TRIBUTE TO THE UNIVERSITY OF KENTUCKY'S COLLEGE OF PHARMACY

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to the University of Kentucky's College of Pharmacy. Today at the Kennedy Center the college is being awarded the American Pharmacists Association's 2005 Pinnacle Award to recognize the success of UK's Diabetes Education and Management program in helping Kentuckians with diabetes.

Over the past 30 years, doctors have been able to treat more and more conditions with prescription medication. While this revolution in pharmaceuticals is overwhelmingly positive, the incorrect use of medication can result in harmful side effects, ineffective treatment, and unnecessary costs. This is of particular importance in Kentucky, where citizens use significantly more prescriptions than the national average.

The UK College of Pharmacy has created a comprehensive Center for Improving Medication Related Outcomes to educate physicians, pharmacists, and consumers about the appropriate use of medication. This is something I believe in, and since 2002, I have been proud to secure $3 million in Federal funding to help the center become a leader in promoting the safe use of prescription drugs throughout the Commonwealth and the Nation.

The Diabetes Education and Management Program is an important component of the UK Center for Improving Medication Related Outcomes that focuses on diabetes control. I am proud that the UK College of Pharmacy and the Diabetes Education and Management Program have become valuable resources for our Nation's healthcare system. I ask my colleagues to join me in recognizing the University of Kentucky College of Pharmacy for their exceptional work in the field of prescription medication safety.

APOLOGY TO VICTIMS OF LYNCHING

Mr. CORZINE. Mr. President, over 4,700 people, mostly African American, were victims of lynching in the United States between 1882 and 1968. This represents one of the low points in our history as a Nation—a time when our Nation turned away from its responsibility to our fellow citizens and failed to do the right thing. We condemn these terrible crimes and ask forgiveness for the failure of the Senate to act. We are reminded that our history is not perfect and that the Senate made a costly mistake, calculated not in dollar figures but in human lives. I am deeply saddened by the fact that during a time when our commitment to justice for all Americans was tested the U.S. Senate failed to enact antilynching legislation to stop this brutal, tragic, and senseless violence. And so I join my colleagues in this apology.

It would be a mistake to see lynching as distant history for that is simply not the case. Lynching occurred in the United States until 1968 and was committed in 46 States, including New Jersey. Lynching was used to kill, humiliate, and dehumanize African Americans and, to a lesser extent, other minorities. It was intended to teach minorities a lesson—that if they did not follow the established social code of conduct between the races and classes, they too might suffer this fate. Indeed, there are countless stories of African American teenage boys who were allegedly lynched for talking back to a White man or looking at a White woman. Those acts were seen as transgressions in the eyes of lynch mobs who failed to understand one of the most central tenets of our great Nation—that we are all equal under the Constitution and laws of the United States of America.

In reality, it was not only the lynch mobs that failed to understand that we are all equal. State and local governments also failed to uphold this democratic principle. Although State and local laws prohibited murder and other violent crime, State and local officials failed to enforce these laws when they applied to lynching victims. And so lynching continued through the first half of the 20th Century as our society and government failed to hold the people who committed these crimes accountable.

Mr. President, lynching also continued because many communities implicitly sanctioned such events. We are not talking about secret affairs held under cover of darkness by men wearing hoods to hide their identity. We are talking about public spectacles held in town squares during broad day-light with no attempt by the participants to shield their identity. Indeed, there are countless stories of community celebrations surrounding lynching: of businesses closed so locals could attend, of postcards sent out commemorating these horrific events, and of souvenirs such as pieces of hanging rope sold to onlookers.

American Presidents asked the Senate, on seven separate occasions, to enact antilynching legislation to stop the violence. From 1900 to 1950, approximately 200 antilynching bills were introduced in Congress. And between 1920 and 1940, the U.S. House of Representatives passed three such bills. But the Senate remained silent and it was that silence that prevented the enactment of a Federal antilynching law.

This resolution is an acknowledgement that the Senate, in failing to pass a Federal antilynching law, ceased to protect many American citizens. While Federal legislation may not be the ideal solution in all areas of criminal justice, it has been essential in the realm of civil rights. When States have failed to enforce their own criminal laws because of local pressure or bias, the Federal Government has frequently established laws to vindicate the civil rights of all Americans.

