Pollution Act of 1990, OPA 90, as well as the mechanism for providing funding for the cleanup of oil spills.

That mechanism, known as the Oil Spill Liability Trust Fund, is now in danger. In a recent report to Congress, the United States Coast Guard predicted that the Fund will run out of money before 2009. Given the recent spate of costly spills around the country, it may run out sooner. We simply cannot allow this to happen. The fund provides a critically important safety net. It aids the cleanup of oil spills and provides compensation to those harmed, particularly where no responsible party is identified or the responsible parties have insufficient resources.

Since the passage of OPA 90, we have significantly reduced the number and volume of oil spills in the U.S. Unfortunately, thousands of gallons of oil continue to be spilled into our waters every year, and the cost of cleanup has increased substantially. The amount of oil carried by tank vessels to and within the U.S. is predicted to increase. While we pray that we will never have another major oil spill, we must be ready to respond if necessary.

The bill introduced today would reinstate an expired fee on oil companies of 5 cents per barrel of oil. The fee, which ceased January 1, 1995, would increase the maximum principal amount of the fund from $1 billion to $3 billion, and if the fund drops below $2 billion, the fee would automatically be reinstated without the need for additional legislative action. Five cents a barrel translates to approximately $0.0011 per gallon of gas—or one eighth of one cent—and is worth about 3 cents per barrel in 1990 dollars. This is substantially less than the original rate of 5 cents.

I urge my Senate colleagues to take up this issue and pass this legislation without delay.

TAIWAN AND CHINA

Mr. CRAIG. Mr. President, in recent weeks Lien Chan of Taiwan undertook the task of meeting with key leaders in the People's Republic of China. This was no small task as the gulf between the two sides is much wider than the Strait of Formosa.

The substantive accomplishments of Chairman Lien's recent mission to mainland China surely put to rest any accusations that the event was little more than a symbolic gesture. In fact, the practical results should have a very positive impact on cross-strait trade, tourism, and culture if momentum can be maintained.

First and foremost, an essential mechanism of dialogue has been established, overcoming obstacles of politics and history. The precedent has been set. Further talks between mainland China and Taiwan should follow as a matter of course, to address a range of issues of mutual concern, provided there is enough goodwill on both sides. However, I think it is important to note that these meetings did not include elected officials of the Government of Taiwan. Although these initial talks were an important step, it is essential that future talks between Taiwan and China include the rightly elected leaders of Taiwan for there to be any real substance and hope for change.

Second, it seems that certain basic principles have been addressed that should help Taipei and Beijing re-open negotiations on an equal footing, even though they still disagree on the meaning of ''one China'' and what Taiwan's international status is. The basic concept of ending hostility and promoting cooperation has been embraced. Both sides believe it is a mistake to let small details create a deadlock forever, and that is a key principle for progress.

Third, even people who insist that all talk is meaningless unless it leads to policy changes should be able to admit that eliminating and/or reducing trade barriers on farm products, like fruit, is a concrete achievement. Both sides gain from such actions, and it sets a good example for further progress later on down the road.

Fourth, it is to be commended by any free society when a tightly controlled country like mainland China agrees to negotiate to allow its people to tour a democracy like Taiwan. Who knows what the long-term implications may be, when those who know few liberties are one day allowed to visit and see for themselves what real freedom feels and looks like.

Finally, even the most humorless critics surely must admit that ''panda bear diplomacy'' still trumps political stalemate and hostility. Critics can call it symbolism, but even symbolism has definite practical value when it lifts spirits and relaxes tensions.

History will record that this mission was blessed with genuine substance as well as great potential in building bridges where none existed before.

PRESS COLUMNS ON JUDICIAL NOMINATIONS

Mr. KYL. Mr. President, a column published recently by Lino A. Graglia in the Wall Street Journal, and another by Charles Krauthammer in the Washington Post, frame particularly well the debate we are having in the Senate on judicial nominations. I ask unanimous consent that these columns be printed in the RECORD.

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

[From the Wall Street Journal, May 24, 2005]

OUR CONSTITUTION FACES DEATH BY DUE ''PROCESS''

(By Lino A. Graglia)

The battles in Congress over the appointment of even lower court federal judges reveal a recognition that federal judges are now, to a large extent, our real lawmakers. Proposals to amend the Constitution to remove lifetime tenure for Supreme Court justices, or to require that rulings of unconstitutionality be by more than a majority (5–4) vote, do not address the source of the problem. The Constitution is very difficult to amend—probably the most difficult of any supposedly democratic government. If opponents of rule by judges secure the political power to obtain an amendment, it should be one that addresses the problem at its source, which is that contemporary constitutional law has very little to do with the Constitution.

Judge-made constitutional law is the product of judicial review—the power of judges to disallow policy choices made by other officials of government, supposedly on the ground that they are prohibited by the Constitution. Thomas Jefferson warned that judges, always eager to expand their own jurisdiction, would ''twist and shape'' the Constitution ''as an artist shapes a ball of wax.'' This is exactly what has happened.

