White House coaches that he would "follow the law." But his willingness to circumvent established Supreme Court precedent that protects fundamental privacy rights seems much more likely.

Judge Pryor has expressed his opposition to fair treatment of all people regardless of their sexual orientation. The positions he took in a brief he filed in the Supreme Court case of *Lawrence v. Texas* were entirely repudiated by the Supreme Court majority two years ago when it declared that: "The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private conduct a crime." Judge Pryor's view is the opposite. He would deny certain Americans the equal protection of the laws, and would subject the most private of their behaviors to public regulation.

Capping Judge Pryor's record of extreme activism were sworn statements made by former Alabama Governor Fob James and his son, both Republicans, explaining that Judge Pryor was only chosen by James to be the State's Attorney General after promising that he would defy court orders, up through and including orders of the Supreme Court of the United States. In sworn affidavits, Governor James and his son recount how Pryor persuaded them he was right for the job by showing them research papers he had supervised in law school about "nonacquiescence" to court orders. Indeed, under penalty of perjury, the former Republican Governor and his son say that Judge Pryor's position on defying court orders changed only when he decided he wanted to be a Federal judge.

If true, this information, consistent with the activism and extremism present elsewhere in Judge Pryor's record, is revealing. To think that this

man would come before the Senate after having made a promise like that—to undermine the very basis of our legal system—and ask to be confirmed to a lifetime position on the Federal bench, is beyond belief.

Indeed, William Pryor's activism has often transcended judicial philosophy and entered the realm of pure partisan politics to the point where it appeared political concerns openly affected his legal views. As Attorney General of Alabama, Pryor was one of the founders of the Republican Attorneys General Association, or RAGA, an organization which raised money from corporations for Republican candidates for state Attorney General positions. Before RAGA was founded, Attorney General candidates usually shied away from corporate fundraising because of the potential for conflicts of interest with an Attorney General's duty to go after any corporate wrongdoing.

But William Pryor not only ignored the tradition of keeping Attorney General's races above politics, he embraced with both hands the mixing of law and politics. He spoke out, vocally and often, against state attorneys general bringing aggressive cases against the tobacco industry, the gun industry, and other corporate interests. And then RAGA, Pryor's organization, raised money for attorney general campaigns from these very industries and others like them that hoped to avoid lawsuits and prosecution. Pryor's philosophy of opposing mainstream government regulation of corporations advanced his politics and his organization's fundraising, and his political interests in turn informed his pro-corporation legal philosophy. Curiously, when asked about RAGA at his hearing, Mr. PRYOR could remember very little about the organization or his role in it.

His partisan, political worldview colors the way he thinks about the role of the courts as well. He ended one speech with the prayer, "Please God, no more Souters!"—a slap at a Supreme Court Justice seen by some as insufficiently conservative. And he said he was pleased the Court's vote in *Bush v. Gore* was a 5-4 split because that vote would give President Bush "a full appreciation of the judiciary and judicial selection;" in other words, it would show the president that he needed to appoint partisan conservatives to the bench. These are the sentiments of an activist and a politician. They are not the considered deliberations that all of us, as Republican or Democrat would expect from an impartial judge.

On a full slate of issues—the environment, voting rights, women's rights, gay rights, federalism, and more—William Pryor's record of activism and advocacy is clear. That is his right as an American citizen, but it does not make him qualified to be a judge. As a judge, it is his duty impartially to hear and weigh the evidence and to impart just and fair decisions to all who come before the court. In their hands, we entrust to the judges in our independent

Federal judiciary the rights that all of us are entitled to enjoy through our birthright as Americans.

Judge Pryor's time on the Eleventh Circuit brings out the very problem with recess appointments of controversial judges. The Constitution sets out that Article III judges receive lifetime appointments precisely so that they can be independent. Judge Pryor, in contrast, cannot be independent during the pendency of his recess appointment because he is dependent on the Senate for confirmation to a lifetime position. He is, in essence, trying out for the job. Accordingly, the opinions he writes while temporarily on the court are not much of a predictor for what he would do if he did receive a lifetime appointment and became truly independent.

What is a good predictor for what he would do as a permanent Eleventh Circuit judge? Quite simply, his actions and statements in the many years of his professional life before he was appointed provide the best insight. And these actions and statements paint a clear and consistent picture of a judicial activist whose extreme views place him far outside the mainstream. A year of self-serving restraint does little to alter this picture.

The President has said he is against what he calls "judicial activism." How ironic, then, that he has chosen several of the most committed and opinionated judicial activists ever to be nominated to our courts.