Mr. President, I strongly believe that it is not enough for us to stand here and apologize for things that happened in the past. We must use this recognition of the Senate's past inaction to motivate us to enact laws today that protect the basic civil rights of all Americans, such as the Local Law Enforcement Act of 2005. This bill, which I am proud to cosponsor, will strengthen the ability of the Federal, State, and local governments to investigate and prosecute hate crimes based on race, ethnic background, religion, gender, sexual orientation, and disability. I urge all my colleagues to support this bill, a true test of the commitment of the Senate to do the right thing.

CHANGES TO H. CON. RES. 95

Mr. GREGG. Mr. President, section 308 of H. Con. Res. 95 the FY 2006 Budget Resolution—permits the Chairman of the Senate Budget Committee to make adjustments to the allocation of budget authority and outlays to the Senate Committee on Energy and Natural Resources, provided certain conditions are met.

Pursuant to section 308, I hereby submit the following revisions to H. Con. Res. 95:

	$ in billions
Current Allocation to Senate Energy and Natural Resources Committee:	
FY 2005 Budget Authority	5.124
FY 2005 Outlays	3.922
FY 2006 Budget Authority	4.600
FY 2006 Outlays	4.135
FY 2006–2010 Budget Authority	19.461
FY 2006–2010 Outlays	18.898
Adjustments:	
FY 2005 Budget Authority	n/a
FY 2005 Outlays	n/a
FY 2006 Budget Authority	.098
FY 2006 Outlays	.098
FY 2006–2010 Budget Authority	.740
FY 2006–2010 Outlays	.672
Revised Allocation to Senate Energy and Natural Resources Committee:	
FY 2005 Budget Authority	5.124
FY 2005 Outlays	3.922
FY 2006 Budget Authority	4.698
FY 2006 Outlays	4.233
FY 2006–2010 Budget Authority	20.201
FY 2006–2010 Outlays	19.570

JUDICIAL NOMINEES

Mr. KERRY. Mr. President, for the past several weeks, the Senate has been consumed with President Bush's judicial nominations. We have debated the constitutionality of the nuclear option, and we have debated the merits of the judicial nominees themselves. In the past 2 weeks, the Senate has confirmed 6 nominees bringing the total of confirmed judges to 214 out of 218.

I voted for two of these nominees: Richard A. Griffin and David W. McKeague, both of whom were nominated to the Court of Appeals for the Sixth Circuit. These two individuals were highly rated by the American Bar Association, and, although I disagree with their politics, I believe they will be fair and impartial jurists.

I voted against the other four nominees, none of whom I believe deserved lifetime appointments to the Federal bench. Each one has demonstrated an unwillingness to follow the law when it

conflicts with his or her extreme conservative political ideology, and each one embraces a judicial philosophy which would severely curtail constitutionally protected civil rights and civil liberties. Confirming these nominees was a mistake, and their appointments diminish the strength and integrity of the Federal judiciary.

Take, for example, Priscilla Owen. While on the Texas Supreme Court, Priscilla Owen repeatedly attempted to rewrite the law from the bench as her dissent in an abortion case concerning parental consent and judicial bypass clearly demonstrates. Justice Owen did not like the fact that the Texas law permitted abortions without parental consent in certain circumstances. As it turns out, she was not the only one. The majority did not like the law either, but, unlike Justice Owen, they honored their sworn duty to uphold it. In their words, they:

recognize that judges' personal views may inspire inflammatory and irresponsible rhetoric. Nevertheless, the [abortion] issue's highly-charged nature does not excuse judges who impose their own personal convictions into what must be a strictly legal inquiry. We might personally prefer, as citizens and parents, that a minor honor her parents' right to be involved in such a profound decision. But the Legislature has said that Doe may consent to an abortion without notifying her parents if she demonstrates that she is mature and sufficiently well informed. As judges, we cannot ignore the statute or the record before us. Whatever our personal feelings may be, we must respect the rule of law.

Then Justice—and now Attorney General—Alberto Gonzales was much more direct in his criticism of Justice Owen's decision in this matter. He chastised Owen for rewriting the Parental Notification Act in a way that created nonstatutory hurdles to obtaining a judicial by-pass. He called it ''an unconscionable act of judicial activism'' and noted that:

[a]s a judge, I hold the rights of parents to protect and guide the education, safety, health, and development of their children as one of the most important rights in our society. But I cannot rewrite the statute to make parental rights absolute, or virtually absolute, particularly when, as here, the Legislature has elected not to do so.

Entrusting Priscilla Owen with a lifetime appointment to the Court of Appeals for the Fifth Circuit did not strengthen the Federal judiciary, Mr. President, it weakened it.

