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

a disability rating of not less than 50 percent. This is our way of saying thank you and helping our veterans achieve their dreams.

Some of the hardest hit victims of this war are not soldiers or veterans, but survivors of the fallen. These brave men and women need our help. This year I voted to extend survivor benefits from $12,000 to $100,000 and to extend military housing privileges from 6 months to 1 year. To complete our support for survivors, my bill will extend childcare privileges for survivors from 6 months to 2 years in any Federal childcare program, giving surviving family members the help they need to grieve, heal, and move on from a painful loss.

Mr. President, legislation such as this is not without costs and it will require the Senate to make difficult choices. Sending troops into harm's way is a difficult choice, even when that choice is clearly justifiable, like it is in Iraq and Afghanistan. But taking care of veterans and their families is not a difficult choice, it is one we must embrace. As General Omar Bradley once said: ''We are dealing with veterans, not procedure—with their problems, not ours.''

Scripture tells us there is a time for everything, a time for peace and a time for war. America is facing a time of war, and we are fighting an evil and determined enemy. We have to ensure that the men and women who are bearing the burden of this war are cared for and are confident they can count on their government in their hour of need.

I ask unanimous consent that this statement be entered into the RECORD as if read.

ADDITIONAL STATEMENTS

TRIBUTE TO THE NORTHERN KENTUCKY UNIVERSITY WOMEN'S SOFTBALL TEAM

● Mr. BUNNING. Mr. President, I pay tribute in the Senate to the Northern Kentucky University Women's Softball Team for their remarkable season and recent participation in the NCAA Division II World Series.

The NKU was the No. 1 ranked team in the country and were the NCAA Division II Great Lakes Regional Champs. The team finished the most successful season in school history with a 55–2 record. The 55 game winning streak is the longest in collegiate softball history.

The Commonwealth of Kentucky should be very proud of this team. Their example of hard work and determination should be followed by all in the Commonwealth. I want my colleagues in the Senate to know of the pride that I have in representing these athletes and their families: Sarah Newland, Jamie Patton, Becky Napier, Krystal Lewallen, Kara Lorenz, Ricki Rothbauer, Heather Cotner, Stephanie Leimbach, Michelle Logan, Angie Lindeman, Emily Breitholle, Jeni Schamp, Sarah King, Megan Owens, Rachele Vogelpohl, and Sara Becker.

Congratulations to the members of the team for their success. I also want to congratulate their coach, Kathy Stewart, along with their peers, faculty, administrators, and parents for their support and sacrifices they've made to help the NKU meet their dreams and achieve their goals.●

HONORING THE TOWN OF KENNEBEC, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, I wish today to honor and publicly recognize the 100th anniversary of the founding of the town of Kennebec, SD. Kennebec has a strong sense of past and anticipates a bright future.

Since 1924, Kennebec has been the county seat for Lyman County, located in central South Dakota. Few people lived in the area prior to the town's establishment in 1905, as it was challenging to import the supplies necessary to sustain a substantial population. In 1905, however, railroad tracks were laid through the area, thus making it significantly easier for residents to build homes and other structures, since materials no longer needed to be hauled in from surrounding towns and cities. The railroad and influx of people mark the birth of Kennebec. By 1907, Kennebec was a bustling prairie town full of diverse and eager residents.

As years passed and the town flourished, a number of businesses opened, such as the hardware store operated by Albert Williamson. In addition to running the hardware store, Williamson also edited and printed the county newspaper known as the Prairie Sun. Also around this time, Sam Abdnor built and operated a store that survives to this day as the Kennebec movie theatre. Many of my colleagues will recognize the surname ''Abdnor'' and will recall that former U.S. Senator Jim Abdnor hails from Kennebec. He served admirably as Lt. Governor, in the U.S. House of Representatives for 8 years and in this body for an additional 6 years, having never forgotten the community of Kennebec or its people.

In the town's early days, there was only a single doctor in Kennebec, and water had to be hauled by horse-drawn wagons from wells over a mile and a half to the north of the community. All other needs were met by the railroad, which delivered merchandise to the stores and shops, as well as thousands of tons of coal, which was required to heat homes in Kennebec during the long winters. Not only did the railroad allow imports into town, but it also fostered the transport of Kennebec's main exports, which included cattle, sheep and hogs.

Kennebec had no electrical power until 1914, when John Spotts of Armour, SD moved into town. Spotts bought a track of land southeast of Kennebec and built a two-story brick building with a full size basement. The upper floors provided a dance floor and silent movie theater for Kennebec residents, while the basement served as the first electric power plant in the town.

After a hundred years, Kennebec supports a population of over 280 citizens and continues to modernize and improve itself in its role to serve the farmers and ranchers throughout the region. Kennebec's proud citizens celebrate their 100th anniversary on June 18, 2005, and it is with great honor that I share with my colleagues the achievements made by this great community.●

HONORING THE CITY OF RELIANCE, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, it is with great honor that I publicly recognize the 100th anniversary of the founding of the city of Reliance, SD. It is at this time that I would like to draw your attention to and commemorate the achievements and history of this charming city on the western prairie, which stands as an enduring tribute to the moral fortitude and pioneer spirit of the earliest Dakotans.

Located in Lyman County in western South Dakota, the original town-site of Reliance was plotted in the summer of 1905 after officials decided the new railroad's route would not include the already-established towns in the area. As a result, a new town was created on the homestead of Mr. C.C. Herron in order to service the Milwaukee Railroad. This original town-site, located on the southwest quarter of Section 21, encompassed a mere eight blocks. However, several additions were made to this small city between 1905 and 1910 with the help of the Milwaukee Land Company. Today, the town is nearly one square mile in area.

Reliance's early years proved to be incredibly prosperous. The Dirks Mercantile Company, a two-story building used for general store business and public gatherings, was a central part of life in the early years of this small city. An advertisement in the Lyman County Record stated that Dirks Mercantile Company ''would buy anything you wanted to sell and sell anything you wanted to buy.''

Reliance grew rapidly and in less than a decade came to include two saloons, two blacksmith shops, two banks, two lumberyards, a livery barn, three stores, two hardware stores, one creamery, three elevators, one harness shop, one cafe, and two hotels.

Like many small agricultural communities in the area, Reliance experienced a great deal of economic prosperity in the years after World War I. In 1918, the town became the first in Lyman County to provide a 4-year accredited high school.

Today, Reliance is a popular fishing spot thanks to the dam built by the Works Project Administration (WPA) during the 1930s. The dam was heavily stocked with several species of fish and provides sportsmen with the opportunity to enjoy the recreational treasures of South Dakota.