Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. DEMINT), and the Senator from Mississippi (Mr. LOTT).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Maryland (Ms. MIKULSKI) is necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—96

Akaka	Dole	Martinez
Alexander	Domenici	McCain
Allard	Dorgan	McConnell
Allen	Durbin	Murkowski
Baucus	Ensign	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Frist	Pryor
Bond	Graham	Reed
Boxer	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Salazar
Burr	Hatch	Santorum
Byrd	Hutchison	Sarbanes
Cantwell	Inhofe	Schumer
Carper	Inouye	Sessions
Chafee	Isakson	Shelby
Chambliss	Jeffords	Smith
Clinton	Johnson	Snowe
Cochran	Kennedy	Specter
Coleman	Kerry	Stabenow
Collins	Kohl	Stevens
Conrad	Kyl	Sununu
Cornyn	Landrieu	Talent
Corzine	Lautenberg	Thomas
Craig	Leahy	Thune
Crapo	Levin	Vitter
Dayton	Lieberman	Voinovich
DeWine	Lincoln	Warner
Dodd	Lugar	Wyden

NAYS—1

Coburn

NOT VOTING—3

DeMint	Lott	Mikulski

The bill (H.R. 2360), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

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

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

APPOINTMENT OF CONFEREES—H.R. 2360

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendments and requests a conference with the House, and the Chair appoints the following conferees: Mr. GREGG, Mr. COCHRAN, Mr. STEVENS, Mr. SPECTER, Mr. DOMENICI, Mr. SHELBY, Mr. CRAIG, Mr. BENNETT, Mr. ALLARD, Mr. BYRD, Mr. INOUYE, Mr. LEAHY, Ms. MIKULSKI, Mr. KOHL, Mrs. MURRAY, Mr. REID of Nevada, and Mrs. FEINSTEIN.

UNANIMOUS CONSENT AGREEMENT—H.R. 3057

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 10 a.m. on Friday, tomorrow, July 15, the Senate proceed to the immediate consideration of Calendar No. 150, H.R. 3057. I further ask that the committee-reported substitute be agreed to and considered as original text for the purposes of further amendment, and that no points of order be waived by virtue of this agreement.

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

THE SUPREME COURT

Mr. CORNYN. Mr. President, I yield myself 15 minutes out of the majority time, the manager's time, to address a different subject, but one that is timely given some developments earlier today.

On July 3, the Washington Post reported that Democrats signaled that whoever the nominee to the U.S. Supreme Court is, their three likely lines of attack will be to assert that the White House did not consult sufficiently, to paint the nominee as ideologically extreme, and to finally assert that the Senate has not received sufficient documents about the candidate.

I will address the second prong of this three-prong attack. That has to do with ideology and the personal views of the nominee, or perhaps asking the nominee to predict how they would likely rule on an issue were it to come before the U.S. Supreme Court.

Over the past few days, some Members on the other side of the aisle have stated their intention to ask whomever the President nominates to the Supreme Court a series of questions on where that nominee stands on controversial political issues. For example, yesterday the senior Senator from Massachusetts said he wants to know whether the nominee supports laws related to the environment, civil rights, and abortion. The senior Senator from New York today said he wants to know what the nominee thinks about any one of a number of things, including the appropriate role of religion in government and how to balance environmental interests against energy interests. Indeed, the senior Senator from New York has said that ''every question is a legitimate question, period.'' These questions must be answered, they say, because they have a right to know what the nominee's so-called ''judicial philosophy'' is.

Let me be clear. Any one of the 100 Senators who has been elected and who serves in this Senate has a right under the First Amendment, if nowhere else, to ask any question they want. However, these statements of the last few days indicating the scope of questions that some Senators intend to ask represents something of a change of heart.

During Justice O'Connor's confirmation hearing, for example, the Senator from Massachusetts declared:

> . . . [i]t is offensive to suggest that a potential Justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential Justice must pass the litmus test of any single-interest group.

The Senator's colleagues have always agreed with him on that. And I agree with the position he took at that time, but not with the position he is taking more recently.