Janice Rogers Brown has not only shown her willingness to re-write our Federal laws but has also indicated a desire to re-interpret the U.S. Constitution, even if doing so would reverse 70-year-old precedent. Justice Brown has publicly supported a return to the era of Lochner v. New York, one of the most discredited Supreme Court cases in history. Without going into the details, it is fair to say that even staunch conservatives view Lochner as a clear case of the worst kind of judicial activism. Justice Scalia has criticized it, stating that Lochner was discredited because it

sought to impose a particular economic philosophy on the Constitution.

Justice Brown thinks Justice Scalia is wrong. She explained, I quote, that it

dawned on me that the problem may not be judicial activism. The problem may be the world view—amounting to altered political and social consciousness—out of which judges now fashion their judicial decisions.

Justice Brown brought that same kind of activism to bear on her lone dissent in the 2001 case of San Remo Hotel v. California, when she interpreted the Constitution—in this case the Takings Clause—to advance her personal economic theories.

Placing Janice Rogers Brown on the Court of Appeals for the District of Columbia Circuit did not strengthen our Federal judiciary, Mr. President, it irreversibly damaged it.

William H. Pryor Jr. has been a constant and outspoken advocate for scaling back constitutionally guaranteed rights. Pryor opposes abortion even in cases of rape or incest, and has called Roe v. Wade a creation

out of thin air of a constitutional right to murder an unborn child.

As the attorney general of Alabama, Pryor filed an amicus brief with the Supreme Court equating private consensual sex between same-sex couples with activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia.

The Supreme Court rejected Pryor's arguments when it found the Texas law criminalizing private, consensual sexual intimacy between same-sex adults to be unconstitutional. The Supreme Court also rejected Pryor's argument, filed in another amicus brief, that the eight amendment permits the execution of mentally retarded offenders.

William Pryor's consistent pursuit of extreme and incorrect legal views should have been a red flag for my colleagues. It should have demonstrated how dangerous placing him on the Federal bench with lifetime tenure would be. Unfortunately, Mr. President, it did not. As a result, our Federal judiciary will have less ability to protect the constitutional rights we hold so dear.

Thomas B. Griffith presents a similar threat to our constitutional rights, particularly to the rights of women. As a member of the President's Commission on Opportunity and Athletics, Mr. Griffith made a radical proposal to eliminate the ''proportionality test'' in title IX cases. The proportionality test has long been used for determining compliance with title IX and requires that the school in question demonstrate that the athletic opportunities for males and females are in substantial proportion to each gender's representation in the student body of the school. As support for his proposal, Mr. Griffith stated that he was unilaterally opposed to the use of numeric formulas to evaluate title IX compliance. He added that, in his view, the proportionality test—and the use of numeric formulas—violates the equal protection clause, despite the fact that eight Circuit Courts of Appeals have rejected that very position.

Mr. Griffith's statement demonstrates a lack of respect for previous court rulings and raises questions about whether, as a judge, he would follow established precedent. In fact, the ABA has rated him partially not qualified. With legal views so clearly out of the mainstream, Mr. Griffith's confirmation seriously undermines the strength of the Federal judiciary. His confirmation is particularly problematic given the fact that his voice will be added to that of Janice Rogers Brown, both of whom have been confirmed to the D.C. Circuit.

Thus, after months of debate, we are left with a Federal judiciary less likely to protect individual rights and more likely to undermine the legal principles which Americans hold so dear. And, because we have spent so much time debating these unqualified judges, we, as U.S. Senators, have not been able to address the very real problems facing the American people. Problems like ensuring people have adequate health care and top-notch educations. Problems like securing our energy independence and providing for our Nation's military families.

Currently, 44 million Americans do not have health care, and as a result, many middle-class Americans are one doctor's bill away from bankruptcy. This is particularly troublesome given that eleven million of those uninsured are children—sons and daughters of working parents.

Our education system is terribly underfunded. Teachers are being asked to provide more with less, and, as a result, students of every age from head start to higher education—are getting sub-par educations.

Our Nation is now more dependent on foreign oil than ever before. We rely heavily on Middle East countries that do not share our values—a reliance that makes us more vulnerable every day—yet still, Americans are suffering at the pump, paying $2.12 a gallon.

Our military families, the people who are the front line in the war on terror and allow us to live life as we know, struggle unnecessarily to pay the bills and deal with lost benefits when loved ones are called to duty.

