

Supreme Court. Accordingly, I have reviewed the record and the commentary relative to the Samuel Alito nomination with great care and deliberation. The decision on the Alito nomination is more difficult than was the case for now Chief Justice John G. Roberts inasmuch as Judge Alito's long record raises concerns across a broad range of areas. Clearly, he would not have been my pick for the Supreme Court.

Nonetheless, I must conclude that Judge Alito possesses a high level of legal skill, is a man of solid personal integrity, and that his views fall within the mainstream of contemporary conservative jurisprudential thinking. At the conclusion of Senate floor debate, I will oppose any effort to filibuster his nomination, and I will vote to confirm Judge Alito's nomination to the Supreme Court.

While it is not the role of the Senate to "rubberstamp" any President's judicial nominations, it is also true that any President's choice deserves due deference. Judge Alito deserves the same deference that Republican Senators accorded the Supreme Court nominees of President Clinton. I am mindful that Justice Ginsberg, a former counsel to the ACLU, was confirmed with 96 Senate votes in her favor.

I do not believe that simple political ideology ought to be a deciding factor so long as the nominee's views are not significantly outside the mainstream of American legal thinking. I also believe that the judicial nomination and confirmation process in recent years has become overly politicized to the detriment of the rule of law.

I am troubled by Judge Alito's apparent views on matters such as Executive power, his past opposition to the principle of one person, one vote, and his narrow interpretation of certain civil rights laws. Even so, I cannot accept an argument that his views are so radical that the Senate is justified in denying his confirmation.

The PRESIDING OFFICER (Mr. ENSIGN). The minority's time has now expired.

Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have been asked by the majority leader to come to the floor, as manager of the proceedings, in my capacity as chairman of the Judiciary Committee, to see if we can have a vote on Judge Alito. We have informed the Democrats of our interest in having a unanimous consent, but we will not ask for one until their leader is here. He is on his way, and I will await his arrival. In the interim, the acting leader, Senator SALAZAR, is on the floor, so he can always protect their interests. But I shall not move in a way precipitously until Senator REID arrives.

I am advised we do not have any speakers for the Democrats tomorrow. We are now in the second full day of our discussion. The rules of the Senate require either that we speak or we

vote. If there are no further speakers for the proceedings, then it would be my inclination we ought to follow regular order, we ought to vote. Either we speak or we vote. So long as there is somebody to speak, there is the right of unlimited debate, as we all know, and we respect that.

This is a lifetime appointment, and it is a controversial appointment. There is no doubt about that. But if we are not going to have debate, then, in my capacity as manager, as chairman of the Judiciary Committee, it seems to me we ought to vote. We have a lot of other pressing business for the Senate.

I have just left the conference of the Republican Party where there had been a plan, months ago, to be out of town so we could make plans for the second session of this Congress. Because the nomination of Judge Alito is on the floor, we have altered those plans, I might say at considerable financial loss since reservations had been made. But our duty is to be here, and we are not complaining about that. We are here to move the business of the Senate along.

There are a number of pressing matters which we could take up tomorrow or yet today, such as the issue of appropriations of some \$2 billion for LIHEAP. That is a matter for assistance for fuel in a cold winter. It is a cold day out there today. It is cold in Pennsylvania. It is colder in Vermont. It is colder yet in Maine. We need to resolve that issue.

We also have the PATRIOT Act, which is due to expire on February 3, a week from tomorrow. That is a very important matter both for security in our law enforcement fight against terrorism and also for a balance on civil rights. And we now have a motion to reconsider the cloture vote pending before the U.S. Senate.

There have been discussions about what to do. It is my hope that we would yet approve the conference report. We face the alternative of having the PATRIOT Act expire, which no one wants. We have the suggestion made for a 4-year extension of the current PATRIOT Act which, in my view, is much less desirable than having the conference report enacted. The conference report on a new PATRIOT Act gives much more for civil rights than does the existing act. It is not as good as the Senate bill, the bill that came out unanimously from the Judiciary Committee and was passed by unanimous consent, but the conference report is a lot better than the current bill. So there are other important matters that we could address.

#### UNANIMOUS CONSENT REQUEST

Now that the distinguished Democratic leader is on the floor, on behalf of the majority leader, I ask unanimous consent that at 5:30 on Monday, January 30, the Senate proceed to a vote on the confirmation of the pending nomination of Samuel Alito.

And before the Chair rules, I would reiterate that we are prepared to de-

bate the nomination through the weekend if Senators have additional comments or have not yet delivered their statements.

Now, Mr. President, I am glad to yield to my distinguished colleague, Senator REID.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, reserving the right to object, we have seven speakers lined up this afternoon. We hope they will all show up. I am confident they will.

LIHEAP is something the distinguished majority leader and I have spoken of several times. We know it is an important issue. We have made commitments to the Senator from Maine, Senator SNOWE, and the Senator from Rhode Island, Senator REED. It is something we need to do as soon as we can.

In regard to the PATRIOT Act, I had a number of conversations, again, with the distinguished majority leader. Also, I spoke yesterday afternoon to Senator SUNUNU, who indicated he has been in conversations with the White House and is confident he is not far away from working out that matter with the other interested parties, one of whom is, of course, the chairman of the Judiciary Committee.

I also have had a number of conversations with the distinguished majority leader as to how we should move forward on the matter relating to Judge Alito, and there are a number of possibilities. I think we are at a point now where we may well enter into a unanimous consent later today. I would hope so.

Based on that, and based on the fact I have not spoken to Senator FRIST yet today—we spoke several times yesterday—I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I inquire of the distinguished Democratic leader whether there will be speakers on his side of the aisle to speak tomorrow, Friday, or Saturday, or Sunday, or Monday, if we are to remain in session without voting on this nomination?

Mr. REID. Mr. President, I am happy to respond to my friend. We will have speakers tomorrow. The weekend will be another item. We will talk about that later, whether that is necessary.

Mr. SPECTER. Mr. President, may I further inquire of the distinguished Democratic leader when his side of the aisle would be prepared to vote on the nomination?

Mr. REID. As I indicated, I have spoken to the distinguished majority leader on several occasions—not today. Yesterday we had a number of conversations, in fact into the evening last night, and I think it would be best for Senator FRIST and me to talk about this rather than now.

Mr. SPECTER. I thank the Democratic leader for those comments. But

Senator FRIST, the majority leader, has asked me to come to the floor. He is engaged now in the Republican conference and has asked me to raise these issues so we can give some idea to our colleagues. We have a lot of Senators who are standing by as to what is going to happen. We have a lot of Senators who are not standing by. Quite a few of them are overseas. Quite a few Senators are always overseas. We have more Senators overseas customarily than in the Chamber. I think that is certainly true now. We only have five Senators in the Chamber. I know we have a lot more Senators overseas. So a lot of Senators are trying to make their plans.

I came to make the point, and I made the point.

I thank the Senator.

Mr. REID. Mr. President, I appreciate the Senator from Pennsylvania. I enjoy my relationship with him. But the only thing I would do is defend the Senate a little bit. I know he was being facetious. Senators are here in Washington. There are a few Senators attending a very important economic conference in Switzerland, but that is a handful of Senators, three or four, as I understand it. I am glad they are there. I am confident that if any votes are required in the near future—they have been advised and have agreed to come back in a few hours' notice.

As I said, I know the Senator was being facetious, but we do not have more Senators overseas than we have here ready to work.

Mr. SPECTER. Well, Mr. President, I did not say we had more Senators overseas than Senators prepared to work. I said we have more Senators overseas than we have in the Chamber. I counted five, and now a sixth has joined on the floor.

Well, as I said earlier, I came to make the point, and I have made the point. The point is that we either debate or we ought to vote. Debate or vote, that is what we do. When the debate is over, we vote. If the debate continues, we do not vote. If the debate continues, we may have to go to cloture. We have rules to accommodate us there. There have been counts made that when you have the number of Senators who have stated their intention to vote for cloture, plus the number of Senators who have stated their intention to vote for Judge Alito, you come to 60 or more.

We are ready to do the business of the Senate. I know Senator FRIST is watching these proceedings because our conference, at a little after 3 o'clock in the afternoon, reaches a little low point, a little low on blood sugar, things get a little sleepy. So I am sure they turned on the television to watch this. It would be my hope that the Republican leader and the Democratic leader will be on the floor today, and we will come to some sort of a schedule so we all know what to do.

Mr. REID. I am not sure our conversation would wake them up, though.

Mr. SPECTER. It is all comparative. If I may direct this comment to Senator REID, you haven't been to a Republican conference. No matter how dull it is, let me tell you, it is lively here. It is exciting here by comparison to what goes on in our Republican conference. I speak with authority because I just came from there.

I thank my distinguished colleague and the Chair and yield the floor for some serious business because we have some speakers.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I think it is safe to say that Chairman SPECTER has committed more time to the nomination of Samuel Alito than any single person in this body and in this country, with the exception of one, and that would be Judge Alito.

I rise today in support of the nomination of Samuel Alito to be Associate Justice of the U.S. Supreme Court. Voting on the nomination of a Supreme Court Justice is a rare event in the Senate, but this year this body has now considered two nominations in only a few short months. To cast this vote is a privilege, and it is one this Member takes seriously. Most Americans did not know Sam Alito 6 months ago, but now millions of citizens have seen him in the news. They have heard him answer countless questions during his confirmation hearing. We have learned a great deal about Judge Alito.

We have seen his family. We have listened to his stories about his childhood. We have heard about his educational background, and we have learned of his service on the bench. We have learned that his temperament and his character, are in fact solid. I personally have had the opportunity to sit with him, and I believe he respects the U.S. Supreme Court and the seat for which he has been nominated.

Americans have probably also heard the Senate debate Judge Alito's nomination. I would guess by now most Americans understand that there is no substantive debate over Judge Alito's qualifications for the Supreme Court. Clearly, Judge Alito has the legal qualifications to be an Associate Justice. He has remarkable academic credentials, extensive experience, not only on the bench but in trying cases as an attorney, and he was given a unanimous "well qualified" rating by the American Bar Association. He has argued cases before the Supreme Court, and he served on the bench of the Third Circuit Court of Appeals for the past 15 years.

It is my assessment that those who oppose Judge Alito's nomination do it for purely political purposes. They believe he might take positions contrary to their own political ideologies. Therefore, they believe he should be disqualified. He should not be considered for a slot on the Supreme Court.

Let me take a moment to provide an example of how critics have severely distorted the facts about Judge Alito's

record. Quite honestly, if those same critics chose to rely upon the facts rather than the political sound bites, they might be quite surprised.

Judge Alito has been viciously attacked by critics over his record on civil rights. As we all know, Judge Alito serves on the Third Circuit Court of Appeals. This appellate court in New Jersey has been described by the Associated Press as one of the most liberal courts in the Nation. My guess is it is probably only second, within that categorization, to the Ninth Circuit Court. It seems that opponents of Judge Alito have become so fixated on criticizing his record that they disregard the actual facts of his record.

When analyzing Judge Alito's civil rights record based on the more than 4,800 cases he has decided, the facts are these: Judge Alito has agreed with the other members of his "liberal" Third Circuit judicial panel 94 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by President Clinton on that bench 95 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by Jimmy Carter on the Third Circuit Court 96 percent of the time on civil rights issues. Finally, when Judge Alito sat on a three-judge panel where both other judges were appointed by Democratic Presidents, the decision handed down in those cases was unanimous 100 percent of the time on the civil rights cases. These are the facts. Those are the numbers.

Clearly, by the standards some in this body have chosen to apply to Judge Alito, no judge on the Third Circuit Court would therefore qualify to be considered for the Supreme Court. The statistics are one example of the distortion of Judge Alito's record by some. I could stand here on the floor for hours to discuss other misrepresentations of Judge Alito's record on individual issues, but I believe it is important to speak on why this Supreme Court confirmation should matter to the American people.

When I say I am going to speak about why this confirmation matters, I don't mean that I am going to talk about why the debate matters in the daily battles inside the beltway in Washington, DC. I want to speak about why it matters to the American people. It has become clear to me and to the 8½ million people in North Carolina that I represent, that Washington, DC, is overshadowed by partisan bickering and is arguably more polarized now than ever before.

As I discussed in this Chamber and in front of this body when considering the nomination of Chief Justice Roberts a few months ago, my constituents in North Carolina care about civil liberties. They have questions about life and death, property rights, basic freedoms, as well as their own economic prosperity and personal security.

That is why this vote is important today. The Supreme Court affects every aspect of our daily lives. But

more importantly, the decisions being made on the High Court today will affect the lives of our children and future generations yet to come. I am a father and I am a husband first; I am a Senator second. I believe while it is part of my job to vote on Supreme Court confirmations, I think of this vote in terms of how it will affect my family as well as the rest of the families in North Carolina and across the country. When my sons are my age, how will this decision, my vote on Sam Alito, affect them or eventually affect their children? That is what we are here to debate.

As we all know, public opinion frequently changes with time as opposed to the Constitution which changes rarely. While the legislative bodies across the country are intended to be flexible branches of our government institution, charged with addressing the needs of the people by making new laws, the judiciary is intended to be the equitable and impartial check, charged with preserving and protecting our Nation's basic fundamental principles.

I believe a nominee's judicial philosophy should translate to their legal interpretations, not their political positions. The legislature makes the law and the judiciary interprets it. Both branches serve an equally legitimate and important function, but they are very different. My constituents want justices who apply the law, not judges who make the law.

Opponents of Judge Alito continuously cite political reasons to vote against his nomination. Unfortunately, this sounds all too much like your typical Washington, DC, partisan battle. But I assure my colleagues, the American people outside of the beltway of this town don't care to hear us bicker about partisan political issues when it comes to the future of the Supreme Court. This should be a thorough debate on an individual's legal qualifications and judicial philosophy.

This debate is much bigger than Republicans and Democrats. This debate is about our children's future. For me, it is about doing what is right, and about doing what is right as a father and a husband. It demands that this body, the Senate, come together. Stop the character assassination, the distortion of a nominee's record, and support this nominee because of his expertise and his accomplishments.

After meeting Judge Alito, having the opportunity to review his questions in front of the Judiciary Committee, having an opportunity to ask him questions personally, I am confident that he does, in fact, have a sound judicial philosophy and that he will administer justice according to the strict interpretation of our Constitution. I am confident that he will preserve our Nation's longstanding principles and that he will interpret the law, not make it.

I am also convinced that Sam Alito is a man of character and honesty. Judge Alito is not only a good nomi-

nee, he is a good man. He deserves the support of every Member of the Senate. I will vote in favor of Judge Alito's nomination to be an Associate Justice to the Supreme Court. I urge my colleagues in this body to join me and to come together to stop the character assassinations and to speak up for the American people and the future of our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, at the outset, I thank Mike Quiello and Nick Pearson of my staff for the research and preparation they gave me in my deliberation and consideration of Samuel Alito, Jr., and his appointment to the Supreme Court. Further, as a second generation American, the grandson of a Swedish immigrant who came to this country about 11 years prior to Samuel Alito, Sr.'s coming to this country from Italy, I am pleased that in the next few days I will have the chance to cast my vote to confirm Judge Alito as a Justice of the Supreme Court and reaffirm the promise that is the American dream of those who have come here from backgrounds that are diverse and far away to be a part of a great nation and have pledged their allegiance to all it stands for.

I have thought a lot about what I would say in confirming my vote on behalf of Judge Alito, and I decided, after listening to the speeches over the last couple of days, that I would try to draw a distinction that, to me, has been apparent in this debate but also is clearly the reason that I support Judge Alito. As we have heard today from a number of my colleagues, he has been criticized for being narrow and restrictive. It is important that we understand what the opposite of narrow and restrictive is to understand where those who oppose him are coming from.

The opposite of narrow and restrictive is broad and unlimited. The last thing the United States of America needs, or our Founding Fathers intended, is to have a Supreme Court that is unrestricted and broad in its interpretation of the Constitution and the laws the legislative branch passes under its authority. Therein lies the philosophical difference in this debate.

It has saddened me that through innuendo and reference in some of the previous speeches over the last couple of days, Judge Alito has been cast as being exactly the opposite of what Judge Alito really is. For example, in the recent aftermath of the tragedies in West Virginia, one speaker referred to Judge Alito's dissenting opinion in the case of *RNS Services v. Department of Labor* as exemplifying the fact that Judge Alito was against the little man and the worker.

That was a case where a ruling was made on the application of a rule on mine safety. But if you read the rule, Judge Alito did what you would hope a judge would do: He ruled on the application of the rule given the cir-

cumstances of the case. He didn't rule against the little man, nor did he rule for the big guy; he ruled based on the laws and the regulations promulgated by the agency this Congress appointed to be over mine safety. That is precisely what we need—a Court that will show us direction, but a Court that will never direct the laws we have passed in the wrong direction.