The Constitution is a very short document, easily printed on a dozen pages. The Framers wisely meant to preclude very few policy choices that legislators, at least as committed to American principles of government as judges, would have occasion to make.

The essential irrelevance of the Constitution to contemporary constitutional law should be clear enough from the fact that the great majority of Supreme Court rulings of unconstitutionality involve state, not federal, law; and nearly all of them purport to be based on a single constitutional provision, the 14th Amendment—in fact, on only four words in one sentence of the Amendment, ''due process'' and ''equal protection.'' The 14th Amendment has to a large extent become a second constitution, replacing the original.

It does not require jurisprudential sophistication to realize that the justices do not decide controversial issues of social policy by studying those four words. No question of interpretation is involved in any of the Court's controversial constitutional rulings, because there is nothing to interpret. The states did not lose the power to regulate abortion in 1973 in Roe v. Wade because Justice Harry Blackmun discovered in the due process clause of the 14th Amendment, adopted in 1868, the purported basis of the decision, something no one noticed before. The problem is that the Supreme Court justices have made the due process and equal protection clauses empty vessels into which they can pour any meaning. This converts the clauses into simple transferences of policy-making power from elected legislators to the justices, authorizing a Court majority to remove any policy issue from the ordinary political process and assign it to themselves for decision. This fundamentally changes the system of government created by the Constitution

The basic principles of the Constitution are representative democracy, federalism and the separation of powers, which places all lawmaking power in an elected legislature with the judiciary merely applying the law to individual cases. Undemocratic and centralized lawmaking by the judiciary is the antithesis of the constitutional system.

The only justification for permitting judges to invalidate a policy choice made in the ordinary political process is that the choice is clearly prohibited by the Constitution—''clearly,'' because in a democracy the judgment of elected legislators should prevail in cases of doubt. Judicially enforced constitutionalism raises the issue, as Jefferson also pointed out, of rule of the living by the dead. But our problem is not constitutionalism but judicial activism—the invalidation by judges of policy choices not clearly (and rarely even arguably) prohibited by the Constitution. We are being ruled not by the dead but by judges all too much alive.

Because most of the Supreme Court's activist rulings of unconstitutionality purport to be based on a 14th Amendment that it has deprived of specific meaning, the problem can be very largely solved by simply restoring the 14th Amendment to its original meaning, or by giving it any specific meaning. The 14th Amendment was written after the Civil War to provide a national guarantee of basic civil rights to blacks. If a constitutional amendment could be adopted reconfining the 14th Amendment to that purpose or, better still, expanding it to a general prohibition of all official racial discrimination, the Court's free-hand remaking of domestic social policy for the nation would largely come to an end. If the justices lost the ability to invalidate state law on the basis of their political preferences, their ability and willingness to invalidate federal law on this basis would likely also diminish.

Plato argued for government by philosopher-kings, but who could argue for a system of government by lawyer-kings? No one can argue openly that leaving the final decision on issues of basic social policy to majority vote of nine lawyers—unelected and lifetenured, making policy decisions for the nation as a whole from Washington, D.C.—is an improvement on the democratic federalist system created by the Constitution. Yet that is the form of government we now have.

The claim that the Court's rulings of unconstitutionality are mandates of the Constitution, or anything more than policy preferences of a majority of the justices, is false. Rule by judges is in violation, not enforcement, of the Constitution. Ending it requires nothing more complex than insistence that the Court's rulings of unconstitutionality should be based on the Constitution—which assigns ''All legislative Power'' to Congress—in fact as well as name.

[From the Washington Post, June 10, 2005]

FROM THOMAS, ORIGINAL VIEWS

(By Charles Krauthammer)

Justice Thomas: ''Dope is cool.''

Justice Scalia: ''Let the cancer patients suffer.''

If the headline writers characterized Supreme Court decisions the way many senators and most activists and lobbying groups do, that is how they would have characterized the Supreme Court decision this week on the use of medical marijuana in California. It was ruled illegal because the federal law prohibiting it supersedes the state law permitting it. Scalia agreed with the decision. Thomas dissented.

In our current, corrupted debates about the judges, you hear only about results. Priscilla Owen, we were told (by the Alliance for Justice), ''routinely backs corporations against worker and consumer protections.'' Well, in what circumstances? In adjudicating what claims? Under what constitutional doctrine?

The real question is never what judges decide but how they decide it. The Scalia-Thomas argument was not about concern for cancer patients, the utility of medical marijuana or the latitude individuals should have regarding what they ingest.

It was about what the Constitution's commerce clause permits and, even more abstractly, who decides what the commerce clause permits. To simplify only slightly, Antonin Scalia says: Supreme Court precedent. Clarence Thomas says: the Founders, as best we can interpret their original intent.

The Scalia opinion (concurring with the majority opinion) appeals to dozens of precedents over the past 70 years under which the commerce clause was vastly expanded to allow the federal government to regulate what had, by the time of the New Deal, become a highly industrialized country with a highly nationalized economy.