Our country has amassed record deficits, mounting debts that cede a dangerous amount of control over America's economic future to central bankers in Asia and oil cartels in the Middle East.

These are the issues that we should be debating. These are the problems that plague Americans daily. The judicial confirmation process should be quick and easy, allowing us the time we need to work on the real problems facing this great Nation. All we need is for the President to take seriously the Senate's role of providing advice and consent. We need the President to nominate more individuals like Richard A. Griffin and David W. McKeague,

principled jurists who are committed to following the law and upholding our constitutional rights, and less individuals like Priscilla Owen, Janice Rogers Brown, William Pryor, and Thomas Griffith, conservative ideologues who are not afraid to rewrite our laws to further their political agenda. I can only hope that he will do so in the future, sparing the Senate from endless hours of debate on unqualified, dangerous judges.

Thank you, Mr. President.

AGAINST RACE-BASED GOVERNMENT IN HAWAII

Mr. KYL. Mr. President, I rise today to ask unanimous consent that the following analysis of the 1993 Hawaii apology resolution, prepared by constitutional scholar Bruce Fein, be entered into the RECORD following my present remarks.

To be sure, I do not think that the nature of the events that led to the end of the Kamehameha monarchy is relevant to the question whether we should establish a race-based government in Hawaii today. I believe that America is a good and great Nation, and that all Americans should be proud to be a part of it. The United States does not deserve to have its government carved up along racial lines.

Nevertheless, proponents of racially separate government in Hawaii have advanced their arguments for S. 147, the Native Hawaiian Government Reorganization Act, in terms of history. It is thus instructive to take a close look at that history.

[The Grassroot Institute of Hawaii, Jun. 1, 2005]

HAWAII DIVIDED AGAINST ITSELF CANNOT STAND—AN ANALYSIS OF THE APOLOGY RESOLUTION

(By Bruce Fein)

THE 1993 APOLOGY RESOLUTION IS RIDDLED WITH FALSEHOODS AND MISCHARACTERIZATIONS

The Akaka Bill originated with the 1993 Apology Resolution (S.J. Res. 19) which passed Congress in 1993. Virtually every paragraph is false or misleading.

The opening paragraph declares its purpose as to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii and to offer an apology to ''Native Hawaiians'' on behalf of the United States for the event that ushered in a republican form of government and popular sovereignty, in lieu of monarchy. The apology wrongly insinuates that the overthrown 1893 government was for Native Hawaiians alone; and, that they suffered unique injuries because of the substitution of republicanism for monarchy. There never had been a race-based government since the formation of the kingdom of Hawaii in 1810, and only trivial racial distinctions in the law (but for discrimination against Japanese and Chinese immigrants). [Footnote: Minor exceptions include jury trials, membership in the nobility, and land distribution. In addition, the 1864 Constitution mandated that if the monarch died or abdicated without naming a successor, the legislature should elect a native Ali'i (Chief) to the throne.] Native Hawaiians served side-by-side with non-Native Hawaiians in the Cabinet and legislature. The 1893 overthrow did not disturb even a square inch of land owned by Native Hawaiians. If the overthrow justified an apology, it should have been equally to Native Hawaiians and non-Native Hawaiians. Both were treated virtually the same under the law by the ousted Queen Liliuokalani. Moreover, it seems preposterous to apologize for deposing a monarch to move towards a republican form of government based on the consent of the governed.

Paragraph two notes that Native Hawaiians lived in a highly organized, self sufficient, subsistent social system based on communal land tenure with a sophisticated language and culture when the first Europeans arrived in 1778. It errantly insinuates that Native Hawaiians are not permitted under the United States Constitution to practice their ancient culture. They may do so every bit as much as the Amish or other groups. They may own land collectively as joint tenants. The paragraph also misleads by omitting the facts that Hawaiian Kings, not Europeans, abolished communal land tenure and religious taboos (kapu) by decree. [See Appendix page 3 paragraphs 2, 3, 4]

Paragraph three notes that a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii. It neglects to mention that the King established the government by conquest and force of arms in contrast to the bloodless overthrow of Queen Liliuokalani. In other words, if King Kamehameha's government was legitimate, then so was the successful 1893 overthrow. [See Appendix page 2 paragraph 1]

Paragraph four notes that from 1826 until 1893, the United States recognized the Kingdom of Hawaii as an independent nation with which it concluded a series of treaties and conventions. But the paragraph neglects to note that the United States extended recognition to the government that replaced Queen Liliuokalani in 1893. It treated both governments as equally legitimate under international law, as did other relations.