Secondly, there have been those who have talked about his commitment to civil rights, or really his lack of commitment to civil rights in terms of the claims of a few. I went to do some research on that issue because everything I saw in Judge Alito when he and I talked was the opposite of what those allegations would imply. I went to the testimony of Jack White, an attorney from San Francisco, CA, an African American, a member of the American Civil Liberties Union who came to Washington, DC, and testified before the Judiciary Committee on behalf of Samuel Alito. Rather than me trying to paraphrase what Jack White said, I would like to read it verbatim and then ask anyone who hears this speech the question whether Samuel Alito is a man who is not for the civil rights of all and the individual rights and liberties of every American:

Now, as I clerked for Judge Alito, I saw a deep sense of duty, diligence, humanity, and respect for his role as a Federal appellate judge. . . .

. . . He uniformly applied the relevant law to the specific facts of every case. Judge Alito recognized that every case was the most important case to the parties and attorneys with something at stake.

See, Judge Alito doesn't judge people by their color; he judges everybody individually in the cases he calls, as the cases are, understanding that every party has an equal interest.

I further quote Jack White:

I never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case.

. . . I left New Jersey without knowing Judge Alito's personal beliefs on any of them. Now, the reason I didn't know his personal beliefs on all these issues was that the jurist's ideology was never an issue in a case that Judge Alito heard.

You see, Jack White, who was an African-American law clerk for Judge Alito, said that when he left, he never saw the ideological beliefs of the judge interfere with his judgment of the law and his ruling in a case.

I end my quote by reading simply what he said:

Without fail, I saw Judge Alito treat everyone, every individual, with dignity and respect.

I will take the word of Jack White, who worked for Sam Alito, any day over any of us who, through innuendo or what we may have heard, want to castigate this nominee on his commitment to civil rights. Jack White's word, and his experience, is good enough for me. And Jack White knows what I know about Sam Alito—that he is committed to equity and fairness in the treatment of all Americans.

There has been something made of the fact that he is replacing Sandra Day O'Connor. I wish to talk about that for a minute.

Sandra Day O'Connor is one of my favorite Justices. I am not a lawyer. I came to the Senate from the House, but prior to my years in the House, I ran a small business. I am a businessman, and that is the interest I know and that which I know the best. Judge O'Connor was, without question, during her period on the bench the very best Justice in dealing with the complex issues of business that came before the U.S. Supreme Court. When I had the chance to meet with Judge Alito, I made that point to him and I asked him questions about American business, free enterprise, and the law. In every case, I became convinced that he had the same commitment Sandra Day O'Connor had.

To that end, and with regard to "narrow and restrictive" and with regard to the little guy, I wish to conclude my remarks on behalf of Samuel Alito by taking a second to talk about the *Kelo v. New London* case, the dissenting opinion which Sandra Day O'Connor wrote, and the answers to questions Judge Alito gave before our Judiciary Committee because they completely contravene any comment anybody has made about his commitment to the little guy or the benefit, or lack thereof, of narrow and restrictive ideology.

Justice O'Connor was one of the four dissenting Justices in the *Kelo* case. They didn't believe in the broadening of eminent domain to take property just because somebody could pay more taxes and would benefit more from it, and I concur with that. I think they made the right ruling. She said:

For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property—

She is speaking within the context of the ruling in the majority.

Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.

What more brilliant statement can be made on behalf of the little guy, the average American, or the small homeowner than Sandra Day O'Connor's? What better affirmation of someone's capacity to replace that distinguished Justice could you possibly make than by reading the last sentence of Judge Alito's answer to that question before the Judiciary Committee when he was asked about the *Kelo* case? He said:

I would imagine that when someone's home is being taken away, a modest home, for the purpose of building a very expensive commercial structure, that is particularly galling [to me].

Sandra Day O'Connor was a great Justice and did a great service to America. She broke the glass ceiling in being the first woman appointed to the U.S. Supreme Court. I believe Justice Alito will serve our people on this Court every bit in same way Justice

O'Connor did. The criticisms of Judge Alito of being narrow and restrictive may, in fact, be, if you look at them in the perspective I have given, a great compliment to his ability and that which all of us seek, and that is a jurist who will rule based on the law, not legislate based on the position. A jurist understands the value and the strength and the power of the Constitution of the United States of America.

Mr. President, I look forward to casting my vote in favor of the nomination of Samuel Alito, Jr., to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I met with Judge Alito on the day after his nomination. I was very impressed with him from the start. After spending an hour or so with him, I could tell that he is a modest, honest, and fair man, a person with a solid understanding of the proper role of a judge. At the time, however, I said I would not make a final decision about his nomination at that point.

I started my career as a county prosecuting attorney, and I believe in trials before verdicts. We just had the trial, and during that trial, the hearing, this is what I saw: I saw a man who is forthright and honest. Over the course of 3 days before the Judiciary Committee, Judge Alito was asked 677 questions on issues ranging from abortion to executive power to Vanguard. He answered at least 659 of them, or 97.3 percent of the questions.

To give you some perspective on these numbers, Chief Justice Roberts, when he was in front of our committee, was asked only 574 questions and answered 89 percent of them. Justice Ginsburg was asked just 384 questions, answering only 80 percent of them. Justice Breyer was asked 355 questions, answering 82 percent. Judge Alito was asked more questions and gave more answers than any recent nominee to the U.S. Supreme Court.

At that hearing, I saw a man of character and integrity. Judges do not shed their values when they don their robes. Our Founders themselves recognized this important point. In *Federalist No. 78*, for instance, Alexander Hamilton said that only a few individuals would really have the expertise in the law to become a Supreme Court Justice. But fewer still would have the "integrity" and the "dignity" befitting the office. In my opinion, Judge Alito has the integrity, the character, and the dignity befitting the office of Associate Justice of the Supreme Court.

The best evidence on this point is the testimony of those who know Judge Alito best—his colleagues on the Third Circuit, people he has worked with day in and day out. Judge Edward Becker described Judge Alito as "modest and self-effacing." Judge Becker continued:

I have never seen a chink in the armor of his integrity, which I view as total.

Judge Leonard Garth, his first boss, called him a "morally principled

judge." Even former Judge Tim Lewis, a man who said he occasionally disagreed with Judge Alito, endorsed his elevation to the High Court.

To me, all of this testimony carries substantial weight. We can judge a man by his record, we can judge him by his judicial philosophy, certainly, but there is no better judge of a man than those who know him best.

Unfortunately, some who hardly know Judge Alito have tried to smear his reputation by raising his recusal in the so-called Vanguard case. This case got a lot of play during the hearing. In my opinion, this attack is clearly frivolous. I wish to talk for a moment about it.

This so-called Vanguard case arose out of a financial dispute between two people. The plaintiff won a suit against a woman by the name of Monga, requiring her to turn over about \$170,000 that she had in some Vanguard accounts. Ms. Monga then went to court to prevent Vanguard from turning over the money. So while Vanguard was technically a defendant in the case, in the classic sense of the term, it really was not accused of any wrongdoing. It didn't stand to lose anything. The only question was whether Vanguard would transfer the funds it held for Ms. Monga to another person. They just held the money. Nothing about this case could realistically have affected Vanguard as a company, nor Judge Alito. The judge did not own Vanguard; he held mutual funds that were managed by Vanguard.

Mr. President, that is why everyone who has looked into that matter has concluded that the allegations against Judge Alito are absurd. The ABA looked into this allegation and unanimously concluded that Judge Alito was entitled to its highest rating, a rating which explicitly considers ethics and integrity. Five legal experts concluded that Judge Alito did nothing wrong. Judge Becker, the former Chief Judge of the Third Circuit, said he was "baffled" by these allegations. The *Washington Post* wrote in a January 13 editorial that Judge Alito's own testimony "revealed the frivolousness of the charge."

Before these hearings began, one of Judge Alito's opponents, Nan Aron, president of the Alliance for Justice, said, "you name it, we'll do it" to defeat Judge Alito.

With Vanguard, Judge Alito's opponents resorted to an outrageous attack on him in an effort to undermine his integrity. This attack clearly failed. Although some waged a full-scale war against Judge Alito, what Judge Becker said at the hearing remains true today: There is simply "not one chink in the armor of his integrity."

At the hearing, I saw an experienced judge with a brilliant legal mind. Judge Alito came to the Judiciary Committee with a lengthy and distinguished legal career. He served for several years as a Federal prosecutor, taking on the mob, drug dealers, and

white-collar criminals. He argued 12 cases himself before the U.S. Supreme Court. And for more than 15 years, he has served as a judge on the Third Circuit, deciding thousands of cases and authoring hundreds of opinions with his own pen. This background certainly attests to his extraordinary competence and shows why he received a unanimously well-qualified rating from the ABA.

His judicial opinions attest to his competence as well. He writes crisply and clearly without any kind of overstatement. For the most part, he decides only the issues before him and has proven himself capable of tackling complex areas of the law with clear and yet simple language.

In my mind, however, the way Judge Alito answered our questions is perhaps the best example of his extraordinary legal talent. During our hearings, he demonstrated a mastery of constitutional law and his own voluminous jurisprudence. Over the course of 3 days, he spoke clearly and succinctly without using notes. It was an amazing performance. He provided us with detailed information about how he thinks, how he reasons, how he comes to his conclusions. I found his testimony thorough, forthcoming, and informative, and I believe the American people felt the same way.

At the hearing, I also saw a man who is openminded and fair, a man who is compassionate. During our hearings, some complained that Judge Alito has a bias toward Government or big business. But that is not what was said by those who, again, know him best. Take, for example, the testimony of Judge Alito's former law clerks.

Kate Pringle, a self-described "committed and active Democrat," said that Judge Alito "approached each case without a predisposition toward one party or the other." She said he treated all litigants "in a fair and openminded way."

Jack White, a member of the NAACP and the ACLU, said that Judge Alito had an "abiding loyalty to a fair judicial process," not "an enslaved inclination toward a political or personal ideology." In fact, Mr. White "never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case."

Finally, Professor Nora Demleitner, who described herself as "a left-leaning Democrat, a member of the ACLU, a woman, and an immigrant," also had praise for Judge Alito:

In the years I have known the judge, he has never decided a case based on a larger legal theory about the Constitution or conservative worldview, but instead has looked at the merits of each individual case.

Judge Alito also understands that judicial opinions are more than ink in the Federal Reporter. He understands that they are decisions that affect real people and have real consequences. The judge himself put it best:

[W]hen a case comes before me involving, let's say, someone who is an immigrant . . .

I can't help but think of my own ancestors because it wasn't that long ago when they were in that position. . . . [W]hen I look at those cases, I have to say to myself, and I do say to myself, this could be your grandfather. This could be your grandmother. They were not citizens at one time, and they were people who came to this country. When I have cases involving children, I can't help but think of my own children and think about my children being treated in the case that's before me. . . . When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender, and I do take that into account. When I have a case involving someone who has been subjected to discrimination because of disability, I have to think of people whom I've known and admired very greatly who had disabilities, and I've watched them struggle to overcome the barriers that society puts up[.]

To me, this testimony accurately reflects Judge Alito's record while on the bench. No matter who comes before him and no matter what the case, Judge Alito approaches each case with an open mind and a real-world sense of the consequences of his actions. To me, that is truly the approach of a fair, openminded, and compassionate judge.

Finally, I saw a man who understands the proper role of a judge. I believe judges play a limited, but obviously important, role in our constitutional system. Judges are not Members of Congress, State legislators, Governors, or Presidents. Their job is not to pass laws or make policy. Instead, it is the job of a judge—to use the words of Justice Byron White—simply "to decide cases." Nothing more.

Judge Alito seems to embody this thinking as well. Several years ago at a ceremony honoring one of his Third Circuit colleagues, Judge Alito reminded his colleagues about the attributes of a good judge. Always remember, he said, to "act like a judge."

He went on to say:

Do what good judges do, what they have done for a long time. Decide the cases that come before you, decide them as best you can. . . . Speak straightforwardly on the matters that are properly before you. Exercise the important powers that are rightfully yours, but keep in mind that you are a judge.

On the first day that I met Judge Alito, I was impressed with him, but I am even more impressed today. He is a good, decent, and honest man. He has extraordinary legal talent, and he approaches each case with an open mind and understanding heart.

In spite of some of the frivolous attacks on his reputation and character, Judge Alito has conducted himself with dignity, patience, and, yes, poise. He is an excellent judge and, in my opinion, will make an outstanding addition to the Supreme Court. I am proud to support his confirmation.

I conclude by noting that when Judge Roberts was sworn in as our Nation's 17th Chief Justice, he reminded us of a "bedrock principle." And that is that "judging is different from politics." Similar to John Roberts, Samuel Alito understands the difference, and when

he takes a seat on the Supreme Court, as I expect he will, I know he will remember that. When tough cases come up, he will, in fact, I am sure, act like a judge.

I thank the Chair, and I yield the floor.

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

THE PRESIDING OFFICER (Mr. BURR). THE CLERK WILL CALL THE ROLL.

The legislative clerk proceeded to call the roll.

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

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

Mr. OBAMA. Mr. President, it is my understanding that the hour is dedicated to the Democrats speaking with respect to the Alito nomination. I request 5 minutes of that time.

THE PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, first let me congratulate Senators SPECTER and LEAHY for moving yet another confirmation process along with a civility that speaks well of the Senate.

As we all know, there has been a lot of discussion in the country about how the Senate should approach this confirmation process. There are some who believe that the President, having won the election, should have complete authority to appoint his nominee and the Senate should only examine whether the Justice is intellectually capable and an all-around good guy; that once you get beyond intellect and personal character, there should be no further question as to whether the judge should be confirmed.

I disagree with this view. I believe firmly that the Constitution calls for the Senate to advise and consent. I believe it calls for meaningful advice and consent and that includes an examination of a judge's philosophy, ideology, and record. When I examine the philosophy, ideology, and record of Samuel Alito, I am deeply troubled.

I have no doubt Judge Alito has the training and qualifications necessary to serve. As has been already stated, he has received the highest rating from the ABA. He is an intelligent man and an accomplished jurist. There is no indication that he is not a man of fine character.

But when you look at his record, when it comes to his understanding of the Constitution, I found that in almost every case he consistently sides on behalf of the powerful against the powerless; on behalf of a strong government or corporation against upholding Americans' individual rights and liberties.

If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there is a claim between prosecutors and defendants, if the Supreme Court has not provided a clear rule of decision, then he will rule in

favor of the State. He has rejected countless claims of employer discrimination, even refusing to give some plaintiffs a hearing for their case. He has refused to hold corporations accountable numerous times for dumping toxic chemicals into water supplies, even against the decisions of the EPA. He has overturned a jury verdict that found a company liable for being a monopoly when it had over 90 percent of the market share in that industry at the time.

It is not just his decisions in individual cases that give me pause, though; it is that decisions like these are the rule for Samuel Alito rather than the exception.

When it comes to how checks and balances in our system are supposed to operate, the balance of power between the executive branch, Congress, and the judiciary, Judge Alito consistently sides with the notion that a President should not be constrained by either congressional acts or the check of the judiciary. He believes in the over-arching power of the President to engage in whatever policies the President deems to be appropriate.

As a consequence of this, I am extraordinarily worried about how Judge Alito might approach the numerous issues that are going to arise as a consequence of the challenges we face with terrorism. There are issues such as wiretapping, monitoring of e-mails, other privacy concerns that we have seen surface over the last several months.

The Supreme Court may be called to judge as to whether the President can label an individual U.S. citizen an enemy combatant and thereby lock them up without the benefit of trial or due process. There may be consideration with respect to how the President can prosecute the war in Iraq and issues related to torture. In all of these cases, we believe the President deserves our respect as Commander in Chief, but we also want to make sure the President is bound by the law, that he remains accountable to the people who put him there, that we respect the office and not just the man, and that that office is bounded and constrained by our Constitution and our laws. I don't have confidence that Judge Alito shares that vision of our Constitution.

In sum, I have seen an extraordinarily consistent attitude on the part of Judge Alito that does not, I believe, uphold the traditional role of the Supreme Court as a bastion of equality and justice for U.S. citizens. Should he be confirmed, I hope he proves me wrong. I hope he shows the independence that I think is absolutely necessary in order for us to protect and preserve our liberties and our freedoms as citizens. But at this juncture, based on a careful review of his record, I do not have that confidence, and for that reason I will vote no and urge my colleagues to vote no on this confirmation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. CARPER. Mr. President, of the three branches of our Federal Government, the Supreme Court seems the most removed from the American people. There are, as we know, only nine members of the Supreme Court. None of them, in the end, is accountable to the public. They certainly do not have to face groups of angry voters as you and I do from time to time, at townhall meetings or local potluck dinners, and they are probably thankful for that.

However, their actions can have a tremendous and lasting effect on the lives of every American, probably more so than any Senator or Governor, or perhaps even more than many Presidents. For, in the end, the Supreme Court exists as the last bastion of protection for the rights and freedoms we enjoy as Americans. That is why I take so seriously, as I know you do, our obligation as Senators to provide advice and consent to our Presidents, as required by our Constitution, to determine whether their nominees truly merit a lifetime appointment to serve on our Nation's highest Court.

When I voted for Judge John Roberts' nomination to become Chief Justice of the Supreme Court last fall, I said standing here that it was a close call, at least for me. Ultimately, though, I chose to take what I described then as a leap of faith. As someone whose political and legal opinions are perhaps somewhat more conservative than mine, I knew Chief Justice Roberts would sometimes render decisions with which I may not be comfortable or entirely agree. But after carefully reviewing his testimony, and discussing that testimony with Democratic and Republican members of the Senate Judiciary Committee, meeting with him and other interested parties, and talking to his colleagues, colleagues of his who had known and worked with him in the past, I concluded John Roberts was a worthy successor to Chief Justice Rehnquist and was not likely to shift the balance of the Court in any significant way.