Also during Justice O'Connor's confirmation hearing, the senior Senator from Delaware noted:

> [w]e are not attempting to determine whether or not the nominee agrees with all of us on each and every pressing social or legal issue of the day. Indeed, if that were the test, no one would ever pass by this committee, much less the full Senate.

Similarly, the senior Senator from Vermont declared during the same hearing that:

> Republican or Democrat, a conservative or a liberal. That's not the issue. The issue is one of competence and whether she has a sense of fairness.

The question is, Why the change of heart? I submit that one potential answer is because it has been a long time since the Senate has considered a Supreme Court nominee and perhaps some need to be reminded what the role of a judge in a democracy is.

As a former judge myself, let me share a few observations with my colleagues. Put simply, judges are not politicians. Judges do not vote on cases like politicians vote on legislation. Judges do not vote for or against environmental laws because their constituents demand it or because their consciences tell them to. They are supposed to rule on cases only in accordance with the law as written by the people's representatives. If a judge disagrees with the law as written, then he or she is not supposed to substitute his or her views for the people's views. Any other approach is simply inconsistent with democratic theory, with government by the people, and with respect for the rule of law.

It is worth noting that this has not always been the case. The judicial system in England during and before the American Revolution was one where judges made the law. This is called our common law system or common law heritage. Judges made up the law as they went along, trying to divine the best rules to govern the interaction between citizens. This was a heady power, the common law-making power, to decide what policies best serve mankind.

This is not, however, the judicial system created by our Founding Fathers

or by the Federal Constitution to govern the Federal courts, including the U.S. Supreme Court.

The Founding Fathers did not believe it was consistent with democracy to allow unelected judges to make laws that govern the people. We know this for three reasons. First, we know this because the Constitution says so. The Constitution quite clearly at the very outset says ''all legislative powers''—the power to make the law—''shall be vested in [the] Congress.'' This means no power to make law is vested in our courts, even in the U.S. Supreme Court.

Second, we know this because the Framers told us explicitly this is what they had envisioned. In Federalist Paper No. 47, for example, James Madison noted:

> [W]ere the power of judging joined with the legislative, the life and liberty of the [people] would be exposed to arbitrary control, for the judge would then be the legislator.

Finally, we know this because the Supreme Court has also told us so. In 1938, in the famous case of Erie v. Tompkins, the Supreme Court declared in no uncertain terms that ''[t]here is no federal general common law.''

Judges in our Federal system do not make law, or I should say are not supposed to make law. The laws are made for them and indeed for the entire Nation by the people's representatives in the form of statutes enacted by the Congress and in the form of the Constitution that we the people have ratified to govern our affairs. These are legal texts and they are supposed to tie the hands of judges in our system. Judges in our system are not supposed to make up the law as they go along. They are simply supposed to apply the laws made by the people to the facts at hand.

If the law is to change, it is because the people are the ones who are supposed to change it, not because judges do. Federal judges, again, have no general common law-making power.

Once we remember the role of judges, unelected judges, in our democracy, it is clear why the questions some members of the body intend to propound to the President's nominees are so wrongheaded. So long as we satisfy ourselves that the President's nominee will do what the President has said he wants his nominee to do—which is to not make up the law but to simply implement the law as it has already been enacted by the people's representatives—there is simply no reason to demand answers from the nominee on particular cases. Indeed, the only possible reason a Member would ask these kinds of questions is to try to make political hay out of the nominee's personal views.

Special interest groups, in order to raise money from donors, are pressing members of this Senate to do just that. But I sincerely hope we can resist the temptation to turn the impending confirmation hearings into a political fundraising opportunity. After all, a precedent for the right way to do things exists in the confirmation of Justice Ruth Bader Ginsburg in 1993.

Prior to her service on the Federal bench, Justice Ginsburg, a distinguished jurist and liberal favorite, served as the general counsel for the American Civil Liberties Union, an organization that has championed the abolition of traditional marriage laws and challenged the validity of the Pledge of Allegiance for invoking the phrase ''One nation under God.''