The question posed by this controversial nomination is not whether Judge Pryor is a skilled and capable politician and advocate. He certainly is. The question is whether—not for a two-year term but for a lifetime—he would be a fair and impartial judge. Could every person whose rights or whose life, liberty or livelihood were at issue before his court, have faith in being fairly heard? Could every person rightly have faith in receiving a just verdict, a verdict not swayed by or yoked to the legal philosophy of a self-described legal crusader? To see Judge Pryor's record and his extreme views about the law is to see the stark answer to that question.

I oppose giving Judge Pryor a lifetime appointment to the Eleventh Circuit where he can impose his radical activist vision on the many people whose lives and disputes come before him. I believe the President owes them a nominee who can unite the American people.

Mr. President, I believe my time has expired.

The ACTING PRESIDENT pro tempore. The Senator is correct.

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

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

The legislative clerk proceeded to call the roll.

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

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

Under the previous order, the time until 4 o'clock is under the control of the majority leader.

The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, it is a great honor for me to stand in this great Senate Chamber to share a few thoughts about my friend, one of the best lawyers I have ever known, now Judge Bill Pryor, serving on the Eleventh Circuit Court of Appeals, to speak in favor of his confirmation.

He is principled. He is highly intelligent. He is committed to doing the right thing. He has won the support, respect, friendship, and admiration of people on both sides of the aisle—African Americans, Whites, Democrats—throughout our State of Alabama. He has virtually unanimous support among those groups, and he has earned that by his principled approach to being attorney general, his love and respect for the law, his courageous commitment to doing the right thing.

He has views about the law and public policy in America, and he expresses those, but he absolutely understands that there is a difference between advocacy and being on a bench and having to judge, that you are not then an advocate, you are a referee, you are a judge, a person who is supposed to fairly and objectively decide how the dispute should be settled. He understands that totally. That is true with most good lawyers in America, but I think he understands it more than even most good lawyers. Most good lawyers have been good advocates, and they have become good judges. Certainly we understand that.

Criticism has been raised against him that is painful to me. I think much of it is a result of misinformation. For example, my colleague from Iowa, who is such a champion of the disabled, always is a champion of the interests of the disabled, suggested that Bill Pryor is not a believer in rights for the disabled because in a disabilities act that was passed by this Congress it allowed people to sue their employers for back pay, for injunction, and for damages if they were wronged by an employer. But the Congress never thought at that time what it meant if it involved a State.

Three percent of the people in Alabama work for the State of Alabama. He understood, as a skilled constitutional lawyer, that the Congress would have then undertaken, if the law was to be interpreted so that damages could be rendered against the State, to wipe out the doctrine of sovereign immunity. That is a doctrine that prohibits States from being sued for money damages. He said, yes, the employee can get the job back, yes, the employee can receive back pay if they were discriminated in any way as a result of that disability, but they cannot, in a case against the State of Alabama or any State, get money damages because that violates the constitutional principle of sovereign immunity.



He took that to the Supreme Court and won. Nobody in Alabama or anywhere else who knows anything about disabilities would think this represented an action by him to harm the disabled. It was simply to clarify this important principle as to what power the Congress has under these kinds of legislation to wipe out the traditional historic right of a State under sovereign immunity.

That is how these issues become confused. That is what hurts me about this debate process. So often nominees are accused of things based on results or maybe outcome of any one given case, and they are said to be against poor people or against education or against the disabled.

I will offer for the RECORD an editorial from the Mobile Press that totally analyzes the complaints and allegations that were raised by Senator KENNEDY about fundraising for the Attorney Generals Association. It completely refutes those allegations. We had a full look at it. I think everybody who was involved in the Judiciary Committee and the staff people who made lots of phone calls found there was absolutely nothing to show any wrongdoing.

How do we decide what a good person is or a good nominee is? I do not know. You may know them and respect them personally. You have seen their integrity and their courage in trying to do the right thing daily. What do others say who may have a different political philosophy? Let me read a letter from Alvin Holmes, a member of the State House of Alabama.

I see the majority leader here. I will be willing to yield to him or take a couple minutes, if he allows me.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, we will start voting about 4. If I can start in a couple minutes, that will be good.

Mr. SESSIONS. Mr. President, I will state what Representative Alvin Holmes said. He is an African American. He starts off saying:

Please accept this as my full support and endorsement of Alabama's Attorney General Bill Pryor to the United States Court of Appeals for the 11th Circuit.

I am a black member of the Alabama House of Representatives having serving for 28 years. During my service . . . I have led most of the fights for civil rights of blacks, women, lesbians and gays and other minorities.

He lists seven different points where Attorney General Bill Pryor has stood up for minority rights and African-American rights in the State, including a mentor program where he for 3 years worked every week reading as a tutor to Black children.