Obviously, more than three-fourths of our colleagues agreed with that decision. When the time had come to cast my vote, I concluded that Chief Justice Roberts' decisions would not be guided by ideology alone, but also by legal precedent and the combination of his life's experiences as a judge, as an attorney, as an academic, as a father, and as a husband. In short, by supporting John Roberts' nomination I voted my hopes and not my fears.

After we confirmed Chief Justice Roberts and turned to face yet another impending Supreme Court vacancy, I urged President Bush to send us a nominee similar to the person he or she would replace—Justice Sandra Day O'Connor. I noted that his next choice could divide this Congress and our country even further, or it could serve to bring us closer together. In my view, we needed that type of consensus can-

didate to replace Justice O'Connor and her legacy on the Court.

For more than 20 years, Justice O'Connor has been a voice of moderation during often difficult and tumultuous times. As we all know, her decisions oftentimes determined the direction of the Court. Not infrequently, the opinions she wrote reflected the prevailing sentiment of our country and its citizens, too. In my view, she was the right Justice at the right time.

Unfortunately, and with some regret, I rise today not fully convinced that Judge Samuel Alito is the right person to replace Justice O'Connor on the Supreme Court. Unlike a few months ago, when I rose to support the nomination of John Roberts, I will not be supporting Judge Alito's nomination to the Supreme Court. In sharing that decision today, though, let me be clear on several points. I will not be voting against his confirmation because I don't believe he has the legal qualifications, the intellect, or the experience necessary to sit on the Supreme Court. I do. He is clearly very bright and demonstrates an excellent grasp of the law.

I will not be voting against him because I don't like him or respect him. I do. He is described by a number of his colleagues as collegial, as hard working, and as a devoted father and husband. I believe Samuel Alito is an honorable person and that he has lived an honorable life.

Having said that, though, I don't believe we should vote for Supreme Court Justices based solely on their qualifications and likeability. We must also consider their judgment, their legal opinions, their judicial philosophies, and what they said or did not say during the confirmation hearings, in order to determine whether we are truly comfortable with the direction a particular nominee will take our Nation's highest Court. After all, these are lifetime appointments that will have consequences for decades into the future.

In the end, I found myself asking one simple question. Here it is: Is Judge Samuel Alito the right person for this vacancy, not just for now but for decades to come? For me, the answer to that question is, regrettably, no. Let me take a few minutes to explain why.

As we all know, our Constitution provides for three separate but equal branches of Government—the legislative branch, that is us, the Congress; the executive branch, the Presidency and his or her administration; and the judicial branch, the courts. The Framers of our Constitution believed no branch of our Federal Government was superior to another, so our Founding Fathers established an intricate system of checks and balances to ensure that each branch kept a watchful eye on the others.

For instance, it is Congress's job to represent the people and write the laws of our land, but the President can refuse to sign a bill the Congress has passed if he or she disagrees with our conclusions. Congress can then come



back and override a President's objections, if we can muster the necessary votes. Meanwhile, the Supreme Court can rule that a law is, in part or in whole, unconstitutional, providing yet another important check on the power vested in the Congress and in the Presidency.

Admittedly, it is not the most harmonious or quickest form of Government, but it has served our country well for over 200 years. Perhaps it was Churchill who said it best when he described democracy as the worst form of government devised by wit of man, but for all the rest.

I am concerned that, if confirmed, Judge Alito, during the decades he is likely to serve may well take the Court in a new direction that serves to undermine our system of checks and balances, threatening the rights and freedoms many of us hold dear.

Let me elaborate, if I may. In the past, Judge Alito has advocated for what is known as the "unitary executive theory."

Until a couple of months ago, I had not heard of that. If you are like me, Mr. President, and you didn't go to law school, you are probably wondering what that means. Let me put it simply. It basically means that Judge Alito feels that the President should largely be allowed to act without having to worry much about Congress or the Supreme Court stepping in and saying: With all due respect, you are out of line.

This line of thinking deeply concerns me and, I believe, many of my colleagues and the people we represent. And it should. Remember, our Nation declared her independence from Britain because we no longer wanted to be ruled by a king, or, frankly, by anyone with king-like powers. Our Founders wanted power to be invested in the people and shared equally by the three branches of Government.

To say then that there are times when a President's power should go largely unchecked except in very rare instances, in my opinion, goes against what our Founders intended. Moreover, unfettered Presidential power could have dangerous consequences, given how a particular President—either now or in the future—chooses to exercise that kind of unchecked power.

Let me give you a recent real-world example. Over the past few months, the Bush administration has been embroiled in several controversies, as we know, over its policies concerning the torture of detainees, as well as its decision to spy on or intercept phone calls and e-mails apparently of thousands of people living in the United States who are suspected of being agents of foreign countries or entities. In both cases, the administration asserted that it should be able to act without the consent of Congress or the courts.

I disagree. I believe that our courts have an obligation under our laws to monitor an administration's actions concerning foreign prisoners and crimi-

nal suspects, and I believe administrations should have to justify, within reasonable periods of time, their decision to spy on Americans. I will be the first to acknowledge that there are times when the President—this one or another President—needs the ability to conduct secret wiretaps. And I think most of us agree on that point.

The issue, however, is do Presidents have a constitutional right to conduct secret wiretaps without court authorization, without some other branch of Government making sure that that administration isn't breaking the law?

Again, the fundamental issue for me is the issue of checks and balances.

In these instances, Congress and the courts provide a needed and important backstop to make sure that the administration doesn't become overzealous and abuse the rights of innocent people.

Americans may not understand why these issues are such a big deal. They may even agree with the reasons the Bush administration give, for instance, for circumventing the law—a law that has been in place since 1978 which we modified I think about 4 years ago.

But it is not a stretch to understand how a President—maybe not this one but one in the future—could overstep his or her authority and thereby infringe on the civil rights of innocent Americans.

For that reason alone, we should all have grave concerns about an unchecked Presidency—or a Supreme Court Justice who has routinely sided and ruled in favor of unchecked Executive powers.

Jeffrey Stone, a law professor at the University of Chicago, is a supporter of the Roberts nomination—and initially a supporter of the Alito nomination—wrote recently:

Given the times in which we live, we need and deserve a Supreme Court willing to examine independently these extraordinary assertions of Executive authority. We can fight and win the war on terrorism without inflicting upon ourselves and our posterity another regrettable episode like the Red Scare and the Japanese internment—

Of the 1950s and 1940s, two shameful episodes in the history of our country where our Government seriously infringed on the rights of average Americans under the guise and excuse of national security.

But as Professor Stone went on to say, we will only avoid such terrible excesses of governmental power "if the Justices of the Supreme Court are willing to fulfill their essential role in our constitutional system."

Based on his history and his opinions—in his own words—I fear that Judge Alito may well change the Court's approach and rule in favor of expanded Presidential power—not just at the expense of Congress and the courts but ultimately at the expense of the American people. We cannot and should not play witness to an unchecked Presidency, regardless of political party, regardless of whether the

President is a Democrat or a Republican.

We need in this country for the courts and the Congress to ensure that this administration and future administrations abide by the laws of this land and the principles we hold dear.

Just as I am concerned about Judge Alito's views on expanded Presidential power, I am also concerned about Judge Alito's opinion on the role and powers of Congress.

Traditionally, Congress has enjoyed broad authority, as a coequal branch of Government, to debate and adopt laws that we believe protect the interests of the American people, such as keeping our water clean and our air clean and ensuring that fair labor laws and employment standards across the country are fair.

Back in the 1990s, Congress used that authority to pass a bill that banned the possession or sale of machineguns across State lines among everyday Americans. To me, that ban wasn't about whether people had the right to own guns for recreation or self-protection. Those rights are forever enshrined in our Constitution, as they should be. This was about whether people had the right to own, to buy, or to sell across State lines Army-style machineguns, which I think reasonable people can agree have little, if anything, to do with protecting our homes or going hunting.

Nevertheless, the constitutionality of the law was challenged in the courts. All nine Federal appeals courts that heard the subsequent challenges upheld the validity of the original law.

Judge Alito, as a member of the Federal appeals court that covers Delaware and our surrounding region in the Delaware Valley, heard one of those challenges. He ended up disagreeing with his own court's decision and that of eight other Federal appeals courts which ruled that Congress does indeed have the authority under our Constitution to ban the sale of machineguns across State lines.

My primary concern is that if Judge Alito thinks Congress shouldn't have the right to pass laws that arguably keep Americans safer, then what other laws might he believe Congress does not have the authority to adopt under the commerce clause of our Constitution? Laws that protect the air we breathe or the water we drink? Laws that allow men and women to take unpaid leave from their jobs to care for members of their family during times of crisis? I don't know, and that uncertainty—at least for me—is a cause of real concern.

A third concern I hold about Judge Alito relates to his views on other rights and freedoms we enjoy as Americans, particularly a woman's right to end a pregnancy prior to fetal viability. My own opinion about abortion is we have far too many of them, and we need to put a lot more effort into reducing the number of abortions that still take place in America. I am sure on that point Judge Alito and I agree.

But I am not certain Judge Alito agrees with me that we should not go back in time to a place where almost all abortion laws were illegal, where women who wanted to end a pregnancy were in too many instances forced into unhealthy behavior that often put their lives and their reproductive futures at risk. That is why, during his confirmation hearing, I was disappointed that Judge Alito, unlike Judge Roberts, declined to acknowledge that the Supreme Court decision that granted women the right to end an early term pregnancy is “settled law.”

Justice O'Connor, whom Judge Alito has been nominated to replace, has been the deciding vote on numerous cases that challenged this precedent. That is why I believe replacing Justice O'Connor with Judge Alito—given his rulings and statements on this subject—may well be putting this precedent in jeopardy.

Let me explain why. In the historic *Planned Parenthood v. Casey* case, Judge Alito voted to uphold a Pennsylvania law requiring married women to notify husbands before obtaining an abortion even during the early stages of pregnancy. That case eventually went to the Supreme Court, which ruled against Judge Alito's position, as we know.

Justice O'Connor, who cast the deciding vote in the Supreme Court overturning the Pennsylvania law and Judge Alito's position, wrote that women do not leave their Constitutional protection at the altar. Married women are entitled to the same protections as single women. I believe she is right.

I had the opportunity to talk with Judge Alito at length recently. I asked him—a conversation that I very much enjoyed—why he ruled the way he did in this instance. He told me he did not think the requirement placed an undue burden on married women. I asked him if he felt the same way today, especially in light of the Supreme Court ruling in opposition to his view. He told me he basically thought the same way. While I respect that honesty, I respectfully disagree and question what other undue burdens he may decide to place on women in the future.

Let me close by saying that this is not an easy vote for me. I know it is not an easy one for a lot of our colleagues. As a former Governor, I believe strongly that this administration or any other administration has the right to nominate judges of the same mind and philosophy. There are consequences in elections. If you win, you have the chance, if you are a Governor or a President, to nominate candidates of your choice for the bench. And I believe Senators should not automatically reject judges outright because of political affiliation or beliefs.

However, politicians of both stripes must take a stand and reject nominees that we believe will take the courts too far to the extreme right or to the extreme left. Wisely, in my State, Dela-

ware's constitution requires overall political balance in our State's courts.

For every Democrat who is appointed to serve as a judge, Delaware Governors have to nominate a Republican. The result has been an absence of political infighting and a balanced, exceptionally and highly regarded State judiciary that we are enormously proud of in our State.

Our Federal Constitution, regrettably, does not require similar political balance when it comes to the judiciary, but political balance should be one of our goals. The Founders of the U.S. Constitution tasked the Senate with finding that balance.

I fear, in the end, that Judge Alito may well upset the balance that exists on the Supreme Court for the better part of my lifetime and move the Court in a direction that will not be best for many of the people of this country.

So this time, unlike my vote for the nomination of John Roberts a few months ago, I will be voting my fears—not my hopes. Having said that, I sincerely wish Judge Alito well.

I hope, if he is confirmed—and I believe that he will be—that he proves my concerns wrong and unfounded. I hope he remembers that our Constitution—that our entire democracy—is both an everlasting and ever-changing experiment. Our Constitution is not something to be strictly interpreted, nor is it something to be recklessly abandoned.

Success in life is often measured not just by the stances we take but by the results we achieve. I believe that is one of the reasons why Justice O'Connor is so revered. It is not because she was always predictable or that she advocated an intractable world view. It is that she found the right balance, even in the most difficult, controversial, and emotional cases of our times.

My fear is that too often Judge Alito may not do so, and thus I will not be supporting his nomination.

My hope, though, is that once he is confirmed to the Supreme Court he will balance the scales of justice and not tip them too far in either direction.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, for the second time, this Congress we are considering the nomination to the Supreme Court. Having confirmed Judge John Roberts as Chief Justice in September, a decision in which I joined, we are now debating the nomination of Judge Samuel Alito to the position of Associate Justice. Positions on the Supreme Court are hugely significant given their lifetime tenures, the balance on the Court, and the importance of the Court's decisions on the lives of Americans. These votes are among the most important and difficult that we cast.

Article II, section 2 of the Constitution simply provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall

appoint . . . Judges of the Supreme Court. . . .”

The Constitution gives us no guidance on the factors the Senate should consider while we carry out this constitutional duty. In the end, each Senator must determine what qualities he or she thinks a good Supreme Court Justice should have and what scope of inquiry is necessary to determine if the prospective nominee has these qualities.

This will be the 11th Supreme Court nomination on which I will have voted. With each nomination I have done my best to fairly determine if the nominee satisfies fundamental requirements of qualification and temperament, if the nominee is likely to bring to the Court an ideology that distorts his or her judgment, and brings into question his or her open mindedness and whether any of the nominee's policy values are inconsistent with fundamental principles of our Constitution.

Like Judge Roberts before him, Judge Alito has an impressive background and command of the law. He easily meets the educational and professional requirements of the position. Judge Alito has worked for the Justice Department, as the U.S. attorney for the District of New Jersey, and for nearly 16 years as a judge on the Third Circuit Court of Appeals. He is respected by his peers as a very decent person and is a person of high caliber and integrity.

That Judge Alito has a keen intellect and understands the nuances of the law is indisputable. That is not enough to warrant confirmation if his discernible views on key issues are at variance with fundamental principles of our constitutional system. Because I am not convinced he will adequately protect the constitutional checks and balances that are the bedrock of our liberty, I cannot support his confirmation.

I have concerns about Judge Alito's views in a number of areas. One in which I have the greatest doubts relates to his undue deference to Executive power. In recent years, constitutional issues on the authority of the executive branch have multiplied. These include executive actions in areas of government eavesdropping, other government intrusions on personal privacy, including library records, medical records, and Internet search records, and the detention and treatment of American citizens whom the President designates as “enemy combatants.” Our system of checks and balances requires the Supreme Court to enforce limits on Executive power, and the nominee's views on executive authority under the Constitution are extremely important.

Judge Alito's record, however, is one of undue deference to Executive power and raises significant doubts as to whether he would adequately apply the checks and balances that the Founders enshrined in the Constitution to protect, in part, against an overreaching Executive.



For example, while serving as Deputy Assistant Attorney General in 1986, Judge Alito recommended the President use bill signing statements to influence the Court's interpretation of legislative history. He argued that "the President's understanding of the bill should be just as important as that of Congress," and that his signing statement proposal would "increase the power of the executive to shape the law."

This issue took on renewed urgency when President Bush recently declared in a signing statement that he would ignore the ban on torture by executive branch personnel, a ban passed overwhelmingly by Congress in the very bill he was signing, if the ban hampered his actions as Commander in Chief. In a written question, I asked Judge Alito about the possible legal relevancy of Presidential signing statements. His response was erudite, as always, suggesting they might be relevant if the President participated in the crafting of the legislation.

In the case of the torture ban language, the President strongly and repeatedly opposed the language and unsuccessfully sought, at a minimum, to obtain a Presidential waiver. Yet when asked at his Judiciary Committee hearing whether a signing statement could have relevancy in that context where the President strongly opposed the language and was not involved in its crafting, Judge Alito responded:

The role of signing statements and the interpretation of statutes is, I think, a territory that's been unexplored by the Supreme Court.

That statement of fact was not responsive to a question about his views. Judge Alito, thereby, missed the chance to show that his views on this issue have evolved since 1986. His words in 1986 that signing statements can help achieve the goal of "increasing the power of the Executive to shape the law" should give us all pause.

If Judge Alito were on the Supreme Court and voted to give constitutional weight to signing statements such as President Bush made when he signed the torture ban legislation, he would be creating a new and radical expansion of Executive power.

In 1988, the Supreme Court addressed the question of executive authority in *Morrison v. Olson*, the decision which upheld the Independent Counsel Act. The government had argued that the Act was unconstitutional because it restricts the Attorney General's power to remove an independent counsel and interfered with executive branch prerogatives, thereby disrupting the proper balance between the branches of Government.