Paragraph five notes the more than 100 missionaries sent by the Congregational Church to the Kingdom of Hawaii between 1820 and 1850. But the missionaries did not cause mischief. They brought education, medicine, and civilization to Native Hawaiians for which no apology is due. [See Appendix page 2 paragraphs 2, 3]

Paragraph six falsely accuses United States Minister John L. Stevens as conspiring with non-Native Hawaiians to overthrow the indigenous and lawful Government of Hawaii. The Government, as previously explained, was not ''indigenous,'' but included non-Native Hawaiians. The latter were treated identically with Native Hawaiians and shared fully in the society and governance of the kingdom. Moreover, Minister Stevens, as a meticulous Senate Foreign Relations Committee report (the ''Morgan'' report) established, remained steadfastly neutral between the contesting political forces in Hawaii in 1893. [See Appendix page 4 paragraph 1]

Paragraph seven falsely indicts Minister Stevens and naval representatives of aiding and abetting the 1893 overthrow by invading the Kingdom of Hawaii and positioning themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government. The ''Morgan'' report convincingly discredits that indictment. It demonstrated that United States forces were deployed solely to protect American citizens and property. [See Appendix page 4 paragraph 1]

Paragraph eight falsely insinuates that the overthrow of the Queen was supported only by American and European sugar planters, descendants of missionaries, and financiers. The Queen was abandoned by the majority of Hawaiian residents, including Native Hawaiians, because of her squalid plan to alter the constitution by illegal means to make the government more monarchical and less democratic. At best, the Queen was able to rally but a feeble resistance to defend her anti-constitutional plans. A Provisional Government was readily established and maintained without the threat or use of overwhelming force, in contrast to the force Kamehameha brandished to establish the Kingdom of Hawaii. [See Appendix page 1 paragraphs 1, 2, 3, 4, 5]

Paragraph nine falsely asserts that the extension of diplomatic recognition to the Provisional Government by United States Minister Stevens without the consent of the Native Hawaiian people or the lawful Government of Hawaii violated treaties and international law. The international community in general extended diplomatic recognition to the Provisional Government. That was consistent with international law, which acknowledges the right to overthrow a tyrannical government. The Provisional Government received the consent of Native Hawaiians every bit as much if not more than did King Kamehameha I in establishing the Kingdom of Hawaii by force in 1810. In addition, international law does not require the consent of an overthrown government before extending diplomatic recognition to its successor. Thus, the Dutch recognized the United States of America without the consent of Great Britain whose colonial regime had been overthrown. Similarly, the United States extended diplomatic recognition to the new government regime in the Philippines in 1986 headed by Cory Aquino without the consent of Ferdinand Marcos. Finally, sovereignty in Hawaii at the time of the 1893 overthrow resided in the Monarch, not the people. Native Hawaiian and non-Native Hawaiians alike possessed no legal right to withhold a transfer of sovereignty from Queen Liliuokalani to the Provisional Government. The Queen's own statement, reprinted in the Apology Resolution, confirms that sovereignty rested with the monarch, not the people. She neither asked nor received popular consent for yielding sovereignty to the United States. In any event, Native Hawaiians enjoyed more popular sovereignty than did non-Native Hawaiians. Accordingly, if the diplomatic recognition was wrong, both groups were equally wronged.

Paragraph ten falsely suggests that Queen Liliuokalani yielded her power to avoid bloodshed. She did so because her anti-constitutional plans had provoked popular anger or antagonism. The Queen forfeited the legitimacy necessary to sustain power. Even Cabinet members she had appointed abandoned her and advised surrender. [See Appendix page 1 paragraph 5]

The Queen's statement itself is cynical and false in many respects. She condemns the Provisional Government for acts done against the Constitution, whereas she had provoked her overthrow by embracing anti-constitutional plans for a more monarchical and less democratic government. The Queen falsely asserts that Minister Stevens had declared that United States troops would support the Provisional Government. The Minister insisted on strict United States military neutrality between contending parties. And the Queen audaciously insists that the United States should reinstall her to reign as an anti-democratic Monarch in lieu of a step towards a republican form of government, akin to Slobodan Milosevic's requesting the United States to restore him to power in Serbia after his replacement by a democratic dispensation. [See Appendix page 4 paragraph 2, 3]

Paragraph ten falsely insists that the overthrow of Queen Liliuokalani would have