He goes on to note a number of points. He finally concludes this way:

Finally, as one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Lu-

ther King's SCLC, as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his yard by the KKK . . . as one who has lived under constant threats day in and day out because of his [stands] . . . I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

Bill Pryor has the support of every Democratic official in the State, the top African-American leaders, the people of Alabama. They know him and respect him to an extraordinary degree.

I am pleased to now yield the floor. I see the majority leader is here.

The PRESIDING OFFICER (Mr. CORNYN). The majority leader.

Mr. FRIST. Mr. President, I thank my distinguished colleague from Alabama for his leadership. I mentioned to him yesterday it was just a few weeks ago that it was uncertain whether we would ever reach this moment—about 3½ weeks ago and I remember the conversation. We committed to have an up-or-down vote, whatever it took. Indeed, I am delighted to say that in a few moments we will vote up or down on William Pryor's nomination to serve on the Eleventh Circuit Court of Appeals. This body will be allowed that opportunity to give Judge Pryor what he deserves, and that is the respect of an up-or-down vote.

He was first nominated to the Federal bench on April 9, 2003, over 2 years ago. So it has been a long time coming. That wait is almost over. It will be over in about 6 or 7 minutes. The partisan charges and obstruction leveled against him are going to be brought to a close. Soon William Pryor will get the fairness and the respect he deserves with that vote.

Judge Pryor's experience and achievements in the legal profession have prepared him well to serve on the Federal bench. He graduated magna cum laude from Tulane University School of Law where he served as editor in chief of the Law Review.

He began his legal career as a law clerk for a legendary civil rights advocate, the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit.

While practicing law at two of Alabama's most prestigious firms, Judge Pryor also taught several years as adjunct professor at Samford University's Cumberland School of Law.

Later he served as deputy attorney general and then attorney general of Alabama. As attorney general, he was overwhelmingly reelected by the people of Alabama in 2002.

Two years later, President Bush, in 2004, recess appointed Judge Pryor to the Eleventh Circuit. During this time, Judge Pryor has served with distinction. While on the appellate bench, many of Judge Pryor's opinions have been supported by judges appointed by both Democrats and Republicans.

But this should not come as a surprise. His rulings as a Federal judge are

entirely consistent with his past record. William Pryor believes in interpretation of the law, not rewriting the law according to his own political views.

He has an outstanding record on civil rights. Dr. Joe Reed, chairman of the African-American caucus for Alabama's Democratic Conference, said of Judge Pryor: He "will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him."

Many other prominent African-American leaders have submitted letters of support for Judge Pryor praising him for his commitment to upholding civil rights and equality for all Americans. It is simple. Those who criticize Judge Pryor's record have not examined it with the care and respect that every nominee's record deserves.

His record consistently proves his unwavering dedication to the protection of individual liberties and his commitment to treating all people fairly.

Further, those who study his record, as I have, know that Judge Pryor understands and appreciates the obligation of the judiciary branch to interpret the law, not to write the law. He stated in his hearing before the Judiciary Committee the following:

I understand my obligation to follow the law, and I have a record of doing it. You don't have to take my word that I will follow the law. You can look at my record as Attorney General and see where I have done it.

It has been over 2 years since the President sent William Pryor's nomination to the Senate. In that time, he has endured a hearing before the Senate Judiciary Committee lasting 4 hours where he answered over 185 questions.

Judge Pryor answered another 45 written questions from Senators and submitted over 26 pages in response.

On two separate occasions, his nomination has been favorably voted out of the Judiciary Committee, consuming another 4 hours of debate.

Two times his nomination has come to the Senate floor for a cloture vote, and twice the motion to invoke cloture failed because of partisan obstruction.

But that day is over. During the last 2 days, we have continued to debate the nomination of Judge Pryor, and now it is time to give him that long overdue vote. With the confirmation of Justice Owen and Justice Brown, and the upcoming vote on Judge Pryor, the Senate does continue to make good progress, placing principle before partisan politics and results before rhetoric.

I hope and I know we will continue working together. As the debate on judicial nominees has shown, we can disagree on whether individual nominees deserve confirmation, but we can all agree on the principle that each nominee deserves a fair up-or-down vote.

I urge my colleagues to join me in supporting the confirmation of Judge William H. Pryor.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Under the previous order, the hour of 4 o'clock having arrived, the question is, Will the Senate advise and consent to the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit? The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

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

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

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 133 Ex.]

#### YEAS—53

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

#### NAYS—45

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

#### NOT VOTING—2

Jeffords Murkowski

The nomination was confirmed.