Chief Justice Rehnquist rejected those arguments when he wrote for a 7-1 majority:

As we stated *Buckley v. Valeo*, the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as "a self-executing safeguard against the encroachment or aggran-

dization of one branch at the expense of the other."

Nonetheless, just a year later, in remarks to the Federalist Society in 1989, Judge Alito, then the U.S. attorney for the District of New Jersey, called the *Morrison v. Olson* decision "stunning," and described congressional checks on broad Presidential power as "pilfering." He said:

... the Supreme Court [in *Morrison*] hit the doctrine of separation of powers about as hard as heavy weight champ Mike Tyson usually hits his opponents.

Yet in the setting of the Judiciary Committee hearings, when asked whether the views he expressed to the Federalist Society were still his views, Judge Alito would only say:

*Morrison* is a settled precedent—it is a precedent of the court. It was an 8-1 decision (sic). It's entitled to respect under *stare decisis*. It concerns the Independent Counsel Act, which is no longer in force.

He gave no indication that he has modified his earlier extreme view over time, but, again, he simply made a statement of obvious fact: that *Morrison* is a precedent of the Supreme Court and entitled to respect as such.

Although he has been hesitant to check Presidential power, Judge Alito has been more than willing to check congressional power. In *United States v. Rybar*, the Third Circuit upheld a conviction under the Federal law prohibiting the possession of machine guns. In his dissent, Judge Alito said there was insufficient evidence in the RECORD to determine that Congress had the power under the commerce clause to enact that legislation. Not only did the majority strongly criticize his view of congressional power, and not only did the Supreme Court decline to review the majority's ruling, thereby suggesting the majority's view was the correct view, but the Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have also all found the congressional machine-gun ban to be constitutional.

Undue restriction of legislative branch authority such as reflected in Judge Alito's dissent in *Rybar* could lead to further unwise extension of executive branch powers. For instance, Congress has voted to require the executive branch to seek a warrant to eavesdrop on American citizens. We granted broad powers to tap phone lines where there is probable cause that a person is, or is linked to, a terrorist or a spy. We allow the executive branch to go ahead and tap a phone when there is no time to seek a warrant, first, as long as it subsequently seeks a warrant within 3 days. But Congress added an explicit prohibition on the executive branch tapping phones of U.S. citizens except as provided for in that law. This was an explicit prohibition. You must follow the requirements of this law or else you must not tap American citizens' phones.

Can a President ignore that prohibition, that check on his power? The Supreme Court ruled on the issue of exec-

utive authority in the seminal *Youngstown* case. As Justice Robert Jackson wrote in his renowned opinion:

When the President takes measures incompatible with the expressed will of Congress, his power is at its lowest ebb.

Three times at his hearing, however, Judge Alito characterized that circumstance where the President acts contrary to the explicit congressional prohibition as a "zone of twilight." Justice Jackson reserved that zone of twilight, that zone of ambiguity, for the circumstance where "the President acts in absence of either a congressional grant or denial of authority."

Again, where the President acts in defiance of a congressional prohibition, Presidential power, according to Jackson, is at its lowest ebb, not in a twilight zone of uncertainty.

More specifically, Judge Alito—referring to the congressional prohibition on executive wiretapping under the Foreign Intelligence Surveillance Act, FISA, the prohibition on executive wiretapping, except as provided for in that act, spoke as follows at his hearing:

Where the President is exercising executive power in the face of a contrary expression of congressional will through a statute or even an implicit expression of congressional will, you'd be in what Justice Jackson called the twilight zone, where the President's power is at its lowest point.

And Judge Alito said:

What I'm saying is that sometimes issues of executive power arise and they have to be analyzed under the framework that Justice Jackson set out. And you do get cases that are in this twilight zone.

Again, referring to the hypothetical presented to him where there was a specific congressional prohibition on wiretapping. Again, calling that a case that is in the twilight zone.

Later, Judge Alito said:

When you say regardless of what laws Congress passes, I think that puts us in that third category that Justice Jackson outlined, the twilight zone, where, according to Justice Jackson, the President has whatever constitutional powers he possesses under Article II minus what is taken away by whatever Congress has done by an implicit expression of opposition or the enactment of a statute.

By repeated characterizations of Presidential action in the face of a prohibition on that action, as falling into a twilight zone of uncertainty rather than a zone of dubious constitutionality, Judge Alito, unwittingly or otherwise, reflected what I fear his real view is. The twilight zone that he referenced is entered, according to the *Youngstown* test, when the President acts without congressional authorization, not when Congress has explicitly prohibited his actions. Again, for instance, where Congress has prohibited domestic wiretapping in the absence of seeking a warrant, Presidential power is at its lowest ebb.

In the 1981 case of *Dames and Moore v. Regan*, Justice Rehnquist reaffirmed the same test, writing that the zone of twilight is entered "when the President acts in the absence of congressional authorization," and reaffirming

Justice Jackson's opinion. Justice Rehnquist found that "when the President acts in contravention of the will of Congress 'his power is at its lowest ebb and the Court can sustain his actions [Justice Rehnquist said] 'only by disabling the Congress from action on the subject.'"

If Judge Alito had described the status of Presidential action in contradiction of congressional prohibition only one time, it could be argued that he slipped or made a mistake. But since he repeatedly made the statement, it is more likely to represent his true feeling, particularly since Senator LEAHY pointed out this mischaracterization of Justice Jackson in the Youngstown case and Judge Alito did not correct himself.

Justice Jackson is a longtime and lifelong hero of mine. He was President Truman's Attorney General when Truman nominated him to the Supreme Court. But when President Truman seized the steel mills under his claim of constitutional authority as Commander in Chief, Justice Jackson ruled against his old friend, now Commander in Chief, and wrote:

What is at stake is the equilibrium established by our constitutional system.

Similarly, Justice O'Connor recently cast the deciding vote in *Hamdi v. Rumsfeld*, which made clear that the President's powers during wartime are not unchecked under our Constitution. Justice O'Connor wrote:

A state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.

The liberties of our people are in the hands of the Supreme Court. The willingness of this President and a number of Presidents before him to ignore the Constitution's limits on their power needs to be checked by the Supreme Court. While I am hopeful Judge Alito will join the long and revered list of Supreme Court Justices who have protected our Constitution's checks and balances, I have too many doubts to be confident he will do so and that he will stand up to excessive exercises of Executive power, as Justice Jackson and Justice O'Connor and other Justices have done.

Judge Alito is a personable, decent man, a man of great integrity and extraordinary intellect. His associates vouch for his collegiality and his congeniality. But I am not confident Judge Alito will help provide the essential check on executive excess that has proven throughout our history to be the bedrock of our liberty.

During his hearings, he stated time and time again that the President is "not above the law," but in the end I am not persuaded there is real conviction behind that mantra.

I wish I could ignore my fears and vote my hopes. But the doubts are too nagging and the stakes are too high for me to consent to Judge Alito's nomination to the Supreme Court.

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. CRAIG. 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. CRAIG. Mr. President, I am here today to discuss the nomination of Judge Samuel A. Alito, Jr. to be an Associate Justice of the Supreme Court.

Over 200 years ago, the Framers of the United States Constitution had a similar discussion. On the topic of judicial nominations, they emphasized the need for qualified judges—those who possess virtue, honor, requisite integrity, competent knowledge of the laws, fit character, and those who have the ability to conduct the job with utility and dignity.

They also talked about the courts that these judges sit on and warned against them exercising will instead of judgment, the consequence of which would be the substitution of the courts' pleasure to that of the legislative body.

These principles have stood the test of time—have been a constant standard that has guided the Senate's constitutional obligation of advice and consent and—today, over two centuries later, we see these principles embodied in Judge Samuel Alito.

You can tell this by Judge Alito's record.

Judge Alito has served as a judge on the Third Circuit Court of Appeals for 15 years. He was confirmed unanimously by a voice vote and since his appointment, he has participated in more than 1,500 Federal appeals and written more than 350 opinions.

From 1987 to 1990, he was the U.S. attorney for the District of New Jersey—the chief Federal law enforcement officer in the State. As a Federal prosecutor, he oversaw the prosecutions of numerous organized crime figures, white-collar criminals, environmental polluters, drug traffickers, terrorists, and other Federal defendants.

Judge Alito also served as an Assistant to the Solicitor General from 1981–1985, arguing 12 cases before the Supreme Court and writing briefs or petitions in more than 250 cases.

He was a Deputy Assistant Attorney General in the Office of Legal Counsel, which is the highest authority within the executive branch for answering legal questions and advising the federal government on complex statutory and constitutional questions.

He is also a distinguished student and scholar. He earned his bachelor's degree from Princeton University and his law degree from Yale Law School, where he served as editor of the *Yale Law Journal*.

You can also tell his qualifications by the kind of human being he is—and by the kind that others know him to be.

Judge Edward Becker, Senior Court of Appeals Judge for the Third Circuit,

who served with Judge Alito for 15 years, called him a wonderful human being, gentle, kind, considerate, patient, self-effacing, brilliant, highly analytical and meticulous, a soul of honor, with no chinks in the armor of his integrity.

Judge Leonard Garth, who has known Judge Alito since he clerked for him in 1976 and served with him on the Third Circuit for the 15 years of Judge Alito's tenure there, called him thoughtful, modest, and self-effacing, and that it is rare to find humility such as his in someone of such extraordinary ability.

And Edna Axelrod, a former colleague and lifelong Democrat, called him a man of unquestionable ability and integrity, one who approaches each case in an openminded way, seeking to apply the law fairly.

You can also tell his qualifications from his judicial philosophy—and the way he judges.

Judge Becker testified that Judge Alito scrupulously adheres to precedent.

A former colleague and friend of 20 years likewise said that those who know him know that he is not an ideologue, he does not use his position to pursue personal agendas, and he has a profound respect for the law and precedent.

Judge Alito himself testified that he makes decisions knowing a judge can't have any agenda, a judge can't have any preferred outcome in any particular case, and a judge certainly doesn't have a client. The judge's only obligation—and it is a solemn obligation—is to the rule of law. And that means in every single case, the judge has to do what the law requires.

All of these things—his record, character, and judicial integrity—don't simply make him qualified to be an Associate Justice of the Supreme Court—they make him well qualified, according to the American Bar Association.

After interviewing more than 300 people and analyzing nearly 350 published opinions, a panel at the ABA concluded that Judge Alito's integrity, his professional competence, and his judicial temperament are of the highest standard—and his time on the bench established a record of both proper judicial conduct and even-handed application in seeking to do what is fundamentally fair.

Some of those now opposing the nomination of Judge Alito used to agree.

When Judge Alito was in the process of being confirmed to the Third Circuit, one Senator said that Judge Alito "obviously had a very distinguished record" and commended him for his "long service in the public interest."

Another, referring generally to the nominations process, said "we need to get away from rhetoric and litmus tests, and focus on rebuilding a constructive relationship between Congress and the courts . . . we do not need nominees put on hold for years . . . while we screen them for their Republican sympathies and associations."

And the Senate did this some years ago. I recall when the nomination of Ruth Bader Ginsburg to the Supreme Court came before the Senate in 1993, I was confronted with a nominee whose past revealed that she had a vastly different political ideology than my own. My constituents from Idaho made clear just how different and how far out of the Idaho mainstream that ideology was.

However, Justice Ginsburg was a judge of great ability, character, intellect, and temperament. Her record was replete with evidence of these qualities. And although at one time she had been a vocal advocate for particular political issues, she had a sharp understanding of the limited character of the judiciary and her role within it as a neutral arbiter, not an advocate.

I voted for Ruth Bader Ginsburg. Not because she had the same ideology as I do, but because there was a lack of convincing evidence that she believed the Supreme Court was a place for judicial activism rather than restraint.

Judge Alito's record reflects the same belief, perhaps even more so than Justice Ginsburg's. But now we have the same senators who supported him the first time around suddenly calling his record "ominous" and uniting their opposition on the basis of his alleged "extreme views of executive power."

In a recent hearing, Judge Alito acknowledged that "the President, like everybody else, is bound by statutes that are enacted by Congress" and that there is "no question about that whatsoever." He also testified that "as a judge, he would have no authority and certainly would not try to implement any policy ideas about federalism." There is nothing in Judge Alito's record to suggest otherwise.

What his record does show is a man of character, competence, and integrity who can apply the laws, regardless of his own views.

It is hard to argue against that.

Let us vote to confirm Judge Samuel Alito as an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I understand the leader may be coming. If he does, I will suspend my remarks to allow him to speak, then I will resume. Are we in morning business?

The PRESIDING OFFICER. We are in executive session on the nomination of Judge Alito.

Mr. ALEXANDER. I rise to make a few remarks on Judge Alito. The Presiding Officer is from the next State over. North Carolina and Tennessee have the same mountains, and he may be familiar with a story we tell at home about the old Tennessee judge.

It is told in one of our mountain counties that the lawyers showed up one morning in the courthouse, all prepared for a 3-day or 4-day trial. They had their litigants and their witnesses and their books. They had done the research. The judge came in, sat down be-

hind the bench, and said: Fellows, we can save a lot of time. I had a phone call last night, and I pretty well know the facts. Just give me a little bit on the law.

The lawyers were pretty disappointed because it was obvious to them that the judge already had pretty well made up his mind about what to do about that case. That is not what they expected. They thought they were coming before a judge—at least one side did—who was impartial and they wouldn't know whose side the judge was on.

When Judge Alito is sworn in, he will take two oaths. The first is the constitutional oath that we Senators took. The second is the judicial oath, which makes a pretty good job description of a Justice on the Supreme Court: I—and he will say his name—do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Associate Justice of the Supreme Court under the Constitution and laws of the United States. So help me God.

Judge Alito's statements before the Judiciary Committee suggest to me that he understands very well his duty of impartiality under these oaths. He said he will uphold the Constitution. These are his words:

The court should make its decision based on the Constitution and the law. It should not sway in the wind of public opinion at any time.

Judge Alito has said that the Constitution applies to everyone:

No person in this country is above the law. That includes the President and it includes the Supreme Court.

He said he won't allow his personal views to compromise his impartiality. He also said:

I would approach the question with an open mind and I would listen to the arguments that were made.

The other side has taken an unusual position. They keep asking, Whose side is he on? Is he on the side of the rich or of the poor, the big or the little, the Black or the White, business or labor? Is he on the side of the easterner or the westerner? For us to know whose side he is on would violate his oath. He can't tell us that. The American people know that.

I had the privilege of being Governor of my home State. In that process, I appointed 50 judges. I never asked a single one of them whose side they were on. I appointed Democrats and Republicans. I appointed the first African American judges, and the first women to be circuit court judges. I didn't ask them where they stood on abortion or the death penalty. I tried to find out about their character, about their intelligence, about how they would treat people before them, about their respect for law and their understanding of our country. I have been proud of those 50 appointees.

I am disappointed that some in this Chamber would keep asking of Judge Alito and other nominees of the President, Whose side is he on? Is he on the side of the rich or the poor, of the big, of the little? He must take an oath of office that says he will not be on anybody's side and that when the lawyers come before him to argue a case, they don't know where he is going to come down except that he is going to come down according to his oath, according to the law.

Americans have shown that they know better. I had the privilege of being elected to the Senate in 2002. That was an issue in my election: Did the people of Tennessee want to confirm President Bush's judicial nominees, people who would interpret the law, not make it up as they go along? The people of Tennessee don't want a judge who takes sides before the case is argued.

I said a few months after I arrived here that I would not participate in a filibuster of any President's nominee. I might vote against them for one reason or another, but I wouldn't participate in a filibuster. Each one of them deserves an up-or-down vote. I am looking forward to casting this vote.

I would like to express my great respect for the woman Judge Alito will succeed. Sandra Day O'Connor was appointed by President Ronald Reagan. She was the first woman appointed to the Supreme Court. She has distinguished herself there by her intelligence, her independence, and scholarship. She has been a wonderful representative for our country. She is a great symbol for other men and women, reminding us that American history is a work in progress and that we had a long way to go when she was appointed, as we still do.

She tells a wonderful story of how, when she graduated from Stanford Law School, she applied for a job with a Los Angeles firm. Even though she graduated near the top of her class, she was told they only had places for women as secretaries. A few years later, a partner in the same firm was the Attorney General of the United States, and he called her and asked her to fly to Washington from Arizona so that he could talk with her about being President Reagan's appointee to the Supreme Court. She has come a long way, and she has helped our country come a long way. As we consider Judge Alito, we certainly salute Justice O'Connor.

I look forward to casting my vote for the confirmation of Judge Alito. His resume reads like a resume any of us who were once in law school dreamed we could have: his degree from Yale, his work as an Assistant U.S. Attorney, as Assistant to the Solicitor General, as U.S. Attorney, nearly 16 years of service on the Third Circuit Court of Appeals, and receiving a unanimous "well qualified" rating from the American Bar Association, which is the highest possible rating. He has based his opinions and dissents on sound

legal arguments. He appears to be unswayed by the particular details of the case that are irrelevant to the legal issues at stake. He seems to understand that he is not to be on anybody's side, that he is supposed to enforce the law impartially and respect the Constitution. In short, Samuel Alito has demonstrated judicial temperament suitable for a nominee.