Thomas's dissent refuses to bow to such 20th-century innovations. While Scalia's opinion is studded with precedents, Thomas pulls out founding-era dictionaries (plus Madison's notes from the Constitutional Convention, the Federalist Papers and the ratification debates) to understand what the word commerce meant then. And it meant only ''trade or exchange'' (as distinct from manufacture) and not, as we use the term today, economic activity in general. By this understanding, the federal government had no business whatsoever regulating privately and medicinally grown marijuana.

This is constitutional ''originalism'' in pure form. Its attractiveness is that it imposes discipline on the courts. It gives them a clear and empirically verifiable understanding of constitutional text—a finite boundary beyond which even judges with airs must not go.

And if conditions change and parts of the originalist Constitution become obsolete, amend it. Democratically. We have added 17 amendments since the Bill of Rights. Amending is not a job for judges.

The position represented by Scalia's argument in this case is less ''conservative.'' It recognizes that decades of precedent (which might have, at first, taken constitutional liberties) become so ingrained in the life of the country, and so accepted as part of the understanding of the modern Constitution, that it is simply too revolutionary, too legally and societally disruptive, to return to an original understanding long abandoned.

And there is yet another view. With Thomas's originalism at one end of the spectrum and Scalia's originalism tempered by precedent—rolling originalism, as it were—in the middle, there is a third notion, championed most explicitly by Justice Stephen Breyer, that the Constitution is a living document and that the role of the court is to interpret and reinterpret it continually in the light of new ideas and new norms.

This is what our debate about judges should be about. Instead, it constantly degenerates into arguments about results.

Two years ago, Thomas (and Scalia and William Rehnquist) dissented from the court's decision to invalidate a Texas law that criminalized sodomy. Thomas explicitly wrote, ''If I were a member of the Texas Legislature, I would vote to repeal it.'' However, since he is a judge and not a legislator, he could find no principled way to use a Constitution that is silent on this issue to strike down the law. No matter. If Thomas were nominated tomorrow for chief justice you can be sure that some liberal activists would immediately issue a news release citing Thomas's ''hostility to homosexual rights.''

And they will undoubtedly cite previous commerce clause cases—Thomas joining the majority of the court in striking down the Gun Free School Zones Act and parts of the Violence Against Women Act—to show Thomas's ''hostility to women's rights and gun-free schools.''

I hope President Bush nominates Thomas to succeed Rehnquist as chief justice, not just because honoring an originalist would be an important counterweight to the irresistible modern impulse to legislate from the bench but, perhaps more importantly, to expose the idiocy of the attacks on Thomas that will inevitably be results-oriented: hostile toward women, opposed to gun-free schools . . . and pro-marijuana?

VETERANS HEALTHCARE AND EQUITABLE ACCESS ACT OF 2005

Mr. THUNE. Mr. President, today I rise to speak on a matter of great importance, the state of care received by America's veterans. On April 28. I proudly introduced the Veterans' Healthcare and Equitable Access Act of 2005, which will honor America's veterans with the dignity and respect they have earned. This legislation was inspired by my work on the Senate Committee on Veterans' Affairs. I have had the privilege to come face to face with real heroes, like injured veterans returning from the battlefield and grieving survivors who proudly and bravely carry the memory of a fallen soldier with them as they struggle to move on. I have been moved by this experience and I offered this bill to honor their sacrifice and their struggles.

The Veterans' Healthcare and Equitable Access Act of 2005 takes a comprehensive approach to fix some of the major problems facing veterans today. Since I was a member of the House of Representatives, I have supported mandatory funding, and the legislation I have introduced underscores that commitment. The widening gap between demand for care and funding is a problem that must be faced head on and dealt with before it spirals out of control. The Veterans' Healthcare Eligibility Act and the Veterans' Millennium Healthcare Care and Benefits Act changed the nature of the VA, but did not change the manner in which the VA was funded. That is why I support mandatory funding for veterans' healthcare, so the VA can finally provide care to those who cared for us.

This bill will also end another problem that has plagued veterans in my home state for years: access to quality healthcare and equitable reimbursement for travel expenses. My legislation will allow rural veterans who are enrolled in the VA to obtain health care at local medical facilities closer to home or to travel to a VA facility and recelve travel reimbursements at the same rate as Federal employees.

The veterans population is aging and we are losing great men and women every day. Today, the GI's who fought in Vietnam are reaching the age of retirement and Medicare eligibility. It is therefore unfair to ask the VA to shoulder a cost that Medicare should help pay for. Aging veterans are seeking care at the VA because it is one of the best care providers in the country. As I see it, the VA and Medicare need to share this cost in order to provide excellent care to those who need it most.

In March, I met Major Tammy Duckworth, an Army pilot who lost both of her legs after a rocket propelled grenade hit the Black Hawk helicopter she was in while flying in the skies above Iraq. Although now a double amputee, she is determined to both walk and fly helicopters again. Major Duckworth has my full support, but needless to say her life has been changed forever. That is why the legislation I introduced would require that a service member who has lost a limb from a service-connected injury receive