The PRESIDING OFFICER (Mr. CHAFEE). The President will be immediately notified of the Senate's action.

#### NOMINATION OF RICHARD A. GRIFFIN TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

#### NOMINATION OF DAVID W. McKEAGUE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. The clerk will report the next two nominations en bloc.

The assistant legislative clerk read the nominations of Richard A. Griffin, of Michigan, to be United States Cir-

cuit Judge for the Sixth Circuit, and David W. McKeague, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise this afternoon in support of the nominations of Judge David McKeague and Judge Richard Griffin to the Sixth Circuit Court.

For some time now, Senator LEVIN and I have been proposing the Senate move forward on these nominees as part of a good-faith effort for us to be working together in a bipartisan way in the Senate. I am pleased we are now to vote on the nomination of Judge Griffin and Judge McKeague as a result of the bipartisan agreement to move forward and stop what was called the nuclear option, which would have eliminated the checks and balances in the Senate. It is my hope this bipartisan agreement will help restore comity and civility in our very important Chamber.

I will say a few words about these two nominees. Judge Richard Griffin is a lifelong resident of Michigan. He would be the first nominee to the Sixth Circuit from Traverse City, MI. He has had a distinguished career both as an attorney and as a State appeals judge. He has served on the Michigan Court of Appeals for over 16 years and has been rated as "well-qualified" by the American Bar Association.

Judge David McKeague is also a lifelong resident of Michigan. He would be the first nominee from my home of Lansing, MI, to the Sixth Circuit. Judge McKeague has also had a distinguished career as an attorney, a law professor, and a Federal judge. He served on the U.S. District Court for the Western District of Michigan for over 12 years and has been rated "well-qualified" by the American Bar Association.

I urge my colleagues to join me and Senator LEVIN in supporting the nomination of Judge Griffin and Judge McKeague. It is important for us to move forward.

I hope confirming the Sixth Circuit nominees before the Senate will help restore comity and civility to the judicial nominations process. We have a constitutional obligation to advise and consent on Federal judicial nominees. This is a responsibility I take extremely seriously, as I know my colleagues do on both sides of the aisle. These are not decisions that will affect our courts for three or four years, but for 30 or 40 years, making it even more important for the Senate not to act as a rubberstamp.

This is the third branch of government and it is important we move forward in a positive way and be able to work with the White House on nominees who will reflect balance and reflect a mainstream approach for our independent judiciary.

I hope the White House will begin working with the Senate in a more bi-

partisan and inclusive manner on judicial nominations. I look forward to working with the White House on any future Michigan nominees since it is absolutely critical we work together in filling these positions.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Michigan.

Mr. LEVIN. Mr. President, I am supporting the two nominations before the Senate.

With today's confirmation of William Pryor, 211 of 218 of President Bush's judicial nominees have been confirmed. After Richard Griffin's and David McKeague's upcoming confirmation, 213 of 218 of President Bush's nominees will have been confirmed. What a contrast to the way that President Clinton's nominees were treated. More than 60 of President Clinton's nominees never received a vote in the Judiciary Committee. In the battles over judicial nominations that have consumed this body in recent years, the way those nominees were treated stands out as uniquely unfair. Even then-White House Counsel Alberto Gonzales acknowledged that treatment of President Clinton's nominees was "inexcusable."

For the last 4 years of the Clinton Presidency, there were Michigan vacancies on the Sixth Circuit court. The Republican majority refused to hold hearings in the Judiciary Committee on Clinton nominations for those vacancies. Indeed, one of those nominees waited longer for a hearing in the Senate Judiciary Committee than any nominee in American history had—a hearing she ultimately never received.

Her nomination was held up for some time by former Senator Spencer Abraham in an attempt to secure the nomination of his preferred candidate to a second position. Then, the seats were kept vacant because the majority hoped that a Republican would be elected President and would put forward his nominees for those vacancies. When President Bush came to office, he not only filled positions which should have been filled by nominees of President Clinton, his nominees were allowed to go forward even over the objections of their home state senators.

Today, we will confirm two of President Bush's Michigan nominees to the Sixth Circuit Court. They should be confirmed and I will vote for them. In deciding to move on, we should not excuse the treatment of President Clinton's nominees or the refusal of President Bush to adopt a bipartisan solution to the acknowledged wrong. A brief history of the Michigan vacancies on the Sixth Circuit will also hopefully prevent a recurrence of the tactic which was used against Clinton nominees—denial of a hearing in the Judiciary Committee, year after year—not just in the last year of a presidential term but in the years before the last year of a presidential term.

Michigan Court of Appeals Judge Helene White was nominated to fill a