I believe he will serve with distinction. I am pleased to support his confirmation as Associate Justice of the U.S. Supreme Court.

I thank the Chair.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CHAFEE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FRIST. 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. FRIST. Mr. President, I understand that earlier today, the distinguished chairman of the Judiciary Committee was on the Senate floor—actually, several times. During his last discussion on the Senate floor, he asked unanimous consent for an up-or-down vote on this distinguished nominee to the Supreme Court. As all of our colleagues know, it is very important from our standpoint that this nominee be given a vote that is up or down, which reflects the advice and consent of this body.

It has been reported to me over the course of the afternoon that there are Members from the other side of the aisle who have expressed their intent to filibuster this nominee. As I have said at the outset, it is important to me to make sure that this nominee be given plenty of time in terms of advice and consent on the floor of this body, and, indeed, he has had just that. It is time to establish an end point for that up-or-down vote. Although we have attempted to set a time certain to have that vote in the future, we have not been able to receive that from the other side of the aisle.

Again, this is a nominee who is well qualified, has the highest ABA rating. We heard seven of his circuit court fellow judges testify on his behalf. Now is the time to bring his vote to the floor of the Senate. There is objection to that, and it has been now 87 days. I believe this is the 87th day since he was initially nominated. We wanted to have hearings in November and December, and there was objection, so we pushed those off until January. In those hearings, Judge Alito testified and was present for 18 hours and answered over 650 questions. We have had debate today and yesterday, and the debate will continue tomorrow and possibly Saturday and Monday—however long it takes for people to be adequately heard. But it is time to set that vote.

Even after we came out of committee, there was yet another delay in

terms of bringing Judge Alito's nomination to the floor of this body. I was disappointed that he came out of committee on a party-line vote. That at least raises the specter that this becomes too partisan, and so I am very concerned. All that is behind us now, and it is time to move toward that up-or-down vote.

#### CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk at this point.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Samuel A. Alito, Jr., of New Jersey to be an Associate Justice of the Supreme Court of the United States.

Bill Frist, Elizabeth Dole, Michael B. Enzi, Jim DeMint, Wayne Allard, Kit Bond, John Ensign, Arlen Specter, Rick Santorum, Kay Bailey Hutchison, Pete Domenici, Judd Gregg, Lisa Murkowski, Norm Coleman, George Allen, Mitch McConnell.

Mr. FRIST. Mr. President, I ask unanimous consent that the vote on cloture occur at 4:30 p.m. on Monday, January 30, with the mandatory quorum waived. I further ask consent that if cloture is invoked, notwithstanding the provisions of rule XXII, the Senate proceed to a vote on the confirmation of the nomination at 11 a.m. on Tuesday, January 31. Finally, I ask unanimous consent that all debate time on Tuesday prior to 11 a.m. be equally divided between the two leaders or their designees, and that cloture vote may be vitiated by the agreement of the two leaders.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Democratic leader is recognized.

Mr. REID. Mr. President, I wish to express the appreciation on our side for giving us adequate time to talk about this most important nomination. The distinguished majority leader could have filed cloture last night because I told him I didn't have it cleared yet for a time-certain vote. There has been adequate time for people to debate. No one can complain in this matter that there hasn't been sufficient time to talk about Judge Alito, pro or con. We have had a dignified debate. We have gone back and forth, and I hope this matter will be resolved without too much more talking. But everybody has a right to talk.

Again, I express my appreciation to the distinguished majority leader for making sure everybody had ample time to talk on behalf of Samuel Alito or against him.

Mr. FRIST. Mr. President, just to summarize, we will be here tonight for as long as people want to speak. We will be here tomorrow, and we will an-

nounce what time we will be in tomorrow. We will be available as long as people would like to speak. If Saturday is necessary, we will provide that time as well. The cloture vote will be at 4:30 on Monday. Once cloture is invoked, we would have a vote at 11 a.m. on Tuesday, January 31.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mrs. DOLE. Mr. President, it is my great privilege to support Judge Samuel A. Alito, Jr., an outstanding choice for Associate Justice of the United States Supreme Court.

Judge Alito is indeed one of the most qualified nominees to ever come before the Senate. He has excelled at every level—high school valedictorian—Phi Beta Kappa from Princeton—Yale Law School—Editor of the Yale Law Journal—Federal prosecutor—distinguished and esteemed judge. His judicial experience and record are vast. During his 15 years on the bench, Judge Alito has participated in more than 1,500 decisions. He has written more than 350 opinions on issues across the legal spectrum. Of the 109 men and women who have been chosen to serve this country on the Supreme Court, Judge Alito has spent more time on the Federal bench than all but four. And no nominee to the high court has come before this body in the last 70 years with as much Federal judicial experience. Judge Alito is precisely the type of person America needs on the Supreme Court.

Yet, despite Judge Alito's obvious qualifications for this important post, some members of the other party have resorted to personal attacks in an effort to deny this good and honorable public servant confirmation by the Senate. They have questioned his integrity, questioned his commitment to equal rights, and mischaracterized his rulings from the bench.

But in reality, the hostility towards Judge Alito has nothing to do with his integrity, his commitment to fairness, or even his view of executive power. Rather, these attacks are simply a pretext upon which to oppose Judge Alito's nomination. His critics' real fear is that he will refuse to rubber-stamp the agenda advanced by liberal interest groups. Make no mistake, they want Judge Alito—and the Supreme Court—to undermine marriage, religious expression, and protection of the unborn.

I do not know how Judge Alito will ultimately rule when confronted with difficult questions of law—and neither do my colleagues—because Judge Alito has rightly refused to prejudice cases that may come before him. But we can all take comfort in the principles that will guide his approach—respect for the Constitution and the rule of law, a commitment to hear all sides of an argument with an open-mind, impartiality and fairness to all parties, big or small, powerful or powerless.

Judge Alito's judicial record and Senate testimony demonstrate an unwavering dedication to these principles. His colleagues on the bench and in the Justice Department, his clerks, and so many others who know him well, have testified that Samuel Alito is a man who will approach his job without bias. Like John Roberts, Samuel Alito understands that a Supreme Court justice should apply the law without regard to his personal views. I am confident that Judge Alito will bring this approach to the Court.

Mr. President, there is no question that confirmation hearings can be long, stressful, and exhausting—not only for the nominees but for their families and friends as well. But in earlier days, a nominee with Samuel Alito's intellect, qualifications, and integrity would have been confirmed with overwhelming support. Indeed, the other side has not publicly ruled out the possibility of an attempted filibuster. I fear that this precedent will have a chilling effect—keeping our best and brightest from entering public service.

The responsibility of the United States Senate to give advice and consent to a Supreme Court nominee is among the most significant given to us. It is vital to our Government's constitutional structure that the Senate discharge its duty by giving a Supreme Court nominee an up or down vote. And each Senator has ample resources upon which to make such a decision here.

Judge Alito has a judicial record far surpassing that which has customarily been available to us when considering a nominee for the highest court in the land. He also has answered more questions during the course of his hearing than any Supreme Court nominee in recent memory. If any question existed about Samuel Alito's integrity, judicial temperament, or qualifications for the Supreme Court, it was put to rest before the Judiciary Committee. I ask that my fellow Senators therefore vote to confirm Samuel Alito as Associate Justice of the United States Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, on January 4, 2005, I was privileged to take the oath of office as a U.S. Senator. I raised my right hand and, along with my colleagues, Republican and Democrat, pledged to support and defend the Constitution of the United States.

Now, as this distinguished body considers the nomination of Judge Samuel Alito, I am reminded again of what that obligation means. The legal experts have had their say, so today I wish to speak not as a legal scholar but as a commonsense American citizen.

When our Founding Fathers framed our Constitution, they gave us an incredible gift: a democracy with checks and balances. We will always be indebted to those visionary leaders who understood that we would need a con-

stant, fixed star by which to navigate the unpredictable and changing seas that we would encounter as a nation.

Today, over 200 years later, the wisdom of our Founders is clear as our Constitution continues to serve as a protector of liberty and individual freedom. But as this confirmation process continues to unfold, I fear that we have strayed far from where the Founders intended us to be.

I am afraid we have done a grave disservice not only to Judge Alito but to other qualified public servants who will certainly think twice before subjecting themselves to the dehumanizing process this has become. As I watched Judge Alito's hearings before the Judiciary Committee, I was struck by the harsh attacks some leveled against him. I was proud of my fellow Senator from South Carolina, Mr. LINDSEY GRAHAM, who expressed the outrage of the American people and apologized to Judge Alito and his family for the behavior of those on the committee, who seemed more intent on slandering him than fairly examining his long, distinguished legal career.

Sadly, partisanship prevailed, and Democrats chose to vote in lockstep against this committed public servant. Every Democrat on the Judiciary Committee voted against this well-qualified judge.

Now, as this nomination comes before the full Senate, the unfair rhetoric continues. I find it sad that yesterday my colleague from Massachusetts, Senator KERRY, took to the floor of this Chamber to insinuate that he could, as he said, "almost imagine Karl Rove right now whispering to Judge Alito, 'just say that you have an open mind, say whatever it takes.'" This accusation is insulting not only to Judge Alito—a man who, by all reports, is a fair and honest public servant—but to the intelligence of every American who shares Judge Alito's understanding that the proper role of a judge is to interpret the law, not make it.

These types of slanderous accusations also fly in the face of diverse and numerous independent groups that have stepped forward to defend Judge Alito's character and qualifications. Many of his former colleagues, including several judges who have served with him, testified under oath that he is fair and independent.

The American Bar Association, hardly known as a bastion of the rightwing, unanimously agreed to give Judge Alito their highest ranking of "well qualified" for his "integrity, professional competence, and judicial temperament."

A bipartisan group of 51 former Judge Alito clerks wrote that the judge was "guided by his profound respect for the Constitution and the limited role of the judicial branch," that he "applied precedent faithfully and fairly." Where Congress had spoken, "he gave the statute its commonsense reading," avoiding both "rigid interpretations that undermined the statute's clear

purpose," and attempts to "distort the statute's plain language to advance policy goals not adopted by Congress."

Their conclusion:

In short, the only result that Judge Alito ever tried to reach was the result dictated by the applicable law and the relevant facts.

Mr. President, I ask you, under our Constitution, what more could anyone—any Republican or Democrat—ask of a judge?

Judge Alito's hearings did serve a useful purpose. We now see a new litmus test being used by the Democrats as their standard for nominees. They have decided that the judiciary should be used to advance their own liberal policies. They are looking for a court that will act as a superlegislature, enabling them to reform laws in a way that Americans have rejected at the polls through the democratic process.

The Democrats lecture us that we must restore constitutional checks on the expansion of Presidential power, while in the same breath assigning to the judiciary a constitutional prerogative reserved solely for Congress. I am having a hard time reconciling these two ideas, and I suspect the American people are, too.

True to their strategy in recent years, the Democrats will say anything but do nothing except block what should be done.

Theirs is the philosophy of judicial activism that has led to decisions to ban the Pledge of Allegiance in our schools and allow local governments to take an American's home just to increase tax revenue. Increasingly, judges have legislated precedents that have little basis in written statute or the Constitution but instead are based on their own personal opinions.

This point was vividly made when Senator KOHL called for "an expansive and imaginative" interpretation of the Constitution, and further stated that the approach of a judge "just applying the law, is very often inadequate to ensure social progress [and] right historic wrongs. . . ."

Judge Alito eloquently addressed this flawed argument when he stated that while previous court decisions are deserving of our respect, if a decision is not supported by the text of the Constitution and the laws passed by Congress, then it should be overturned.

Furthermore, he correctly pointed out that it was exactly this process, not an "imaginative interpretation," that capably righted historic wrongs in the landmark civil rights case *Brown v. Board of Education*. To quote Judge Alito:

When *Brown* was finally decided, that was not an instance of the court changing the meaning of the equal protection clause; it was an instance of a court writing an incorrect interpretation that had prevailed for a long period of time.

It is clear that we are facing the grave danger of the slippery slope in which bad precedent—by which I mean precedent not clearly derived from the Constitution or a law passed by Congress—builds upon bad precedent. Before you know it, the original meaning

of the law or phrase in question is lost to history.

The Democrats are simply on the wrong side of this important debate. The Constitution is not a list of suggestions. It is the constant fixed star that should guide every action we take.

The issue before us today reaches far beyond the confirmation of Judge Alito. He has more judicial experience than any Supreme Court nominee in the last 75 years. There is no question that he is eminently qualified to sit on the Nation's highest Court.

Today we are debating which of these two diametrically opposed philosophies will prevail in the confirmation of future judges—the philosophy in which unelected judges create new law or the philosophy that returns a runaway judiciary to acting within the bounds of the checks and balances established by the Constitution.

In my travels in South Carolina, time and again, South Carolinians have asked me to fight for judges who will place the rule of law above their personal opinions. I support Judge Alito because he has shown that he will do just that. The consistent winner in his court has not been a person of business, a branch of Government, or political ideology. It has been the Constitution and our democracy.

When the speeches are done and the vote is called, I hope there will be those on the other side of the aisle who will put aside partisan politics. I pray that we can join together in affirming the rule of law by voting yes to confirm Judge Samuel Alito as the next Associate Justice of the Supreme Court of the United States. The American people deserve no less.

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

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

Mr. SARBANES. Mr. President, for the second time in 4 months, the Senate is being called upon to carry out one of its most important constitutional responsibilities, which is to give its advice and consent to a nominee to be a Justice on the Supreme Court of the United States. We have many serious responsibilities in this body, but I must say I think this one ranks at or near the very top of any of the decisions we will be called upon to make. That is because it falls uniquely to the nine Justices of the Supreme Court to expound and interpret the Constitution and the laws passed pursuant to it. The installation of two new Justices within a short time period has the potential to alter fundamentally the constitutional framework that protects the rights and liberties of the people of this Nation.

Once again we see the argument being made that the President is enti-

tled to his nominee, and that the Senate's role in the appointment process is limited to confirming the President's choice, barring some serious disqualification with the nominee. In effect, the presumption—a very heavy presumption—it is argued, is with the nominee and his confirmation.

In my view, this is not what the Constitution provides in requiring the Senate's advice and consent to a nominee to the Federal bench, which is, after all, a third, separate, independent branch of our national Government.

From a historical perspective, it is worth noting that over the course of our history, roughly one in every four nominations to the Court has not been confirmed by the Senate. There have been 158 nominations to the Supreme Court in the course of the history of the Republic, of which 114 were confirmed. Not all of the others were rejected. Some were rejected on votes taken in this body, some withdrew, and some were never acted upon. But the notion of this heavy presumption runs contrary to historical practice in the Senate. Almost one out of every four—actually a little more than one out of every four—nominations has not been confirmed by the Senate.

As Michael Gerhardt, distinguished professor of constitutional law at the University of North Carolina Law School, testified recently before the Judiciary Committee:

Neither the plain language of the Appointments Clause nor the structure of the Constitution requires Senators to simply defer to a President's Supreme Court nomination.

Let me repeat that quote:

Neither the plain language of the Appointments Clause nor the structure of the Constitution requires Senators to simply defer to a President's Supreme Court nomination.

In my view, the Senate's duty to advise and consent on nominations is an integral part of the Constitution's system of checks and balances among our institutions of government. A nomination alone does not constitute an entitlement to hold the office.

Furthermore, some have said when considering a nominee that we look only to their experience, their qualifications, their character. These are all obviously very important criteria. But, in my view, the nominee's judicial philosophy also must be given very serious consideration. We are facing a decision to place someone on the Supreme Court for life tenure. It could be 20, 30, or 35 years. Judge Alito is in his fifties, so we are talking about someone who is going to shape the interpretation of our Constitution over decades. You view that when you consider a nominee to the Supreme Court.

The nominee's judicial philosophy should be given very serious consideration, as well put by former Chief Justice Rehnquist. Writing in 1959, long before he went on the Court, the late Chief Justice Rehnquist wrote that the Senate should follow the "practice of thoroughly informing itself on the judicial philosophy of a Supreme Court

nominee before voting to confirm him."

In considering Judge Alito's nomination to be an Associate Justice of the Supreme Court, in my view, the question of his judicial philosophy is not only a legitimate question but indeed an essential question. Inquiring into a nominee's judicial philosophy does not mean discovering how he or she would decide specific future cases.

We are always being warned about that, and there is no effort here to predetermine that. Rather, it seeks to ascertain the nominee's fundamental perspectives on the Constitution, how it protects our individual liberties, ensures equal protection of the law, maintains the separation of powers and the checks and balances encompassed within our Constitution.

Judge Alito has served on the U.S. Court of Appeals for the Third Circuit since 1990, during which time he has written hundreds of published opinions, and earlier he served 6 years in the U.S. Department of Justice. So there is much to consider in his record and many lessons to be drawn from it.

Of the issues the Court is likely to face, perhaps none is more basic than the proper reach and exercise of executive power. We are particularly focused on this issue now, but it is an issue that has recurred constantly throughout our history as we seek to maintain the careful balance the Founding Fathers placed in the Constitution.