Before becoming a judge, Justice Ginsburg expressed her belief that traditional marriage laws are unconstitutional and that prostitution should be a constitutional right. She had also written that the Boy Scouts and Girl Scouts are discriminatory institutions and the courts must allow the use of taxpayer funds to pay for abortions—hardly views the American people would consider mainstream.

Yet Senate Republicans and Senate Democrats alike did not try to exploit her personal views; rather, they overwhelmingly approved her nomination.

There are other reasons why it is inappropriate to demand answers to questions about particular political issues. The Founding Fathers wanted our judges to be independent from the political branches. It threatens the independence of the judiciary to parade nominees in front of this body and then to ask them to state their views on whether, for example, this body has the constitutional power to enact certain environmental and civil rights laws.

How a nominee can remain independent if his or her confirmation is conditional on whether he or she pledges to uphold legislation from this body is beyond me. A nominee could not remain independent having made such a pledge, so they should not make that pledge nor, I submit, should they be asked to make that pledge.

In addition, judges in our system are supposed to be impartial. That is why Lady Justice has always been blindfolded. It undermines a nominee's ability to remain impartial once he or she becomes a judge if he or she has already taken positions on issues that might come before him or her on the bench. For example, if we force nominees to pledge to uphold certain environmental or civil rights laws enacted by this body in order to win confirmation, how is a litigant, challenging one of those laws in court, supposed to feel when the nominee sits to hear that case? The litigant would certainly not feel as though he or she is receiving equal and open-minded justice, I can promise you that.

It is for this reason the American Bar Association has promulgated a canon of judicial ethics that prohibits a nominee from making ''pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.'' It is also why, as Justice Ginsburg has recently noted in an opinion she wrote, that, although ''how a prospective nominee for the bench would resolve particular contentious issues would certainly be of interest to the . . . Senate in the exercise of [its] confirmation power[,] . . . in accord with a longstanding norm, every member of [the Supreme] Court declined to furnish such information to the Senate.'' In other words, just because some Members may ask these questions does not mean the President's nominee should answer them. In accordance with long tradition and norms of the Senate in the confirmation process, they should not answer them.

In conclusion, Mr. President, let me say that I hope Members reconsider their intention to condition the confirmation of the President's nominees on their adherence to a particular political platform. Judges are not politicians, and we do a disservice to the judicial branch and its role in our democracy by trying to treat them as such.

Mr. President, I reserve the remainder of our time and yield the floor.

HONORING OUR ARMED FORCES

NAVY SEAL SHANE PATTON

Mr. REID. Mr. President, Boulder City, NV, lies 25 miles east of Las Vegas, near Lake Mead. The city was constructed in 1931 to serve as a home for the workers who built Hoover Dam. It has seen limited growth over the last 70 years and has never lost its smalltown feel.

Every summer, Boulder City holds a Fourth of July celebration. Like most communities, it has fireworks, parades, and barbeques. But what separates Boulder City is its people. Folks who left long ago return to Boulder City on the Fourth of July to reunite with family and friends, and to remember the freedoms that make this country great.

This year, one of Boulder City's sons did not come back. Shane Patton, a lifelong resident and 2000 graduate of Boulder City High, was killed in action last month defending our freedoms in Afghanistan. He was a Navy SEAL and a hero to us all.

I did not know Shane, but I am very familiar with his grandfather Jim and his great-uncle Charlie. We were high school rivals some 50 years ago. They played sports for Boulder City. I played for Basic High. Jim and Charlie were athletes, and we competed against each other in baseball and football.

At that time, anyone who went to Boulder City was an arch enemy of anyone who went to Basic. But eventually we mixed and had friends in common. Jim even took a roadtrip from Nevada to the Panama Canal and another to Mexico with my friend Don Wilson in the 1970s.

Shane's grandfather has a sense of adventure and a commitment to country. It rubbed off on Shane's dad J.J., who was a SEAL, and eventually on Shane, who followed in his father's footsteps by joining the Navy and becoming one of our country's elite SEALs.