They, in fact, established in the Constitution a complex system of democratic governance with three separate, equal branches of the Government. At the center of this system lies not any one of the three branches but rather a delicate balance amongst the three branches.

Looking at Judge Alito's record, one sees a clear and constant deference to the executive, which, in my view, would significantly tip that delicate balance with respect to our constitutional system.

The Constitution grants the legislative power expressly to Congress. It gives the President power to only approve or veto legislation. The veto power, of course, gives the President very significant authority with respect to legislation. But if a bill becomes the law, with or without the President's approval, it then becomes his or her responsibility as the Chief Executive to see that the law is carried out, to see that the law is properly executed.

Judge Alito's record demonstrates he would seek to extend the President's power to allow for modification of law by the executive alone. As one example, while he was an official in the Department of Justice, he was instrumental in advancing a policy of so-called Presidential statements, to create a platform from which the President could seek to alter the underlying purpose of legislation passed by the Congress without the concurrence of the Congress.

Such a deference to executive power, I think, is of deep concern, especially



as we see on occasion now when Presidents, rather than following constitutional process by seeking legislative change through the Congress, instead refuse to carry out statutes that the Executive finds not to his liking.

Furthermore, under our constitutional system, the courts are the ultimate guarantors of individuals' rights and the defenders of our liberties. On this issue, too, Judge Alito has been quite clear and consistent.

Professor Goodwin Liu of Boalt Hall School of Law at the University of California at Berkeley summed up Judge Alito's work in his testimony to the Judiciary Committee:

Throughout his career, with few exceptions, Judge Alito has sided with the police, prosecutors, immigration officials, and other government agents while taking a minimalist approach to recognizing official error and abuse.

In an editorial on January 12, the *New York Times* made the same point in somewhat different terms:

[Judge Alito] time and again, as a lawyer and a judge, . . . has taken the side of the big corporations against the 'little guy,' supported employers against employees, and routinely rejected the claims of women, racial minorities and the disabled.

In a memorandum that he submitted when applying for a political position in the Justice Department in 1985, Judge Alito made a series of very sweeping statements about his understanding of the Constitution. He wrote that he was inspired to apply to law school by his opposition to certain decisions of the Warren Court—the Court headed by Chief Justice Earl Warren—decisions which are now considered bedrock provisions of constitutional law, decisions involving criminal procedure, the Establishment clause of the Constitution, and reapportionment.

In that very same memo, he also took strong positions in opposition to Court decisions on affirmative action and the right to choose. When asked about the memo during his confirmation hearings, Judge Alito explained that the 1985 memo reflected his views of the Constitution at that time. He did not, however, explicitly disavow those views, and nothing in the hearing record demonstrates they have changed. In fact, his decisions as a judge on the Third Circuit reflect that these are the views he has continued to hold and to espouse.

The *Baltimore Sun* concluded in an editorial that:

Despite Judge Alito's periodic assurances of having an open mind, the disturbing impression from the hearings is that on critical issues such as abortion, civil rights and the limits of executive power, he does not.

That is a very perceptive observation with respect to Judge Alito's testimony before the Judiciary Committee.

I am not persuaded that Judge Alito recognizes either the critically important role the Supreme Court must play in preserving the constitutional balance of power among the three branches of our Government, that delicate balance to which I made reference

earlier which was so much a part of the thinking of that distinguished assemblage which gathered in Philadelphia in the summer of 1787 to frame our Constitution.

I have this concern about his view of the role the Court must play in preserving the constitutional balance of power among the three branches of Government and whether he recognizes the role of the Court as the ultimate guarantor of every individual's constitutional rights and liberties.

For the ordinary citizens all across our country, the rulings of the Supreme Court can be of immense importance in terms of providing for their rights and liberties.

Because I am not persuaded in this regard about the appropriateness of Judge Alito's nomination, when the time comes to vote, I will vote against his nomination to become an Associate Justice on the Supreme Court of the United States.

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. INHOFE. 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. INHOFE. Mr. President, I have just learned that two of our distinguished Senators, both from Massachusetts, have made the statement that they are trying to drum up support for a filibuster. This is not going to happen. I know that people get desperate. They get desperate because they are afraid something might happen to their liberal agenda. But the Constitution is very clear.

We have discussed this, we have debated this, and there is not going to be a problem there. But I think it is worth bringing to the attention of the American people that this is actually taking place right now. Nowhere did our Founding Fathers say that to confirm a judge, you had to have a supermajority, and I do not believe this is going to happen.

Let me share a couple thoughts with you. First of all, I am not a lawyer. I am not a member of the Judiciary Committee. In a way, that puts me in a position, perhaps, that is a little better than a lot of my colleagues who are. In fact, most of the people who have spoken are members of the Judiciary Committee. But, by now, we have heard so much about Judge Samuel Alito's resume, about the type of person he is. I would have to say, yes, he is guilty, he is guilty of being a strict constructionist, of being a strict interpreter of the Constitution, and he will rule according to settled law. I do not think anyone has any doubt in their mind that he would.

The problem is that some of the Democrats have made it clear they are going to make this a partisan fight,

now even talking about perhaps even a filibuster. They have a litmus test. They do not confirm any nominee of any President unless that nominee makes some type of a commitment and passes a litmus test for their far-left liberal agenda, whether that is gay marriage or whether it is abortion on demand or any of the rest of it. That is really what it is about. We do not talk about this. They kind of dance around this issue, but that is the real reason they do not like this guy, because he is not going to line up and give a litmus test to some liberal agenda.

One of the things that bothers me about this is, this is all new. This did not happen in the past. I can remember when Judge Scalia was up for confirmation. People talk about Judges Scalia and Alito not just because their names sound similar, but their temperament is the same and their background is the same, their writings are the same—very similar. We went through a very long process with Judge Scalia during his confirmation, and he ended up being confirmed by a unanimous vote—a unanimous vote.

If you will remember, that is when William Rehnquist was taken from the Court and made the Chief Justice, which created the vacancy. A lot of people did not want to have someone who was a strict constructionist, but they realized he was qualified, and they realized he was appointed by a President who was a Republican, Ronald Reagan, and they went ahead and confirmed him. It was unanimous. Now this is something that is really changing now because there is no way in the world Judge Alito is going to be unanimously confirmed.

Back in the Clinton administration, I remember so well when President Clinton nominated Judge Ginsburg and then Breyer. And keep in mind, we Republicans were not real excited about that. They did not have a very conservative background, and yet they were overwhelmingly confirmed.

That is the change I see happening. It is not like it used to be. Ginsburg was 96 to 3. Breyer was 87 to 9. They were overwhelmingly confirmed.

Not too long ago, just the other day, JEFF SESSIONS, who is our colleague from Alabama, made a statement. He said if we really get into this thing where we are looking at it philosophically, then you are going to have to remember—and the way he worded it was—"the knife cuts both ways." He said if this new standard is affirmed, then it will be more difficult for future Democrat Presidents to have their nominees confirmed. I agree with this. If a Democrat President comes up and makes a nomination, we would change, the same way they are changing during this. Maybe the litmus test would be discussed at that time.

On the plane coming up here just a few minutes ago—we just landed, after this recess—my wife and I were talking about this, and I told her about the comments of Senator SESSIONS. I said:

What I think I will do in my speech on the floor tonight on the confirmation of Judge Alito is make the statement that if they adhere to this litmus test, that if I am around—I do not think there is going to be a Democrat President, but if there is and I am still in the U.S. Senate, I am going to do the same thing. I am going to hold them to a litmus test. My wife said: No, don't do that. Don't stoop to that just because they are doing it. So I am not doing it. I learned a long time ago that—my wife and I have been married 46 years—I do what I am told.

So anyway, this is something that is a change that we have observed, and I think it warrants our consideration.

Now, the Democrats are also making outrageous accusations, trying to justify partisan votes. I believe in my heart that they do not believe these accusations they are making, but what they do want to do is have some excuse so they can go home and say, "I voted against this guy," but not tell them the real reasons. Let's go over some of these accusations that are made.

I start out with Senator KENNEDY, who inaccurately stated that Alito opposes the one-person, one-vote principle. I will go ahead and give the quote. Senator KENNEDY, on January 9 said:

It expresses outright hostility to the basic principle of one person, one vote, affirmed by the Supreme Court as essential to ensuring that all Americans have a voice in their government.

Now, the fact is, Judge Alito has stated that the principle of one person, one vote is a bedrock principle of American constitutional law. He has never taken issue with that principle. And to quote him, he said:

[T]he principle of one person, one vote is a fundamental part of our constitutional law. . . . [and] I do not see any reason why it should be reexamined. And I do not know that anybody is asking for that to be done. . . . I think that is [a] very well settled [principle] now in the constitutional law of our country.

I would adhere to that. Well, he could not be more emphatic than that. Again, Senator KENNEDY—what he said is not true. I know he wants it to be true. He wishes it were true, but it is not.

Then along came Senator SCHUMER from New York. In attacking Judge Alito's jurisprudence, Senator SCHUMER tried to paint Alito as someone who is "too conservative." His statement was:

Judge Alito, in case after case, you give the impression of applying careful legal reasoning, but, too many times, you happen to reach the most conservative result.

Well, the fact is, Senator SCHUMER's characterization of Alito overlooks the bulk of Alito's record of nearly 5,000 votes as a court of appeals judge reached on the law and the facts, which are inconsistent with Senator SCHUMER's picture of Alito.

Now, if you question this, the statement that was made by Senator SCHUMER, if you believe there might be

some merit to it, let's stop. The easiest way to refute that is to read an editorial that was in the Washington Post. There is not a person who belongs to this body or anyone within earshot of what I am saying right now who is going to say the Washington Post is a conservative publication or a Republican publication. It is not. Yet what they said about Alito was:

[J]udge Alito's dissents are not the work of an unblinking ideologue. . . . [T]hey are the work of a serious and scholarly judge whose arguments deserve respect—a respect evident among his colleagues even when their positions differ.

And that is not the Washington Times; this is the Washington Post making this statement. So I would say, like Senator KENNEDY, that Senator SCHUMER, what he said is just flat not true. I am sure he wishes it were true, but it is not.

Here is another statement made by Senator KENNEDY. He is trying to make a position that Judge Alito wants, through the Presidential signing statements—Presidential signing statements are statements that are made by the President when a new law is passed—to say: This is my interpretation of it. Well, he likes to imply that Alito supports giving the President absolute power. Senator KENNEDY said:

You argued that the Attorney General should have the absolute immunity, even for actions that he knows to be unlawful or unconstitutional; suggested that the court should give a President's Signing Statement great deference in determining the meaning and the intent of the law; and argued, as a matter of your own political and judicial philosophy, for an almost all-powerful presidency.

Well, the fact is, the President's bill-signing statement is a device developed long before Alito came along.

They try to imply that he had something to do with this. This has been embraced by Democratic and Republican Presidents for years and years, all the way back to Presidents Monroe and Jackson. The suggestion that Alito somehow invented this notion is patently absurd. So, again, Senator KENNEDY is wrong. His statement is not true.

He further cites false and inaccurate Knight Ridder analysis. This is rather interesting. Senator KENNEDY made more outrageous statements this time about Alito's view of government searches. Senator KENNEDY, on January 10:

Mr. Chairman, at this point, I'd like to include in the appropriate place in the RECORD the Knight Ridder studies that concluded that Judge Alito never found a government search unconstitutional.

Knight Ridder's writers, Stephen Henderson and Howard Mintz, have repeatedly been accused of biased reporting on Alito's record. The National Journal's Stuart Taylor wrote:

I focus here not . . . on such egregious factual errors as the assertion on C-SPAN, by Stephen Henderson of Knight Ridder newspapers, that in a study of Alito's more than 300 judicial opinions, "we didn't find a single

case in which Judge Alito sided with African-Americans . . . [who were] alleging racial bias.

He went on to say:

What is remarkable is that any reporter could have overlooked [case after case after case] in which Alito has sided with African-Americans alleging racial bias.

In a few minutes, I am going to be specific on some of these, but there would be too many to cite for the amount of time we have. Senator KENNEDY's statements are inaccurate and untrue. I know he wishes they were true, but they are not. These guys are grasping at straws.

Then Senator BIDEN came in with inaccurate statements on Presidential treatment toward the State. Senator BIDEN charged Alito with ruling in favor of the State against the individual. This is what he said:

But as I've tried diligently to look at your record, you seem to come down more often and give the benefit of the doubt to the outfit against whom discrimination is being alleged. You seem to lean—in close cases, you lean to the state versus the individual.

The facts belie that. The fact is, Alito's record shows he consistently approaches each case based on the law and the facts. He rules for plaintiffs and for defendants when the law supports him. He rules for the corporation or the State when the law supports their position. This is the appropriate approach for a Federal judge. It is clear that Alito understands the importance of the independence of the judiciary and has a healthy respect for its role as the bullwark against executive overreaching.

Alito often cites Alexander Hamilton. I think Alito has quoted Alexander Hamilton more than anyone else, at least it seems that way to me. He said:

[A]s Alexander Hamilton aptly put it in Federalist 78, the courts should carry out [the judicial power] with "firmness and independence." "Without this," he observed, "all the reservations of particular rights or privileges [in the Constitution] would amount to nothing."

Alito continued:

When a constitutional or statutory violation [by other governmental institutions] is proven, a court should not hesitate to impose a strong and lawful remedy if that is what is needed to provide full redress. Some of the finest chapters in the history of the Federal Courts have been written when federal judges, despite resistance, have steadfastly enforced remedies for deeply rooted constitutional violations.

During his 15 years on the bench, Judge Alito has repeatedly ruled to restrain executive authority, reflecting his understanding of the role of the judiciary to protect the constitutional rights, separation of powers, and so forth. What Senator BIDEN said is not true. I know he wishes it were.

Next we had Senator FEINSTEIN. She was approaching something to which I am particularly sensitive. I chair the committee called Environment and Public Works. The Presiding Officer is a member of that committee. We deal

with environmental issues. Senator FEINSTEIN mischaracterized Alito's environmental record.

Let me say this for anyone who might be listening: If there is nothing better going on right now, these Senators I am very critical of, I love them dearly. That is possible. It doesn't happen in the other body, seeing a Senator here who also served in the House at the time that I was there. We can love our friends, our Senators, with whom we serve, and we can detest their philosophy and their agenda. I learned this the hard way.

I will share this story. Back in 1994, I came from the House to the Senate. And operating as I had always operated in the House, there happened to be a Senator on the floor named Wendell Ford from Kentucky. He was known as the junkyard dog of the Senate. I disagreed with him. I came down here. That was the opening day, the first day I was elected and confirmed in a special election. I went down and I took him on. It was mean. It was wicked. And we are yelling and screaming. Afterwards I felt pretty good. I went to go back to the Russell Building, went down the elevator and ran into none other than Senator BOB BYRD.

BOB BYRD said: Ride along with me. He said: Young man, I appreciate your spunk.

I liked that because that happened to be November 17, 1994. It was my 60th birthday.

He said: Young man, I appreciate your spunk, but this isn't the way we do it in the Senate. He explained to me the history of the Senate, how it must have been divinely inspired, so that there is a genuine love for your fellow Senators, something that doesn't exist in the other body. I don't know why I said all that.

But Senator FEINSTEIN accused Alito of ruling against the Clean Water Act. She said:

In Public Interest Research Group of New Jersey v. Magnesium Electron, a citizens environmental group sued a chemical manufacturer under the Clean Water Act for polluting a river used by members of the group . . . your decision, as I understand it, was based upon your conclusion that the environmental group did not have standing to sue under the Clean Water Act because even though members of the environmental group had stopped using the river due to the pollution, they did not prove any injury to the environment. The decision, if broadly applied, would have gutted the Citizen Lawsuit Provision of the Clean Water Act . . . so you see where the concern comes with respect to overthrowing something on a technicality that can have enormous implications.

That is what Senator FEINSTEIN said. Keep in mind what Alito's vote was. He did not write the opinion. He voted in this case. It was a straightforward application of the Supreme Court's controlling precedent in *Lujan v. Defenders of Wildlife*. Most of us remember Manuel Lujan who later became Secretary of Interior. This decision was a 1992 decision in which the Supreme Court required that in order to file suit, a plaintiff must allege the actual

injury, not just have this great concern over activities such as pollution.

What we are saying here is that Senator FEINSTEIN should have read this. He was interpreting a law he may have agreed on or may not have, but this was sent down. This was settled law, established by the U.S. Supreme Court. Alito's vote, which he didn't write, was one based in law. I think what Senator FEINSTEIN said was not true. It needs to be answered. That is the answer.

Another one that Senator KENNEDY researched. Senator KENNEDY charged that Alito rarely votes for the little guy. Senator KENNEDY charged Alito with false accusations saying that he was biased toward the rich and powerful. This is Senator KENNEDY talking about the rich and powerful. He was biased toward the rich and powerful and against the little man. I will use the quote that he used. He said:

And on the cases he decided, in case after case after case, we see legal contortions and inconsistent reasoning to bend over backwards to help the powerful.

This is on January 12, stated by Senator KENNEDY. Time after time during his hearings, Alito and other Senators have repeated instances in which Alito did rule for the little guy. In cases involving criminal law, employment and labor law, immigration law, and others, Judge Alito has consistently ruled for plaintiffs or defendants as the facts and the law demanded.

I will give some examples. In *Zubi v. AT&T Corporation*, in 2000, Alito dissented from a case foreclosing a plaintiff's opportunity to advance his claim of race discrimination. Alito would have applied a longer statute of limitations to let the claim go forward. That is just the opposite of what was asserted by Senator KENNEDY.

In another case, *Caruso v. Blockbuster-Sony Music Entertainment Center at the Waterfront*, writing for the unanimous panel, Judge Alito reversed in part the district court's grant of summary judgment for Blockbuster-Sony "E-Centre"—this is a big corporation—and against a disabled patron. The plaintiff was William Caruso. He was a disabled veteran of Vietnam who used a wheelchair, brought suit against E-Centre under the Americans with Disabilities Act claiming that the wheelchair areas in the pavilion do not provide wheelchair users with lines of sight over standing spectators. The lawn area is not wheelchair accessible.

Judge Alito explained that even though the Department of Justice's standards do not require that wheelchair users must be able to see the stage when other patrons stand, the E-Centre must make assembly areas like the lawn accessible to people in wheelchairs. He concluded:

We reject the argument that assembly areas without fixed seating need not provide access to people in wheelchairs.

Again, Alito's stellar record proves that Senator KENNEDY's statement is false.

The next one I will mention was Senator KENNEDY's statement on racial

discrimination. Senator KENNEDY wrongly stated that Alito had never written an opinion related to race discrimination, implying that he could be a racist. Senator KENNEDY said:

Judge Alito has not written one single opinion on the merits in favor of a person of color alleging race discrimination on the job: in 15 years on the bench, not one.

He said that on January 9. The facts are that Alito has repeatedly ruled in favor of minorities making allegations of racial discrimination in employment. One such case is *Smith v. Davis*, 2001, in which Alito voted to reverse a grant of summary judgment against an African-American man's claim that he had been discriminated against in employment on the basis of race. Another one is *Zubi v. Johnson & Johnson Medical, Inc.* Alito voted to reverse a district court's grant of summary judgment against the plaintiff.

Judge Alito and his colleagues concluded that the female African-American plaintiff had introduced sufficient evidence to question whether the employer had, in fact, given her lower quality assignments due to her "objective" scores on certain evaluations, as the employer maintained. There are many more cases.

I ask unanimous consent to print in the RECORD the other cases.

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

In *Collins v. Sload* (2004), Alito joined a per curiam opinion reversing the District Court's dismissal of a Pro Se Title VII complaint alleging racial discrimination. The District Court had dismissed the complaint for failure to exhaust administrative remedies. The panel concluded that the question could not be resolved on the record and remanded for further proceedings.

In *Pope v. AT&T* (2001), Alito joined a per curiam opinion reversing the District Court's grant of summary judgment against an African American man alleging race discrimination under Section 1981. The panel concluded that the plaintiff had submitted significant evidence that AT&T's stated reason was pretextual, and remanded for trial.

Mr. INHOFE. The facts, as we have demonstrated, speak for themselves. Samuel Alito is not a racist, not a rightwing extremist who believes in an executive branch with sole authority and rules only in favor of the powerful but a thoughtful, mainstream, fair, experienced interpreter of the Constitution. He is a good guy. I have heard many people say that he is probably one of the most qualified persons ever to be nominated for this High Court. Those liberal Senators who are desperately grasping at any straw to find justification to vote against Judge Alito, they have their litmus test. In order to be confirmed to the U.S. Supreme Court, a judge must embrace all of the leftwing's extremist agenda, an agenda that is so unpopular in America that the American people reject it, and it must be legislated from the bench. That is the problem they have.

When my service in the Senate is over, one of the greatest honors I will have had, for the sake of America and

for the sake of my 20 kids and grandkids, is to vote to confirm Samuel Alito to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise to voice my strong support for the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court. Judge Alito has demonstrated and dedicated his life to public service, from serving in the Army Reserve to working as a prosecutor for the Federal Government.

For the past 15 years, Judge Alito has been a model jurist on the court of appeals, and his record reflects a deference to the political branches of our Government that is all too often lacking among some on the bench.

The guiding question for each of us in determining a nominee's fitness for this post should be whether the person is dedicated to applying the Constitution to every case considered by the Court and not adding to or changing the Constitution's text to suit his or her own personal policy preferences.

Judge Alito has clearly shown that he will approach every case with an open mind and apply the law as it is, rather than what he thinks it should be.

As Judge Alito has said, a judge cannot have an agenda and cannot have a preferred outcome in any particular case. I am convinced that he will not be an activist on the court and will conscientiously exercise restraint in his role as a justice.

Judge Alito has risen to his station in life from relatively humble beginnings. As he stated in his introductory remarks before the Judiciary Committee, his parents instilled in him a love of learning and, through their example, the importance of persistence and hard work.

I had the opportunity to meet with Judge Alito after he was nominated last fall. During this meeting, we discussed the role of the judiciary and some of the broad principles set forth in our Constitution. I was impressed by Judge Alito's quiet answers and thoughtful demeanor during that meeting.

Judge Alito is the kind of person who would fit in very well with my constituents in South Dakota. He is the kind of guy you would see at the local hardware store or at a school activity. Judge Alito would meet what I call the "Murdo" test. Murdo is my hometown. About 600 people live there. They are pretty plain spoken people. They use common sense to solve problems. They believe in the rule of law. And they have an inherent sense of fairness when it comes to making sure that the law applies fairly to all. If you listen to anyone who has served on the court with or worked with Judge Alito, those are the attributes they ascribe to him. He has tremendous respect from those who know him best.

Unassuming and unpretentious, Judge Alito is the kind of individual

with whom I believe the people in my hometown and in my State would feel comfortable. And not just South Dakotans but Americans everywhere, at least the silent majority of Americans. The character attacks on Judge Alito by the loud left have backfired because the majority of the American people have figured it out. They don't need the Senator from Massachusetts or the Senator from New York to tell them what they need to know. Judge Alito told them everything they needed to know in the hearings, and the more the political left attacks and delays and demonstrates, the more partisan they appear to the American public and the more their true agenda is exposed.

Judge Alito's quiet and thoughtful demeanor was clearly on display during his confirmation hearings. During these hearings, Judge Alito was extremely forthcoming and candid in his responses to questions, all 650 questions. For over 18 hours he responded thoroughly and thoughtfully to the full spectrum of questions and questioners, both those who were sincere and those who were sarcastic.

All of these things have convinced me that Judge Alito has the ability and temperament necessary to be an outstanding justice on the Supreme Court.

It is unfortunate that some on the other side have decided to make the nomination process about politics rather than about qualifications. Sadly, it seems the other side is engaging in an effort to ensure a large opposition vote to score political points, rather than giving a well-qualified nominee like Judge Alito the strong vote he deserves.

When Justice Ginsburg, a former general counsel for the American Civil Liberties Union, was nominated by President Clinton, she received nearly unanimous support—96 votes—despite the fact that many Republican Senators strongly disagreed with her views. She replaced the much more conservative Judge White. Yet no one was complaining about her shifting the Court dramatically to the left. Senators voted for her based on her qualifications.

When Justice Breyer, a former staffer for Senator KENNEDY, was nominated by President Clinton, he received 87 votes, and again many of those who voted in his favor strongly disagreed with his views.

Justice Ginsburg and Justice Breyer received strong support because of their qualifications and because Senators put aside politics in the interest of a dignified confirmation process.

Judge Alito is also well qualified. He unanimously received the highest rating from the American Bar Association, the benchmark that used to be considered the gold standard for evaluating nominees to the Federal Courts. Judge Alito is clearly a man of high integrity and intellect. No one disputes that. He deserves a large vote in the U.S. Senate, just as Justice Breyer and

Justice Ginsburg received. I call upon my colleagues on the other side of the aisle to summon their better angels, put aside their desire to score political points, and instead work to ensure a dignified confirmation process.

The Supreme Court gets the last word on some of the most challenging and divisive issues of our day. That is why those on the Court must be dedicated to the rule of law and the principle of judicial restraint. Throughout his career in public service, Judge Alito has shown the qualifications and temperament essential to serving on the Supreme Court.

I ran for the United States Senate for the opportunity to cast votes like the one I will cast on this nomination. When I asked South Dakotans for their vote, I assured them that I would do my best to see that the courts are populated with smart, qualified, and principled people who understand that the appropriate role of the judiciary in our Constitutional Republic is not to make laws but to apply them fairly to all.

Judge Alito is eminently fit and qualified to serve as an associate justice on the Supreme Court. That is why I will vote in favor of his confirmation, and I urge my colleagues to do the same.

I yield to the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank our colleague, Senator THUNE, for his excellent remarks. I know he cares deeply about the judiciary. I know that he talked about it a lot in his campaign. He is such a talented new Member of the Senate. There are many reasons he is here today, and I suggest that one of the reasons is because the individual he ran against—the former Democratic leader, Tom Daschle—led an obstruction of highly qualified judicial nominees. We are seeing that again today.

Now this Democratic leader, Mr. REID, has urged his colleagues to vote "no" in the party conference. Some have tried to say that is not so. But when the Democratic leader goes before his colleagues and urges them to vote "no," it has an impact. It sets this as a political vote rather than allowing and encouraging each individual Member to vote their own conscience. It is going to reduce the number of votes that Judge Alito will receive because people try to follow their leaders when they can. But it is not right.

This is a fabulous nomination. Judge Sam Alito is one of the finest nominees to ever come down the pike. He and Chief Justice Roberts were fabulous as witnesses, with incredible academic backgrounds and experience and a proven record of support from Democrats, liberals and conservatives, and a professional record and resume in both cases that are superb. But they do have a little difference of opinion, apparently, from some in the Senate. Senator THUNE made reference to it. Judge Alito and Judge Roberts believe it is

their duty to follow the law. It is their responsibility as judges to be neutral umpires, to not allow their personal, political, social, or religious views to impact their interpretation of the laws before them.

That is what a judge is all about in the American legal system, for heaven's sake. What kind of threat is that when you have a judge who believes in that philosophy?

Judge Alito's whole judicial approach to life and to his work is that a judge should put aside personal views and be a neutral, fair umpire, deciding the discrete case before the court, based on a fair and honest finding of the facts and an honest application of the law to those facts. That is what a judge is supposed to do.

We have Members on the other side insisting that a judge's ideology ought to play a part in the judge's decision-making process. That goes squarely in the face of what our American legal system is all about. Why do we give our judges, let me ask, a lifetime appointment to the Federal bench? Why? Because we wanted them to be free from pressure and do their duty day after day, fairly and honestly finding the facts truly in the case and applying the law to those facts—not as Judge Alito said, to engage in implementing “grand theories.” I thought that was a good phrase. That is the kind of judge President Bush promised, and that is the kind of judge Senator THUNE promised to support when he ran. That is the kind of judge I have believed in, in my career. I practiced for 15 years, for a long time, before Federal judges. I respect them. We had some magnificent Federal judges that I practiced before. I lost some cases and I won some cases, and every good lawyer does. But we all know one thing—that as long as that judge does his best, day after day, to honestly find the facts and apply the law, we can live with that. Your clients can live with that, too, even though they may be disappointed about the case. If we feel the judge is going to re-define marriage because he didn't like the way the State of Massachusetts defined marriage, and he is just going to say the Constitution somehow made reference to marriage, and a marriage now is no longer between just a man and a woman, but between two men or two women—this is going to be somehow found in the Constitution? And he is going to impose this on the people? What kind of power is that? Would five unelected judges, with lifetime appointments, who are utterly unaccountable to the American people, say that the phrase “under God” in the Pledge of Allegiance is not constitutional? Next, I suppose they will come in here with a chisel and right up there on the wall in this Chamber they will want to take out those big letters saying “In God We Trust.” I suppose that will be the next thing we have.

Well, that is not called for in the Constitution. The Constitution simply says Congress shall make no law estab-

lishing a religion or prohibiting the free exercise of your religion. So this is a recent phenomenon to see such a hostile approach to public expressions of religious faith in America. That is not our heritage, not the way the people understood the Constitution; that is not what the Constitution says.

But our colleagues don't like that. Is almost amusing, as we have gone through the committee process, to see them grasp in desperation to find something to complain about with Judge Alito. None of them could agree on what they didn't like. They bounced all over the place mostly. It sounded like they didn't like President Bush. They were having grievances about Abu Ghraib prison, which President Bush had nothing to do with. It was not the policy of the administration or the Army, and the people who abused those prisons are serving jail time today.

(Mr. ALLEN assumed the chair.)

Mr. SESSIONS. Mr. President, they want to say this has something to do with that. They have been hankering for Harriet Miers, which is rather odd, I think. They have suggested somehow that some rightwing cabal caused President Bush to withdraw her nomination. She didn't have a lot of constitutional experience. I am not aware she has ever argued a case before the Supreme Court. Very few lawyers have, although Judge Alito has argued 12 cases before the U.S. Supreme Court. She has not served as a judge. He has served 15 years as a Federal appellate judge.

At any rate, she is a wonderful person who has many fine qualities. I am not at all sure that she would be any more restrained or any more liberal in her interpretation of judicial decisions than Judge Alito. I don't know what her philosophy would be. But I do know this: They have complained steadfastly that Judge Alito somehow is a tool of President Bush to defend his national security policy and his war on terrorism and that Judge Alito is going to be a part of his efforts to arrogate powers to the executive branch.

Who has been at President Bush's right arm for 5 years? It is Harriet Miers. She is the counsel to the President of the United States. She is his personal lawyer. She sits right by him. She has been involved in every one of these decisions about executive branch powers, National Security Agency wiretaps of al-Qaida telephone conversations. She has been part of all of that. You think they would have let her come through here? They say: Oh, we think she would be a fine nominee. What would they have done to her? Those in this Chamber who think she would have gotten a pass on those issues, raise your hand. And she knew that. That is why she withdrew herself. She wrote the President a letter and said: It has been insisted that if I come before the committee, I have to divulge my private conversations with you, the President of the United States, my ad-

vice to you on all these issues. It would violate attorney-client privilege. That is something I cannot do and will not do. I am in an untenable position. I am honored to serve you. I would like to continue to serve as your chief counsel, which she does today. But I ask you to withdraw my nomination.

That is all that was about. Goodness. It indicates how desperate they have gotten to find complaints about this fine judge.

By the way, Judge Alito has not been a part of any of this national security, Washington, inside-the-beltway stuff. Judge Alito has been sitting on a Federal bench in the Third Circuit—living in New Jersey—outside Washington, DC. He has not had a single case I am aware of dealing with any of these national security or Presidential wartime powers issues. He comes at it as a skilled scholar, a person with a demonstrable record of fairness, and great intellectual capacity. I think when these cases come before him, as some may, he will decide them fairly. That is what everybody who knows him says.

Another deal they keep talking about is the unitary executive. Have you heard that phrase? They say: Oh, he is terrible; he believes in a unitary executive. It is almost amusing. Senator KENNEDY and others have used this phrase more than once: He believes in an all-powerful Executive. Now, you know no judge believes in an all-powerful Executive. You have to watch judges. They can strike down anything they want to. They are not going to give the President unlimited power. They are not going to give Congress unlimited power. But a good judge will follow the Constitution and will contain the executive if it goes too far and will contain the legislative branch if it goes too far. He or she will show personal constraint and not go too far as a member of the court, I think some need to remember that. Some have gone too far, in my opinion.

This has not been about Judge Alito. It has been about an opportunity to attack President Bush. That is what everything seems to come down to here. That is why it is so political.

They said he recommended, in defending a former Attorney General of the United States who had been sued personally for monetary damages, that they not defend the case on the basis that the Attorney General had absolute immunity from suit, but suggested he argue that he had a qualified immunity.

The former Attorney General of the United States believed he had absolute immunity, and Judge Alito then, as a young lawyer in the appellate section of the Department of Justice, was obliged to make the argument, if it was defensible in any way, for absolute immunity, and he made it.

That didn't mean he believed the Attorney General can never be sued. But I am going to tell you, the Presiding Officer has been a Governor of Virginia. People will sue for anything. If

every Governor, if every Senator, if every attorney general can be hauled into court and be sued because they voted on some bill or did something and they have to pay out of pocket these judgments or lawyers to defend themselves, you can shut down the Government. We do have some cases where a Government official has absolute immunity and sometimes they have qualified immunity.

I was Attorney General of Alabama. I had to defend the Governor and other officials in various lawsuits, some of them as bogus as \$3 bills, but you have to go down there and defend it. Are you going to try the case for 6 months or, if he has immunity, do you assert the immunity and get the case dismissed in the beginning? You get the case dismissed. That is what any good attorney for the Department of Justice would do.

He has never, in any way, supported an all-powerful Executive or an all-powerful executive branch that is “unchecked by the other two branches of Government.” Where did they come up with those kinds of ideas?

This is what he said in a speech at law school about the case of *ex parte Milligan*: It expressed that “the Constitution applies even in extreme emergency.” The Constitution does apply in the case of extreme emergency. That is what Judge Alito wrote some time ago.

He also said at the hearings:

The Bill of Rights applies at all times, and it is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis.

That is what he told us under oath in committee. He also said:

No person in this court is above the law, and that includes the President and that includes the Supreme Court. Everybody has to follow the law, and that means the Constitution of the United States, and it means the laws that are enacted under the Constitution of the United States.

He also said this:

Neither the President nor anyone else, I think, can authorize someone to . . . override a statute that is constitutional. . . . The President has to follow the Constitution and the laws, and it is up to Congress to exercise its legislative power. . . . The President has to comply with the fourth amendment, and the President has to comply with the statutes that are passed.

So it is clear that Judge Alito and his opponents are not talking about the same thing when they talk about the unitary executive theory.

According to Judge Alito, the “unitary executive theory” is not a theory that supports “inherent authority to wiretap American citizens without a warrant, to ignore congressional acts at will, or to take any other action he saw fit under his inherent powers.”

Those items have to do with the scope of Executive power, which is an entirely different matter from this theory of a unitary executive. They have tried to take this theory of a unitary executive, which has been around a long time, and twist it to say it has something to do with whether the

President has the power to wiretap you.

Judge Alito clearly explained that the unitary executive theory has nothing to do with the scope of Executive power, the separation of powers doctrine, Presidential signing statements, or the constitutionality of independent agencies. As he stated during the hearings:

The unitary executive doesn't have to do with the scope of executive power . . . I don't see any connection between the concept of a unitary Executive and the weight that should be given to signing statements in interpreting statutes.

That is so correct and so weird that it even has to be clarified. Do we have any lawyers in this body?

He goes on to say:

I don't think I've ever challenged the constitutionality of independent agencies.

Instead, this is what Judge Alito said about the unitary executive theory—this is what he said:

[I]t is the concept that the President is the head of the executive branch. The Constitution says that the President is given the Executive power.

Does anybody dispute that? I am quoting him.

And the idea of the unitary Executive is that the President should be able to control the executive branch, however big it is or however small it is . . . It has to do with control of whatever the executive is doing. It doesn't have to do with the scope of Executive power. It does not have to do with whether the Executive power that the President is given includes a lot of unnamed powers or what is often called inherent power.

Isn't that a good statement? We have heard a lot of discussion for some time now about this problem of the President, and he is supposed to head the executive branch. We have all these agencies that act like independent nations. When the FBI and DEA get together and reach an agreement, they enter into memorandums of understanding, like a treaty. The agencies are both under the executive branch, under the President's authority, but they get so big for their britches that they think they have their own independence. There is a concern that the President is put in charge of the entire executive branch and is supposed to supervise all kinds of different federal agencies—the Immigration and Customs Enforcement Bureau, the Corps of Engineers, the Drug Enforcement Agency, the FBI, all of them. And then the Congress takes all the management of power and gives it to all the individual executive branch people so that the President can't even run the agencies, and then they blame him when things go wrong. That is the way we do things around here.

I asked Charles Fried, who was a former Solicitor General of the United States—the person who argues cases on behalf of the United States before the U.S. Supreme Court—and had been a professor at Harvard Law School before that teaching judicial philosophy: Mr. Fried, you have been around a good while. You have heard this talk about

the unitary executive. What is it? What does it mean to you?

Boy, he just hit it right on. I was surprised. He even rebuked the members of the committee for misinterpreting the theory, he said this:

I think what has been said about the unitary Executive in these hearings is very misleading. The unitary Executive says nothing about whether the President must obey the law. Of course he must obey the law. It talks about the President's power to control the executive branch.

[It] is not an invention of the Reagan Justice Department, it was propounded in the first administration of Franklin Delano Roosevelt who objected to the powers of the Comptroller General who tried to fire a Federal Trade Commissioner, and who referred to himself [this Comptroller] as the general manager of the executive branch. That is the origin of the notion, the FDR administration.

Some Comptroller General declared he was the general manager of the executive branch and Roosevelt didn't like it and he talked about that and said the executive branch is headed by the President. Here, America, the Government, is one. It cannot sue itself.

Judge Edward Becker was aware of all these things. He is one of the most distinguished Federal appellate judges in America. He appeared at the committee with a group of his colleagues from the Third Circuit. They have served with Judge Alito, many of them for his full 15-year career—most of them at least 7 or more years—during his tenure on the Third Circuit Court of Appeals.

For those who may not fully understand it, an appellate judge on the court of appeals handles the appeals from the trial courts where juries and witnesses testify. Everything that is said in those trials is written down. If somebody is unhappy with the result and thinks they did not get fair treatment, they will appeal to the court of appeals and the court of appeals will review the record, listen to the arguments, consider the law, and determine what the facts are in the case and rule whether they got a fair trial.

If you are not happy with the court of appeals' decision, then you appeal to the Supreme Court and the Supreme Court does basically the same thing, it reviews the transcript and the record and considers the decision of the court of appeals that decided it.

That is what Judge Alito has been doing for 15 years. That is what his life has been. He goes to work and reads transcripts. He is not listening to people's phone calls. He is not approving search warrants, such as State county judges, and magistrates judges, and city judges can do. Judge Alito has been up here doing the very same kind of work he would be doing on the Supreme Court.

What do they say about how he performed in that role? This is what Judge Becker said about Judge Alito's temperament. Sam Alito:

is gentle, considerate, unfailingly polite, decent, kind, patient and generous. . . . I have



never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize . . . he expresses his views in measured and tempered tones.

Pretty good job description of what you would want in a Supreme Court Justice, wouldn't you think?

What about the question of integrity? What did Judge Becker, one of the great judges in the United States today, say about his integrity?

Sam Alito is the soul of honor. . . I have never seen a chink in the armor of his integrity, which I view as total.

Judge Becker, on Sam Alito's intellect:

He is brilliant, he is highly analytical, and meticulous and careful in his comments and his written work. . . . He is not doctrinaire, but rather open to differing views and will often change his mind in light of the views of a colleague.

Isn't that a fine statement of what you would want in a judge?

What about his approach to the law? They say he has views and he is going to let his views impact his decision-making process. What does Judge Becker, who served with him for 15 years and watched him and sat right beside him on that same court of appeals, say?

He scrupulously adheres to precedent. I have never seen him exhibit bias against any class of litigation or litigants. . . . His credo has always been fairness.

Judge Anthony Scirica, Chief Judge of that Third Circuit, has been on the bench for 20 years. This is what Judge Anthony Scirica said about him. Alito: is a thoughtful, careful, principled judge who is guided by a deep and abiding respect for the rule of law.

He goes on to say Alito "is intellectually honest."

Let me insert here a parenthetical. I am telling you, those of us who tried a lot of cases before judges, want a judge who is honest intellectually and does not play games, does not twist facts, does not twist the law so he can justify a decision, and most people know which judges do that.

Judge Scirica said that Alito:

is intellectually honest, he is fair, he is ethical. He has the intellect, the integrity, the compassion and the judicial temperament that are the hallmarks of an outstanding judge.

He goes on to say:

His personal views, whatever they may be, do not jeopardize the independence of his legal reasoning or his capacity to approach each issue with an open mind.

All of us have some beliefs, unless we are a potted plant or already beneath the soil. But the question is, when you put a robe on somebody with a lifetime appointment, are they going to allow some personal belief they may have to not give the litigants before the Court a fair shake and allow their personal bias, their disagreement with the law, or their personal concern, to override what their duty is? Alito is absolutely not this kind of a judge.

So what else does he say about him?

Judge Alito is modest and unassuming.

We had one of our Senators, remarkably, make this statement. It takes your breath away, really.

If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer.

Then he goes on to say if it is a prosecutor or defendant, "he will rule for the prosecutor."

That is not what these people who know him say. That is not what his record says and demonstrates. That is not the opinion of anybody who knows the man.

Judge Maryanne Trump Barry, who was appointed to the court in 1999 by President Clinton, had previously worked with Alito in the U.S. Attorneys Office in New Jersey in the 1970s. This is what Judge Maryanne Trump Barry said about him.

In the Attorney General's office, Samuel Alito set a standard of excellence that was contagious, his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency [were clear].

She goes on to say:

Judge Alito is a man of remarkable intellectual gifts. He is a man with impeccable legal credentials. He is a fair-minded man, a modest man, a humble man, and he reveres the rule of law.

This is not a man who is going to get on the Supreme Court and rule against every defendant. As a matter of fact, there is a host of cases in which he ruled for the defendant, sometimes in dissent. He is certainly not going to rule for the employer if the employee has been wronged. Judge Ruggero Aldisert, appointed by President Lyndon Johnson, a Senior Judge who has written a number of books, who campaigned for John F. Kennedy and ran for office as a Democrat, said this about Alito. He is a remarkable man, I must say.

Judicial independence is simply incompatible with political loyalties and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Judge Leonard Garth has been on the bench since 1973. Judge Alito, right out of law school in 1976, clerked for Judge Garth. Judge Garth found him to be: fiercely intelligent, deeply motivated, and extremely capable.

While Alito was Judge Garth's law clerk, Judge Garth:

developed . . . a deep respect for Sam's analytical ability, his legal acumen, his judgment, his institutional values, and, yes, even his sense of humor. . . .

He said Alito:

is an intellectually gifted and morally principled judge.

Some may not like it. They are going to think there is something wrong with that. Judge Garth said he was a "morally principled judge."

He is a sound jurist, always respectful of the institution and the precepts that led to decisions in cases under review.

He goes on to say:

His fairness, his judicial demeanor and actions, and his commitment to the law, all of

those qualities which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

Judge Garth did say he was very careful about those words. He knew some were suggesting that Judge Alito, who served for a time in the Reagan Department of Justice and had been unanimously confirmed by this Senate to the court of appeals, after being appointed by former President Bush—some were somehow saying that he might allow his views, whatever they are—and I have not seen any evidence that he has particularly strong political views—that he might allow them to influence him.

He said that:

. . . his commitment to the law, which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

If you served on a bench a long time with a judge, you will know whether that is true. This is a Democratic individual.

Judge John Gibbons said this about it. He said that he was now representing some prisoners in Guantanamo, his law firm was, and he was not happy with the way they had been treated. But he said:

I am confident, however, that as an able and legal scholar and a fair-minded Justice, he will give the arguments . . . careful and thoughtful consideration without any predisposition in favor of the position of the executive branch.

So this Judge Gibbons had been on the bench and is now retired from the bench. He is now in private practice. His law firm, for reasons of which I am not aware, was representing prisoners in Guantanamo. He thinks they are entitled to trials, I suppose. But he said absolutely he trusted Judge Alito to give him a fair trial.

He went on to add:

Alito is a careful, thoughtful, intelligent, fair-minded jurist who will add to the Court's reputation as the necessary expositor of constitutional limits on the political branches of the government.

Judge Tim Lewis, African American, served on the Third Circuit Court of Appeals for 7 years before going into private practice focusing on civil rights and human rights law. Judge Tim Lewis joked about sitting on the leftwing of the panel. Judge Lewis claimed he is:

openly and unapologetically pro-choice and always has been.

He said that:

Judge Alito never had an ideological bent or a result-oriented demeanor or approach.

He is:

intellectually honest.

Then he went on to add this, he emphasized it:

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I can guarantee you that I would not be sitting here today. That is the first thing I want to make clear.

He said Alito "will not have any agenda-driven or result-oriented approach."

That was one of the more remarkable panels we have ever had. Judge Alito has served with Republicans and Democrats—experienced judges, extraordinarily wise, very interesting to listen to, and their respect for him was remarkable.

Indeed, the ABA panel member—an African American who represented the University of Michigan in the affirmative action admissions case which went before the Supreme Court—said that Judge Alito was “held in incredibly high regard” by the ABA.

I will share a few words from Judge Alito himself before I wrap up.

In his testimony, he was asked about cases that may come before him. I have to say nobody would dispute that in recent years he was more forthcoming than any nominee we have had in discussing openly how he would analyze a case, without going too far and prejudging it in any way. He said these words, which I think reflect good judgment and wisdom of judgment.

By the way, we have a transcript, but all of this was without notes. He spoke so beautifully. He looked right at us.

This is what he said:

Good judges develop certain habits in mind. One of those habits in mind is to have a delay in reaching a conclusion until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read, or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague during the conference on the case when the judges privately fully discuss the case.

That is what we want in a judge. We want a judge who comes in with a philosophy and a demonstrated record of not rushing to judgment, not allowing any personal views he may have to influence him. He analyzes a case, but has a record that has won the respect of colleagues, liberals and conservatives, Republicans and Democrats, the bar, and his colleagues on the bench.

He is an extraordinary nominee. I could not be more proud of him. He did a magnificent job in testifying. I never thought that anyone would testify to the level of John Roberts because he is such a skilled attorney and advocate. But this judge in his own way was every bit as good. He made us all proud, and President Bush should be very proud for submitting his nomination.

I am pleased to support him. I will be voting for him, and I hope my colleagues will do the same.

I thank the Chair. I yield the floor.

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. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

#### MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a

period of morning business with Senators permitted to speak for up to 10 minutes each.

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

#### RESOLUTION ON CAMBODIA

Mr. MCCONNELL. Mr. President, I commend the majority leader for offering an important resolution on Cambodia yesterday that expressed concern with the systematic campaign by Prime Minister Hun Sen and the Government of Cambodia to undermine democracy and the rule of law in that country.

Scholars can argue when this campaign was initiated—after U.N.-sponsored elections in 1993 or before the coup d’etat in 1997—but no one disputes that it culminated early this year in the arrest of human rights leader Kem Sokha and other reformers in Phnom Penh on charges of defaming the Prime Minister.

As the resolution points out, no sector in Cambodia has been spared in this campaign.

Opposition leader Sam Rainsy was stripped of his parliamentary immunity last year and sentenced to 18 months in absentia for defaming the Prime Minister.

Radio journalist Mom Sonando was arrested for criminal defamation.

Even Rong Chhum, president of the Cambodian Independent Teachers Association, was similarly charged.

To be sure, other champions of freedom in Cambodia have suffered worse fates. Former parliamentarian Om Radsady and labor leader Chea Vichea were brutally murdered by unknown assailants. Justice remains similarly elusive for a grenade attack against a conference hosted by the Buddhist Liberal Democratic Party in 1995 and a more brutal attack against a peaceful rally organized by the Khmer Nation Party—headed by Sam Rainsy—in 1997.

The immediate and strong condemnation of the arrest of Sokha and his colleagues by international donors and multilateral organizations, including the United Nations and the World Bank, is certainly welcomed. U.S. Ambassador Joe Mussomeli and Deputy Chief of Mission Mark Storella deserve praise for standing by Sokha throughout the crisis. Assistant Secretary of State Christopher Hill’s trip to the region succeeded in freeing Sokha from prison, and I know he cringes at Hun Sen’s characterization of Sokha’s release as a “gift”. This may have been simply a poor choice of words, but it serves to affirm the world’s perception of Hun Sen as a Southeast Asian dictator.

The news that Hun Sen will drop charges against Sokha and other civil society reformers is not a cause for celebration. History shows that Hun Sen is a habitual offender, and we can expect continued harassment and intimidation against those championing freedom and the rule of law.

The international community must now turn its attention to the plight of Sam Rainsy, Cheam Channy and other political prisoners. It is time for His Majesty King Sihamoni to derail Hun Sen’s campaign by immediately pardoning Rainsy, Channy, and all other political prisoners. Only then will democracy have a chance to get back on track in Cambodia.

The challenge for Cambodia’s many donors is straightforward: hold Hun Sen and his government accountable for their actions. While this may require some soul searching by U.S. allies, particularly France, Germany, and Japan, the status quo in Cambodia serves only the interests of Hun Sen and the ruling Cambodian People’s Party. With a donor’s conference approaching in March 2006, the international community must demand a return on the significant assistance provided to Cambodia.

As over \$2 billion has been invested in the democratic development of that country since the 1991 Paris Peace Accords, it is not too much for the international community to demand that the Prime Minister and his government conduct themselves in a manner that respects the constitutional rights and dignity of the people of the Cambodia.

#### LISTENING TO TEENS ABOUT GUN VIOLENCE

Mr. LEVIN. Mr. President, the 2005 Teen Gun Survey conducted by the Uhlich Children’s Advantage Network, also known as UCAN, produced some very interesting and troubling results. UCAN conducts this survey each year as a way of measuring teens’ attitudes about gun violence. For 2005, the sample included nearly 1,000 teenagers from around the country who responded to a variety of questions about their exposure to gun violence and its impact on their lives.

The UCAN survey makes clear that far too many teens are exposed to gun violence. According to the survey, nearly half of the respondents personally know someone who has been shot, and more than a third know another teenager who has threatened to kill someone with a gun. Almost one out of every five teenagers who responded said they heard gunshots in their neighborhood at least once a month, and 38 percent believe they could get a handgun if they wanted to. Disturbingly, 39 percent of the respondents fear they will be shot someday.

The results of the survey also raise significant concerns about the perceived safety of our schools. More than a third of respondents said that they are afraid gun violence might take place in their school, and 21 percent feel that they are safer away from school than when they are in school.

These results should be taken seriously. Many teens who are exposed to gun violence may turn to violence later in life. A study completed last year by a University of Michigan researcher